1997 8-hour ozone standard for Cherokee County, South Carolina. This maintenance plan was submitted for EPA action on December 13, 2007, by the State of South Carolina, and ensures the continued attainment of the 1997 8-hour ozone national ambient air quality standard through the year 2014. EPA is proposing to approve the SIP revision pursuant to section 110 of the Clean Air Act. The maintenance plan meets all the statutory and regulatory requirements, and is consistent with EPA's guidance. On March 12, 2008, EPA issued a revised ozone standard. Today's action, however, is being taken to address requirements under the 1997 8-hour ozone standard. Requirements for the Cherokee County Area under the 2008 8-hour ozone standard will be addressed in the future.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 1, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–1186 by one of the following methods:

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

2. *E-mail: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2008–0797,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farngalo may be reached by phone at (404) 562–9152 or by electronic mail address *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: May 15, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–12548 Filed 5–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0053; FRL–8910–9]

RIN 2060–AN47

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emission standards for control of hazardous air pollutants (HAP) for the Paints and Allied Products Manufacturing area source category. The proposed emissions standards for new and existing sources are based on EPA's proposed determination as to what constitutes the generally available control technology or management practices (GACT) for the area source category.

DATES: Comments must be received on or before July 1, 2009, unless a public hearing is requested by June 11, 2009. If a hearing is requested on this proposed rule, written comments must be received by July 16, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget on or before July 1, 2009.

ADDRESSES: EPA will accept comment on the proposal for 30 days after publication in the **Federal Register**. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0053, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*: Follow the instructions for submitting comments.
- *Agency Web site: 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*. 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 NESHAP 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 or 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 form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Area Source NESHAP for Paints and Allied Products Manufacturing Docket, at the EPA Docket and Information Center, EPA West, Room 3334, 1301 Constitution Avenue 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, North Carolina 27711, telephone number: (919) 541–3609; fax number: (919) 541–0242; e-mail address: *payne.melissa@epa.gov*.

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

I. General Information

A. Does This Action Apply to Me?

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

The paints and allied products manufacturing area source rule (CCCCCCC) would cover all coatings, but does not include resin manufacturing, which is covered by the chemical manufacturing area source standard (VVVVVV). Facilities that manufacture both resins and coatings would be required to comply with both rules. Paints and allied products are defined in Sec. 63.11606 as any material such as a paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. The source category does not include the following: (1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents; (2) the manufacture of electroplated and electroless metal films; and (3) the manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and allied products. [1]

[1] Paint thinners and paint remover are covered under the Industrial Organic Chemical Manufacturing Area Source NESHAP, and electroplated and electroless metal films are covered under the Plating and Polishing Operations Area Source NESHAP. Resins manufacturing is covered under the Plastic Materials and Resins Manufacturing Area Source NESHAP and pigments manufacturing is covered under the Inorganic Pigment Manufacturing Area Source NESHAP.

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

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

B. What Should I Consider as I Prepare My Comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2008–0053. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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.

C. Where Can I Get a Copy of This Document?

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

D. When Would a Public Hearing Occur?

If anyone contacts EPA requesting to speak at a public hearing concerning this proposed rule by June 11, 2009, we will hold a public hearing on June 16, 2009. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Ms. Christine Adams at (919) 541–5590 at least two days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

A. What Is the Statutory Authority and Regulatory Approach for the Proposed Standards?

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

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We implemented these requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

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

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

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

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate

[2] North American Industry Classification System.

circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for categories listed pursuant to section 112(c)(3) and (k) by August 17, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). Other rulemakings will include standards for the remaining source categories that are due in June 2009.

B. What Source Category Is Affected by the Proposed Standards?

These proposed standards would affect any facility that manufactures paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings, the intended use of which is to leave a dried film of solid material on a substrate. The paints and allied products manufacturing process may include, but is not limited to, any one or combination of the following steps: weighing, mixing, grinding, tinting, thinning, heating, cooking, flushing, and packaging. The paints and allied products may be manufactured in liquid or solid form.

We listed the Paints and Allied Products Manufacturing area source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy. EPA listed this area source category for regulation pursuant to section 112(c)(3), based on emissions of the following six urban HAP: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel.

The definition of containing HAP is identical to the Occupational Safety and Health Administration (OSHA) definitions specified in 29 CFR 1910.1200(d)(4), *i.e.* a concentration of 0.1 percent by mass or more for carcinogens, as shown in formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material. The six Paints and Allied Products Manufacturing HAP are classified as carcinogens.

Throughout this proposed rule, we refer to compounds of cadmium, chromium, lead, and nickel as the ''Paints and Allied Products Manufacturing metal HAP.'' We refer to benzene and methylene chloride as the ''Paints and Allied Products Manufacturing volatile HAP.''

Based on 2002 U.S. Census data, we estimate that 2,510 paints and allied products manufacturing facilities are currently operating in the U.S. Independent estimates by the industry trade association confirm our calculations. Nearly all (97 percent) of the paints and allied products manufacturing facilities are in urban areas. Our analyses also indicate that the 2,190 facilities that comprise the Paints and Allied Products Manufacturing area source category are small businesses, which the Small Business Administration generally defines as facilities with less than 500 employees. The 2002 Census data also show that nearly 50 percent of the facilities in this source category have less than 10 employees.

C. What Are the Production Processes, Emission Sources, Baseline Emissions, and Available Controls?

1. Paints and Allied Products Manufacturing Processes

Paints and allied products manufacturing can be classified as a batch process and generally involves the blending and mixing of resins, pigments, solvents, and additives. Traditional coatings manufacturing consists of four major steps:

- Preassembly and premix;
- Pigment grinding, milling, and dispersing;
- Product finishing and blending; and
- Product filling and packaging.

The Paints and Allied Products Manufacturing volatile HAP emissions are a result of solvents that evaporate during the manufacturing process, and include benzene and methylene chloride. The Paints and Allied Products Manufacturing metal HAP emissions occur from the handling of solid materials such as pigments and resins during the manufacturing process. The metal HAP for this listing are cadmium, chromium, lead, and nickel compounds.

The preassembly and premix step involves the collection of raw materials that will be used to produce the desired coating product. These materials are added to a high speed dispersion or mixing vessel. The types of raw materials that are used for solvent-based coatings include resins, organic solvents, plasticizers, dry pigment, and pigment extenders; water, ammonia, dispersant, pigment, and pigment extenders are used for water-based coatings.

Pigment grinding or milling entails the incorporation of the pigment into the paint or ink vehicle to yield fine particle dispersion. The three stages of this process include wetting, grinding, and dispersion, which may overlap in any grinding operation. The wetting agent, normally a surfactant, wets the pigment particles by displacing air, moisture, and gases that are adsorbed on the surface of the pigment particles. Grinding is the mechanical breakup and separation of pigment clusters into isolated particles and may be facilitated by the use of grinding media such as pebbles, balls, or beads. Finally, dispersion is the movement of wetted particles into the body of the liquid vehicle to produce a particle suspension.

A wide array of milling equipment is used, depending on the types of pigments being handled. Commonly-used equipment includes the following: Roller mills, ball and pebble mills, attritors, sand mills, bead and shot mills, high-speed stone and colloid mills, high-speed dispersers, high-speed impingement mills, and horizontal media mills. Roller and ball mills are considered somewhat outdated methods and are usually associated with elevated volatile organic compound (VOC) emissions due to their more open design. Lids are commonly used on milling and mixing vessels to reduce product loss; the types of lids used range from plywood boards to plastic elasticized covers and, less often, steel lids.

High-speed dispersers, using disk-type impellers, are the most common method of mixing, or dispersion, in the industry. Because no grinding media are present in the mixing vat, pigment disperses on itself and against the surfaces of the rotor. While high-speed disk dispersion may work well for products such as undercoats and primers, it may not be appropriate for high-quality paints and inks, which instead use the other types of milling equipment as described above.

The finishing step involves adding small amounts of pigments, solids, or liquids to achieve the required color or consistency of the final product. The filling step involves packaging the final product for shipment to the buyer.

The process operations that generate HAP emissions include: emissions from loading of materials into the mixing tanks; heat-up losses during operation of the mixers; surface evaporation during mixing and blending; and filling losses

that occur during transfer into the receiving container. In addition, miscellaneous operations generating HAP emissions can include: solvent reclamation during the purification of dirty or spent solvent; cleaning of the process equipment; wastewater conveyance and treatment used to handle and treat contaminated water generated during the manufacturing process; material storage of solvents, pigments, and resins; leaks from the transport of stored materials to the process; and emissions from accidental spills during manufacturing and cleaning activities.

2. Paints and Allied Products Manufacturing Area Source HAP Emission Sources

The National Emissions Inventory (NEI) database was used to determine the sources of HAP emissions and to estimate the amount of HAP emissions produced from these sources. A summary of the data is presented in the following table. Total HAP emissions presented in the NEI database for the source category are 1,500 Tons per year (tons/yr), or 1,400 Megagrams per year (Mg/yr). The table shows that over 90 percent of the HAP emissions occur during the paints and allied products manufacturing process. Product manufacturing generally includes the addition of raw materials to the process vessels, grinding of solids, mixing, and packaging of the final product.

Category	HAP Tons/year (Mg/year)	Percentage of total
Product Manufacturing	1,406 (1,275)	90.7
Combustion Processes	1.60 (1.45)	0.103
Raw Material Storage	14.9 (13.5)	0.961
Equipment Cleaning and Fugitive Emissions	40.5 (36.7)	2.61
Other Miscellaneous Processes	63.8 (57.9)	4.12
Coating Application Testing	22.0 (20.0)	1.42

Source: 2002 NEI Database.

3. Paints and Allied Products Manufacturing Baseline HAP Emissions

Baseline HAP emissions were calculated using the HAP emissions from the 2002 NEI database and extrapolating the emissions data to estimate the emissions for all paints and allied products manufacturing area sources. Using this approach, we estimated the 2002 nationwide baseline HAP emissions (including total metal HAP and volatile HAP) to be 4,800 tons/yr (4,300 Mg/yr).

The total nationwide baseline emissions of the six listed urban HAP was estimated to be 221 tons/yr. This total includes 213 tons/yr of the listed urban volatile HAP (benzene, methylene chloride), and 8 tons/yr of the listed urban metal HAP (cadmium, chromium, lead, nickel).

4. Paints and Allied Products Manufacturing HAP Emission Controls

Emissions reduction approaches were reviewed for the Paints and Allied Products Manufacturing volatile and metal HAP. The data indicate that add-on controls to reduce volatile HAP are not commonly used on process vessels in the paints and allied products manufacturing industry. An absence of prior Federal regulation or specific State or local rules, along with the generally high capital investment needed for add-on control devices, may contribute to these findings. Management practices currently used by the paints and allied products manufacturing industry to control volatile HAP emissions include coating substitution or reformulation from conventional solvent-based coatings, solvent substitution, use of process vessel covers, and other measures (*e.g.*, covered storage of cleaning rags). Water-based and higher solids content coatings have been developed to reduce volatile HAP emissions.

For the Paints and Allied Products Manufacturing metal HAP, our analysis showed that add-on controls for such emissions from process vessels are widespread throughout the industry. Particulate controls are used to capture metal HAP, which are included in particulate emissions. Typical particulate collection devices used by the industry include: baghouses, cyclones, and venturi scrubbers. Each of these mechanical collectors can achieve 98 percent reduction in particulate emissions. According to our data, 79 percent of facilities use particulate matter control technology. Along with dust collectors and other fabric filters, they are used to control airborne dust and particulate matter, primarily in the pigment loading area and during the mixing process. Generally, fabric filters and vent systems are used at facilities that use powdered or dry pigments in their coatings formulations to protect workers from exposure to hazardous materials in the pigments. Management practices used to abate particulate emissions of the Paints and Allied Products Manufacturing metal HAP include lower HAP content coatings, better materials management, use of sandmills instead of ballmills, and equipment modifications.

III. Summary of Proposed Standards

A. Do the Proposed Standards Apply to My Source?

The proposed subpart CCCCCCC standards would apply to new and existing affected sources of paints and allied products manufacturing. The affected source is the new or existing paints and allied products manufacturing operation that processes, uses, or generates any of the following urban HAP: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel. An existing source is a paints and allied products manufacturing operation that processes, uses, or generates any of the following urban HAP: compounds of cadmium, chromium, lead, and nickel and benzene and methylene chloride. A new source is a paints and allied products manufacturing operation that processes, uses, or generates any of the following urban HAP: compounds of cadmium, chromium, lead, and nickel and benzene and methylene chloride, and that commences construction or reconstruction of the affected source on or after the date that this proposed rule is published in the **Federal Register**.

We recognize that standards limited to the emission points of the listed urban HAP in this area source category would be sufficient to satisfy the requirement in section 112(c)(3) and (k)(3)(B) that EPA regulate sufficient source categories to account for 90 percent of the urban HAP emissions. However, section 112 of the CAA does not prohibit EPA from regulating other HAP emitted from area sources listed pursuant to section 112(c)(3). Section

112(d)(5) states that for area sources listed pursuant to section 112(c), the Administrator may, in lieu of section 112(d)(2) ''MACT'' standards, promulgate standards or requirements ''applicable to sources'' which provide for the use of GACT or management practices ''to reduce emissions of hazardous air pollutants.'' This provision does not limit EPA's authority to regulate only those urban HAP emissions for which the category is needed to achieve the 90 percent requirement in section 112(c)(3). Finally, we do not expect this requirement to cause significant additional cost to the regulated facilities, while it will have added environmental benefit.

B. When Must I Comply With the Proposed Standards?

All existing area source facilities subject to this proposed rule would be required to comply with the rule requirements no later than two years after the date of publication of the final rule in the **Federal Register**. New sources would be required to comply with the rule requirements upon date of publication of the final rule in the **Federal Register** or upon startup of the facility, whichever is later.

C. What Are the Proposed Standards?

We are proposing use of a particulate control device as GACT for metal HAP and management practices as GACT for volatile HAP emissions. The standards apply when any operation is being performed that processes, uses, or generates any HAP.

For metal HAP, this proposed rule would require owners or operators of all existing and new affected facilities to operate a particulate control device at all times during the manufacturing process that metal HAP emissions could be present, based on the Material Safety Data Sheet, and visible emissions from the particulate control device shall not exceed 5 percent opacity when averaged over a six-minute period. The Paints and Allied Products Manufacturing metal HAP emissions can be present during the preassembly/premix and pigment grinding and milling manufacturing processes.

New and existing affected sources will be required to comply with the following management practices for the control of all volatile HAP emissions during the preassembly/premix and grinding/milling manufacturing steps:

(1) Process and storage vessels, except for process vessels which are mixing vessels, must be equipped with covers or lids meeting the requirements of paragraphs (1)(i) through (iii) of this section. These vessels must be kept covered when not in use.

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

(ii) The covers or lids must maintain contact along at least 90 percent of the vessel rim.

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

(2) Mixing vessels must be equipped with covers that completely cover the vessel, except for safe clearance of the mixer shaft. The vessels must be kept covered during the manufacturing process, except for operator access for quality control testing of the product, and during the addition of pigments or other materials used to meet the final product specifications.

(3) Leaks and spills of materials containing volatile HAP must be immediately minimized and cleaned up.

(4) Waste solvent rags or other materials used for cleaning must be kept in closed storage vessels.

If the proposed standards are applicable to your paints and allied products manufacturing area source, then the proposed standards would apply to all organic HAP emissions from the manufacturing operation and all metal HAP emissions from the preassembly/premix and grinding/milling manufacturing steps at the area source, not just the Paints and Allied Products Manufacturing volatile and metal HAP. We are proposing that the standards for each type of emission point apply to all of the emission points of that type in an affected source, including those that do not emit Paints and Allied Products Manufacturing volatile or metal HAP. For example, an area source may have two process vessels, one containing tetrachloroethylene and the other containing methylene chloride, and, under the proposed rule, both would be part of the affected source and subject to the process vessel standards.

D. What Are the Compliance Requirements?

To demonstrate initial compliance, this proposed rule would require a new or existing source to certify that the required control technologies and management practices have been implemented and that all equipment associated with the processes will be properly operated and maintained. In addition, a visual emission test using EPA Method 9 will be required to be performed on the particulate control device on or before the compliance date and every six months thereafter.

To demonstrate on-going compliance, the proposed rule requires owners and operators of affected facilities to inspect the particulate control device monthly to ensure that the unit is operating as specified in the manufacturer's operating instructions, and to perform a visual emission test using EPA Method 9 on the particulate control device every 6 months.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, reporting, and recordkeeping requirements to ensure compliance with this proposed rule. The owner or operator of a new or existing affected source would be required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 1 of this proposed rule. Each facility would be required to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9, General Provisions to part 63. These notifications are needed for EPA to determine applicability and initial compliance with specific rule requirements.

The Initial Notification would be required within 120 days of the effective date of the NESHAP. That report serves to alert appropriate agencies (State agencies and EPA Regional Offices) of the existence of each affected source and puts them on notice for future compliance actions. The notification of compliance status (NOCS) report, which is due 150 days after the compliance date of the NESHAP, is a more comprehensive report that describes the affected source, the associated emissions points, and the strategy being used to comply.

Under this proposed rule, each facility would prepare an annual compliance certification for the previous calendar year. The annual compliance certification must be completed no later than January 31 of each year and kept for five years. Facilities would be required to submit this annual compliance report if there is any deviation from the requirements or visual emissions testing during the year, and would include these deviation reports with their compliance report. We recognize that most of these facilities are small businesses; therefore we are requiring the submission of this annual compliance certification only if deviations occur during the year, so that there is not an undue economic burden on small businesses.

The facility must generate a monthly record for the implemented management practices and the particulate control device inspections (daily, weekly, monthly and Method 9, as applicable), listed in Sections C and D above, respectively. For demonstrating ongoing compliance, the proposed requirements include daily, weekly, and annual inspections, semi-annual visible emission testing, monthly checklists and annual certifications that the management practices are being followed and the particulate control device is being properly operated according to manufacturer instructions.

A responsible official at the facility must sign off by the 15th day of the following month that all requirements were met in the previous month. In implementing the requirements of this rule, sources can consider including procedures from their existing Standard Operating Procedures provided the procedures are relevant to implementing the required management practices.

Owners and operators would be required to maintain all records and annual certifications that demonstrate initial and ongoing compliance with this proposed rule, including records of all required notifications and reports, with supporting documentation; and records showing compliance with the control technology and management practices. The records must be kept readily accessible on site for two years, and may be kept at an offsite location for the remaining three years.

IV. Rationale for This Proposed Rule

A. How Did We Select the Source Category?

As described in section II.B, we listed the Paints and Allied Products Manufacturing source category under CAA section 112(c)(3) on November 22, 2002 (67 FR 70427). The inclusion of this source category on the area source category list was based on its contributions to the urban HAP emissions in the 1990 CAA section 112(k) inventory (benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel).

For this source category, we collected information on the production operations, emission sources, and available controls for both area and major sources using reviews of published literature, information gathered during the major source NESHAP, and reviews of operating permits. We also held discussions with industry representatives and EPA experts. This research confirmed that the Paints and Allied Products Manufacturing source category continues to emit the Paints and Allied Products Manufacturing volatile and metal HAP. We found that current emissions of such HAP have been significantly reduced from the amounts estimated in the section 112(k) 1990 base year inventory due to product reformulation, OSHA controls, and a shift in end-use and consumer preferences.

Consistent with the record supporting the listing of the Paints and Allied Products Manufacturing source category, we are proposing that the category include those area source paints and allied product manufacturing facilities that process, use, or generate paints and allied product manufacturing HAP or materials containing these HAP. We are defining materials containing HAP in a manner consistent with the definitions used in other area source categories, *e.g.*, plating and polishing (73 FR 14126) and metal fabrication (73 FR 42977). Therefore, materials containing the Paints and Allied Products Manufacturing volatile and metal HAP, for the purposes of this category, means a material containing methylene chloride, benzene and 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 in the Material Safety Data Sheet.

B. How Did We Select the Affected Source?

Affected source, as defined in 40 CFR 63.2, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard is established. In selecting the affected source for regulation for the paints and allied products manufacturing area source category, we identified the sources of HAP emissions, which include HAP-emitting colorants and cleaning products. We also identified the quantity of HAP emissions from the individual or groups of emissions points. We are proposing to designate all of the blending and mixing processes in the manufacturing operation, within a single contiguous area and under common control, as the affected source. This proposed designation is consistent with the approach EPA employed for other paints and allied product manufacturing regulations, *i.e.*, the major source NESHAP and the New Source Performance Standards (NSPS). This proposed rule includes requirements for the control of primary and fugitive emissions from paints and allied products manufacturing operations.

C. How Are the Paints and Allied Products Manufacturing Metal and Volatile HAP Addressed by This Rule?

For this proposed rule, we have selected particulate matter (PM) as a surrogate for paints and allied products manufacturing metal HAP. When emitted, each of the metal HAP compounds behaves as PM. The control technologies used for the control of PM emissions achieve comparable levels of performance for these metal HAP emissions, *i.e.* when PM is captured, HAP metals are captured non-preferentially as part of the PM. We also determined that it was not practical to establish individual standards for each specific type of metal HAP that could be present in the emissions, *e.g.*, separate standards for compounds of cadmium, chromium, lead, and nickel, because the types and quantities of metal HAP can vary widely in the raw materials. Therefore, emission standards requiring control of PM would also achieve comparable control of metal HAP emissions.

D. How Did We Determine GACT?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for the Paints and Allied Products Manufacturing area source HAP emissions. As noted in section II of this preamble, the statute requires the Agency to establish standards for area sources listed pursuant to section 112(c). The statute does not set any condition precedent for issuing standards under section 112(d)(5), other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

Most of the facilities in this source category have good operational controls in place for particulate matter. Furthermore, we believe that almost all of the area source paints and allied products manufacturing facilities are small businesses. Below, we explain in detail our proposed GACT determinations.

1. GACT for New and Existing Sources

We gathered background information on paints and allied products manufacturing facilities from a review of operating permits, the NEI database, and discussions with industry representatives to identify the emission controls and management practices that are currently used to control volatile and metal HAP emissions. We identified the control technologies and management practices that minimize

emissions from paints and allied products during the manufacturing process and that are commonly used in the industry.

a. Management Practices for Volatile HAP

The data indicate that add-on controls to reduce volatile HAP are used only sparingly on process vessels, as reported in both the State permits and the NEI database. This is probably due to the absence of Federal regulation of this industry and a lack of specific State or local rules. We believe that in the time since the data were collected for the 2002 NEI, most facilities have begun to produce low-VOC and low volatile HAP paints. This is a result of a shift in market demand due to the recent Federal paint and coating rules for other sources, such as the Boat Manufacturing, Fabric Surface Coating, Large Appliance Surface Coating, Metal Can Surface Coating, Metal Furniture Surface Coating, Plastic Parts, Aerospace, and Wood Furniture NESHAPs. Consumer demand for low-VOC paints may also be a factor.

A common management practice that is used to reduce volatile HAP emissions is through the use of process vessel covers. The Miscellaneous Organic NESHAP estimated that 95 percent of the major source facilities in the paints and allied products manufacturing NAICS code use process vessel covers. We believe that the same percentage of the area source facilities in the paints and allied products manufacturing category are currently using process vessel covers; this information agrees with estimates provided by industry. Therefore, we propose the use of process vessel covers as GACT for volatile HAP in the paints and allied products manufacturing industry according to the following requirements:

(1) During the preassembly/premix and grinding/milling manufacturing steps, process and storage vessels, except for process vessels which are mixing vessels, must be equipped with covers or lids meeting the requirements of paragraphs (A)(1)(i) through (iii) of this section. These vessels must be kept covered when not in use.

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

(ii) The covers or lids must maintain contact along at least 90 percent of the vessel rim.

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

(2) During the preassembly/premix and grinding/milling manufacturing steps, mixing vessels must be equipped with covers that completely cover the vessel, except for safe clearance of the mixer shaft. The vessels must be kept covered during the manufacturing process, except for operator access for quality control testing of the product, and during the addition of pigments or other materials used to meet the final product specifications.

(3) Leaks and spills of materials containing volatile HAP must be immediately minimized and cleaned up.

(4) Waste solvent rags or other materials used for cleaning must be kept in closed storage vessels.

The facility must use a monthly checklist as a record for the implemented work practices as listed above. A responsible official at the facility must sign off that all work practice requirements have been met. Existing written standard operating procedures may be used as the work practices plan if those procedures include the activities required by the final rule for a work practices plan.

b. Technology Control for Metal HAP

Paints and allied products manufacturing operating permits were obtained from State agency Web sites to determine the prevalence of add-on controls for metal HAP. The permit information, as well as discussions with the industry, show that add-on controls for metal HAP emissions from process vessels are commonly used throughout the industry. We believe that particulate control devices are primarily used because of concerns with workplace safety and, in some cases, to satisfy OSHA regulations. Information from the operating permits indicates that 23 of 29 (79 percent) area source facilities use add-on controls for particulate emissions. Based on this permit information, we determined that the use of controls to reduce particulate emissions during the preassembly/premix and grinding/milling steps of the paints and allied products manufacturing process commonplace.

To determine an applicable particulate matter standard, we reviewed the State operating permits for facilities in this source category. Most of the permits listed a concentration or mass emission particulate limit that requires testing using an appropriate particulate test method, in most cases EPA Method 5. We have concerns about the economic impact of particulate matter emissions testing for smaller facilities. The typical EPA Method 5 particulate matter emissions test on a stack costs between $3,000 and $10,000, which would be a significant economic burden for these area sources. Other area source rules and the States have used opacity as an effective surrogate for assessing mass emissions and to assure effective particulate emissions control. The use of visual emissions or opacity testing, as opposed to emission testing, is a lower cost method to determine compliance, and accommodates the different levels of activity that can occur from facility to facility, from product to product, and day to day within the same facility. This also reduces the cost impact on small businesses. There is a correlation between particulate matter concentration and opacity in the particulate matter control device outlet stream, and studies have shown that particulate concentrations are approximately zero at an opacity of zero.[3] For example, a test at a wet cement kiln with a fabric filter showed that when outlet concentrations were less than 0.009 grains/dry standard cubic feet (gr/dscf), opacity was less than 2 percent. This opacity is low enough that it would probably be observed as zero under most conditions. This in turn would result in a very low incidence of visible emissions during any observation period. A review of area source NESHAP opacity limits found several examples of particulate control devices being subject to zero or very low visible emission tests. Therefore, we believe that establishing a 5 percent opacity limit averaged over a six-minute period is an appropriate standard to effectively measure the effectiveness of a source's particulate emission control.

Section 112(d)(1) of the Clean Air Act gives the Administrator discretion to distinguish among classes, types, and sizes of sources in a category when establishing emissions standards under section 112(d). EPA is not proposing to subcategorize the paints and allied products manufacturing source category for purposes of the standards proposed in today's action based on our conclusion that there are no distinguishable differences in the grinding and mixing processes, which produce most of the HAP at paints and allied products manufacturing facilities. EPA solicits comments on its proposal to establish GACT standards for this source category without distinguishing among the sources based on class, type, or size. Commenters who believe EPA should establish subcategories for this source category should provide data to support their position.

Another consideration of GACT is the cost of compliance. To estimate the cost impacts, we used the permit

[3] Study of Benefits of Opacity Monitors Applied to Portland Cement Kilns. Prepared by Ronald Meyers, U.S. EPA, May 15, 1991, pp. 3–1–3–6.

information to estimate the percentage of the industry that already uses an add-on particulate control device. The most prevalent particulate control device used was a fabric or cartridge-type filter. Therefore, we used these technologies to estimate the annual cost of adding a particulate control device to a paints and allied products manufacturing facility, which was calculated to be $6,700. The total cost of requiring fabric filters on the estimated number of facilities that currently do not operate a particulate control device would be $3 million and would reduce metal HAP emission by 4.2 tons/yr (3.8 Mg/yr). In addition, this regulation as proposed would reduce particulate matter emissions by 6,300 tons/yr (5,700 Mg/yr), and fine particulate emissions ($PM_{2.5}$) by 3,000 tons per year (2,700 Mg/yr).

For metal HAP, this rule proposes that all owners or operators of existing facilities route emissions from their pigment and solids addition processes to a particulate control device and that visible emissions from the particulate control device shall not exceed 5 percent opacity when averaged over a six-minute period. The manufacturing processes include the addition of pigments and other solids to the process vessels, and grinding and milling of pigments and solids. After the addition processes, the pigment and associated metal HAP are in solution, and metal HAP emissions are minimal.

The manufacturer's specifications for maintenance and all other functioning parameters must be followed. The particulate control device must be designed and operated so that visible emissions from the unit shall not exceed 5 percent opacity when averaged over a six-minute period.

c. Reduction of All HAP Emissions in the Paints Manufacturing Process

The control technology and management practices proposed in this rule are equally effective at controlling emissions of HAP other than the Paints and Allied Products Manufacturing volatile and metal HAP. Applying the proposed standards to only the Paints and Allied Products Manufacturing HAP would require the facility to speciate HAP, as opposed to measuring total HAP when demonstrating compliance. This would require the facility to measure only the Paints and Allied Products Manufacturing metal HAP, which is mixed in with the other particulate matter emissions, and is a small percentage of the total. Applying the proposed standards to only the Paints and Allied Products Manufacturing urban HAP would require the facility to use different test methods to quantify these HAP emissions, which would increase compliance costs with no environmental benefits.

We are proposing to apply the standard to all HAP, as many of the area sources emit a significant amount of HAP in addition to the paints and allied products manufacturing urban HAP (for example, the listed HAP are only four percent of total HAP emissions at paints and allied products manufacturing facilities). Facilities that process, use, or generate HAP, but do not process, use, or generate any of the Paints and Allied Products volatile and metal HAP are not subject to the requirements of this NESHAP.

We have determined that sources would not have to install different controls or implement different management practices to implement the proposed standards for all HAP. Also, as part of the GACT analysis, we have found that the costs of applying the proposed standards to all HAP emissions from this source category are reasonable. For all of these reasons, we propose to apply these standards to all volatile HAP emissions in the manufacturing process and all metal HAP emissions from the preassembly/premix and grinding/milling steps of the manufacturing operations at paints and allied products manufacturing area sources, once the applicability criteria set forth in CCCCCCC are met. We request comment on the environmental, cost, and economic impacts of this approach.

E. How Did We Select the Compliance Requirements?

We are proposing notification, reporting, and recordkeeping requirements to ensure compliance with this proposed rule. We are requiring an Initial Notification and Notification of Compliance Status because these requirements are consistent with § 63.9 of the General Provisions of this part.

For demonstrating ongoing compliance, the proposed requirements include daily, weekly, and annual inspections, semi-annual visible emission testing, monthly checklists and annual certifications that the management practices are being followed and the particulate control device is being properly operated according to manufacturer instructions. Based on our data, most facilities currently operate at the GACT level of control and almost all of the affected facilities are small businesses. Therefore, we are proposing a requirement that would ensure compliance without placing an undue burden on the affected facilities. We believe the proposed requirements for monthly checklists, particulate control device inspections, visible emissions testing, and annual certifications achieve that objective, and can be adequately done by facility employees.

Under this proposed rule, each facility would prepare an annual compliance certification and keep it on site in a readily-accessible location. Facilities would be required to submit this annual compliance certification as a report only if there are any deviations from the work practice requirements during the year, and would include a description of the deviation with their compliance certification report. Deviations may include, but are not limited to, exceeding the opacity standard or failure to meet any requirements or management practices established in this proposed rule. We recognize that most of these facilities are small businesses; therefore we are requiring the submission of this annual compliance certification report only if deviations occur during the year so that there is not an undue economic burden.

We are proposing that existing affected sources must achieve compliance two years after the final rule is published in the **Federal Register**. Because some facilities may be subject to EPA rules for the first time and because most of these facilities are small businesses, with 50 percent of them having less than 10 employees, we believe the 2-year period would provide ample time for facilities to identify any changes that are needed to comply with the control technology, management practices, and recordkeeping and reporting requirements and institute those changes. All new affected sources would be required to comply upon the date of publication of the final rule, or startup, whichever is later.

F. How Did We Decide To Propose To Exempt This Area Source Category From Title V Permitting Requirements?

We are proposing to exempt affected facilities in the Paint and Allied Products Manufacturing area source category from title V permitting requirements for the reasons described below.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA

section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

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

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

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. We propose that requiring compliance with title V for this area source category would be unnecessarily burdensome. We further propose that the exemption from title V would not adversely affect public health, welfare or the environment. Our rationale for this decision follows.

In considering the proposed exemption from title V requirements for sources in the category affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in this proposed NESHAP for the Paints and Allied Products Manufacturing area source category. Title V requires periodic testing or monitoring to ensure compliance. One way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to assure compliance with the emissions limitations and control technology requirements imposed in the standard. This proposed standard would provide for monitoring in the form of visual emissions and opacity testing that would assure compliance with the requirements of this proposed rule. This proposed NESHAP would also require the preparation of an annual compliance certification report and submission of this report if there are any deviations during the year, which will identify for the agency implementing this rule those facilities with compliance issues, in the same way as a title V permit. Records would be required to ensure that the compliance requirements are followed and any needed corrective actions are taken, including such records as results of the visual emissions and opacity tests and the resulting corrective actions such as replacing a torn fabric filter bag. Therefore, this proposed rule contains monitoring sufficient to assure compliance with the requirements of this proposed rule.

In addition, title V imposes a number of recordkeeping and reporting requirements that may be important for assuring compliance. These include requirements for a monitoring report at least every 6 months, prompt reports of deviations, and an annual compliance certification. See 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3), 40 CFR 70.6(c)(1) and 40 CFR 71.6(c)(1), and 40 CFR 70.6(c)(5) and 40 CFR 71.6(c)(5). This proposed NESHAP would also require an annual compliance certification report and submission of this report if there are any deviations during the year, which should call attention to those facilities in need of supervision to the State agency in the same way as a title V permit. Records would be required to ensure that the control technology requirements and management practices are followed, including records about particulate matter control maintenance and Material Safety Data Sheets for all HAP and materials containing HAP as processed, used, or generated in the manufacturing process.

We also considered the extent to which title V could potentially enhance compliance for area sources covered by this NESHAP through recordkeeping or reporting requirements. For any affected paints and allied products manufacturing area source facility, the proposed NESHAP would require an initial notification and a compliance status report, which would include certifications by responsible officials that the facilities are in compliance and will continue to comply with the NESHAP. In addition, the affected facilities must maintain records showing compliance. The required records are similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

We believe the monitoring, recordkeeping, and reporting requirements in this proposed rule are sufficient to assure compliance with the requirements of this proposed rule. Therefore, we conclude that title V would not result in significant improvements to the compliance requirements we are proposing for this area source category.

Under the second factor, we determined whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, June 2007, EPA ICR Number 1587.07.

EPA does not have specific estimates for the burdens and costs of permitting Paints and Allied Products Manufacturing area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on any facility subject to title V. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms;

answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

We found that almost all of the approximately 2,190 paints and allied products manufacturing facilities that would be affected by this proposed rule are small entities; over half have nine or fewer employees. As discussed previously, title V permitting would impose significant costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. More than 90 percent of the facilities that would be subject to this proposed rule are small entities with limited resources, and under title V they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Furthermore, given the number of sources in the category and the relatively small size of many of those sources, it would likely be difficult for them to obtain sufficient assistance from the permitting authority. Thus, we conclude that factor two supports title V exemption for paints and allied products manufacturing facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the economic and non-economic costs of compliance with title V would impose a significant burden on many paint and allied products manufacturing facilities. We also conclude in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping, and reporting requirements in the proposed NESHAP are adequate to assure compliance with the control technology and management practices proposed in the NESHAP. In addition, in our consideration of the fourth factor as discussed below, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for paints and allied products manufacturing area sources.

The fourth factor we considered in determining whether title V permitting for this area source category is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. EPA has implemented regulations that provide States the opportunity to take delegation of area source NESHAP, and we believe that State-delegated programs are sufficient to assure compliance with this NESHAP. See 40 CFR part 63, subpart E; States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program. Furthermore, EPA retains authority to enforce this NESHAP at any time under CAA sections 112, 113 and 114. In addition, small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. These additional programs would supplement and enhance the success of compliance with this area source NESHAP. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with this area source NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data demonstrating that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to assure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. Although we do not have similar data in this case because the paints and allied products manufacturing area source NESHAP has yet to be promulgated and enforced, we have no reason to think that States will be less diligent in enforcing this NESHAP. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, General Provisions, subpart E.

In light of all of the information presented here, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the paint and allied products manufacturing NESHAP without relying on title V permitting. Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to compliance with the NESHAP, because the requirements in this proposed rule are sufficient to assure compliance with the standards and management practices imposed on this area source category. Thus, we propose that title V permitting is ''unnecessarily burdensome'' for the paints and allied products manufacturing area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome,'' EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting this area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the paints and allied products manufacturing category from the title V requirements would not have an adverse affect on public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with

respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

One of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements that would be applicable to these area sources because the requirements of the rule are not difficult to implement. The vast majority of NSPS and NESHAP standards apply only to major sources, with only a small number of such standards regulating any activities at area sources. Because there are so few standards that regulate areas sources, the likelihood that multiple NSPS or NESHAP would apply to these area sources is low. We also have no reason to think that new sources would be substantially different from the existing sources. In addition, we explained in the Exemption Rule that requiring permits could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from ensuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. We therefore conclude that title V exemptions for the paints and allied products manufacturing area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the reasons stated here, we are proposing to exempt the Paints and Allied Products Manufacturing area source category from title V permitting requirements.

V. Summary of Impacts of the Proposed Standards

A. What Are the Air Impacts?

Area sources in the paints and allied products manufacturing category have made significant emission reductions since 1990 through product reformulation, process and cleaning changes, installation of control equipment, and as a result of OSHA regulations. Affected sources appear to be well-controlled, and our proposed GACT determination reflects such controls. For the sources that would be required to install emission controls to meet the emission limits specified in this proposed rule, we estimated the 2002 nationwide emissions of all of the paints and allied products manufacturing HAP (including total metal HAP and volatile HAP) to be 4,800 tons/yr (4,300 Mg/yr).

Based on our data, we estimate that 21 percent of the facilities, or 460 area sources, do not have particulate controls installed. Through compliance with this rule as proposed, these facilities would reduce total PM emissions by 6,300 tons/yr (5,700 Mg/yr), total metal HAP emissions by 4.2 tons/yr (3.8 Mg/yr), and listed urban metal HAP (cadmium, chromium, lead, nickel) emissions by 0.13 tons/yr (0.11 Mg/yr).

We estimate that requiring the use of covers on process vessels as proposed in this rule would reduce nationwide volatile HAP emissions of the paints and allied products manufacturing area source category by about 169 tons/yr (153 Mg/yr), and listed urban volatile HAP (benzene, methylene chloride) emissions by 5.1 tons/yr (4.6 Mg/yr). These emission reduction estimates are based on the assumption that 5 percent of the existing paints and allied products manufacturing facilities would add covers to their process vessels, and that the covers will achieve a 40 percent reduction in volatile HAP emissions.

We do not anticipate any indirect or secondary air impacts of this rule as proposed. The use of process vessel covers does not require any energy to be employed at existing paints and allied products manufacturing facilities.

B. What Are the Cost Impacts?

In this analysis, two types of control options were investigated. The first type looked at potential control options for controlling volatile HAP. The second type looked at potential control options for controlling metal HAP. Costs for these options were developed for two model plants that are typical of the paints and allied products manufacturing industry.

Based on the cost effectiveness calculations, process covers are the most cost effective option of reducing volatile HAP emissions from process vessels. The cost effectiveness of applying covers to the process vessels was calculated to be $34 per ton of volatile HAP reduced for a small model plant and $28 per ton of volatile HAP reduced for a large model plant. These costs were conservatively estimated assuming that 15 percent of the process vessels would be required to be covered. When all VOC emissions are taken into account, the total cost was considerably lower at $3 per ton of VOC removed for both small and large model plants.

Per industry feedback, we know that 2-percent of the product will evaporate during the manufacturing process if the vessels are not covered. We estimated that it would cost $38,000 in total capital costs and $5,500 annually for the 110 facilities that will be required to install process vessel covers to meet the requirements of this rule. However the rule would also provide a cost savings to these same facilities, because they will have more coatings product at the end of the manufacturing process.

We determined that a particulate control device is GACT for reducing metal HAP emissions. The cost effectiveness was calculated to be $1.6 million per ton of metal HAP removed for a small model plant, and $330,000 per ton of metal HAP removed for the large model plant. For particulate emissions, the cost effectiveness for a small model plant was calculated to be $1,200 per ton of PM removed, and $200 per ton of PM removed for the large model plant. For fine particulate emissions, the cost effectiveness was determined to be $2,500 per ton of $PM_{2.5}$ removed for small model plants, and $500 per ton of $PM_{2.5}$ removed for large model plants. Even though the metal HAP cost effectiveness values are high, we believe that the PM and $PM_{2.5}$ cost effectiveness values are reasonable. Additionally, the reduction of particulate matter would improve workplace safety and reduce the cross contamination of coating products.

The estimated total capital costs of this proposed rule for existing sources are $8.1 million for installing particulate control devices. The estimated annualized cost of the proposed rule for existing sources would be $3.1 million per year. The annualized costs account for the annualized capital costs of purchasing disposable process vessel covers for the existing facilities that would be required to install new emission controls, and the annualized cost of installing a particulate control device to facilities that currently do not have particulate control. The other affected facilities would incur costs only for submitting the notifications and for annual control device inspections because those facilities already meet the control, monitoring, and recordkeeping requirements that would be required under the proposed rule. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $147 per facility.

C. What Are the Economic Impacts?

Both the magnitude of costs needed to comply with the rule and the

distribution of these costs among affected facilities can have a role in determining how the market will change in response to a rule. Total annualized costs for the rule are estimated to be $3.1 million. Four hundred and sixty facilities are projected to incur costs because of the proposed rule (79% of the 2,190 facilities are projected to incur no costs because they already meet the control requirements).

The cost to sales ratio is estimated to assess the impact on the affected facilities. Two sizes were used for the facilities and high, average, and low prices were used for the product. Cost to sales ratios range from 0.19 percent for the small model plant with the lowest ($3.50 per gallon price) to 0.001 percent for the large model plant with the highest price ($19.91 per gallon). Thus all of the 2,190 facilities are projected to have a cost to sales ratio below 1.0 percent. The average cost to sales ratio is expected to be around 0.13 percent. Thus this regulation is not expected to have significant impact on a substantial number of small entities. The costs are so small that the impact is not expected to be significant. These small costs are not expected to result in a significant market impact whether they are passed on to the purchaser or absorbed.

In terms of economic impacts, this proposed standard is estimated to impact a total of 2,190 area source facilities, which are all small entities. Our analysis indicates that this proposed rule would not impose a significant adverse impact on any facilities, large or small.

D. What are the non-air health, environmental, and energy impacts?

To comply with the rule as proposed, we expect that affected facilities would control emissions by installing, operating, and maintaining a particulate control device, and using process vessel covers; none of these controls generate wastewater. Therefore, we project that this rule as proposed would have no impact on water emissions.

There were few data available on the amount of solid and hazardous waste disposed of from the paints and allied products manufacturing industry. The main source of solid waste comes from the collected particulate from the particulate control device. Other sources of solid waste include rags used for cleaning and coatings that do not meet customer specifications. If facilities switch to producing low HAP coatings or use low HAP cleaning materials, the amount of hazardous waste would greatly decrease. The actual amount depends on several variables, including the type of manufactured coatings, the cleaners used, and number of facilities switching to low HAP or wetted pigments. It was assumed that there would be no significant waste disposal impacts because many of the facilities are producing low HAP coatings. The few facilities required to install and operate monitoring devices or systems would collect small amounts of metal HAP. Therefore, minimal additional solid waste would be generated as a result of the metal HAP emissions collected. If a facility switches from solvent-based coating to a water-based coating there should be a reduction in the amount of solid waste produced due to the use of nonvolatile materials.

Energy impacts consist of the fuel (natural gas) needed to operate the combustion-based control device (thermal oxidizer) that is used to comply with the regulatory alternatives. It also includes the amount of electricity to operate the control devices. The estimated electricity and fuel impacts are already included in the annual cost of the control technologies. No additional energy is required for the process vessel covers or other management practices.

No detrimental secondary impacts are expected to occur because 79 percent of all existing facilities are currently achieving the GACT level of control. There are no additional energy impacts associated with operation of the control devices or monitoring systems.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2348.01.

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

This proposed NESHAP would require Paints and Allied Product Manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 2,887 labor hours per year at a cost of $322,009 or approximately $147 per facility.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number [EPA–HQ–OAR–2008–0053]. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 1, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by July 1, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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 proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact a total of almost 2,200 area source paints and allied products manufacturing facilities; over ninety percent of these facilities are estimated to be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be approximately 0.13 percent for the estimated 460 facilities that would not initially be in compliance. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this proposed rule would 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. The standards represent practices and controls that are common throughout the paints and allied products industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed in consultation with small business representatives on the State and national level and the trade associations that represent small businesses.

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

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. This proposed rule is not expected to impact State, local, or tribal governments. The nationwide annualized cost of this proposed rule for affected industrial sources is $3.1 million/yr. Thus, this proposed rule would not be subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

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

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.''

This proposed 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 proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

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

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

Executive Order 13175 (65 FR 67249, November 6, 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.'' This proposed rule does not have Tribal implications, as specified in Executive Order 13175. This proposed rule imposes no requirements on Tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

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

I. National Technology Transfer Advancement Act

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

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we

identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Method 9.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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 proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule would establish national standards for the Paints and Allied Products area source category. The nationwide standards would reduce HAP emissions and thus decrease the amount of emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 63

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

Dated: May 22, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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 A—[AMENDED]

2. Part 63 is amended by adding subpart CCCCCCC to read as follows:

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

Applicability and Compliance Dates

Sec.

Standards, Monitoring, and Compliance Requirements

Other Requirements and Information

Tables to Subpart CCCCCCC of Part 63

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

Applicability and Compliance Dates

§ 63.11599 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a facility that performs paints and allied products manufacturing that is an area source of hazardous air pollutant (HAP) emissions and processes, uses, or generates materials containing one or more of the following HAP: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel.

(b) The affected source consists of all paints and allied products manufacturing processes at the facility.

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

(2) An affected source is new if you commenced construction or reconstruction of the affected source after June 1, 2009.

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

§ 63.11600 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with applicable provisions in this subpart by 2 years after the date of publication of the final rule in the **Federal Register**.

(b) If you start up a new affected source on or before the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart by no later than the date of publication of the final rule in the **Federal Register**.

(c) If you start up a new affected source after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards, Monitoring, and Compliance Requirements

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

(a) For each new and affected source, you must capture particulate emissions and route them to a particulate control device meeting the requirements of this section during the addition of pigments and other solids and during the grinding and milling of pigments and solids.

(1) For new and existing affected sources, visible 5 percent opacity when averaged over a six-minute period.

(2) [RESERVED]

(b) For each new and existing affected source, you must comply with the requirements in paragraphs (b)(1) through (4) of this section.

(1) Process and storage vessels, except for process vessels which are mixing vessels, must be equipped with covers or lids meeting the requirements of paragraphs (b)(1)(i) through (iii) of this section. These vessels must be kept covered when not in use.

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

(ii) The covers or lids must maintain contact along at least 90 percent of the vessel rim.

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

(2) Mixing vessels must be equipped with covers that completely cover the vessel, except for safe clearance of the

mixer shaft. The vessels must be kept covered during the manufacturing process, except for operator access for quality control testing of the product, and during the addition of pigments or other materials used to meet the final product specifications.

(3) Leaks and spills of materials containing volatile HAP must be immediately minimized and cleaned up.

(4) Waste solvent rags or other materials used for cleaning must be kept in closed storage vessels.

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

(a) For each new and existing affected source, you must demonstrate initial compliance by conducting the inspection and monitoring activities in paragraph (a)(1) of this section and ongoing compliance by conducting the inspection and testing activities in paragraph (a)(2) of this section.

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

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

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

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

(iv) For each particulate control device, you must conduct an initial 30 minute visible emission test using Method 9 (40 CFR part 60, appendix A–4). If the results of the visible emissions test indicate an opacity greater than the applicable limitation in § 63.11601(a), you must take corrective action according to the equipment manufacturer's specifications or instructions and retest within 15 days.

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

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

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

(B) You must conduct weekly visual inspections of the system ductwork and wet particulate control equipment for leaks.

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

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

(A) You must conduct weekly visual inspections of the system ductwork for leaks.

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

(iii) For each particulate control device, you must conduct a 30 minute visible emission test every 6 months using Method 9 (40 CFR part 60, appendix A–4). If the results of the visible emissions test indicate an opacity greater than the applicable limitation in § 63.11601(a), you must take corrective action according to the equipment manufacturer's specifications or instructions and retest within 15 days.

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

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Technique or method used;

(4) Operating conditions during the activity;

(5) Results; and

(6) Description of correction actions taken.

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

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

(1) Initial Notification of Applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 120 days after the date of publication of the final rule in the **Federal Register**. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 120 days after initial start-up of the operations or 120 days after the date of publication in the **Federal Register**, whichever is later. The notification of applicability must include the information specified in paragraphs (a)(1)(i) through (iii) of this section.

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

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

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

(2) Notification of Compliance Status. If you own or operate an existing affected source, you must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions within 2 years and 120 days after the date of publication of the final rule in the **Federal Register**. If you are the owner of a new affected source, you must submit a Notification of Compliance Status within 120 days after initial start-up, or by 120 days after the date of publication of the final rule in the **Federal Register**, whichever is later. This Notification of Compliance Status must include the information specified in paragraphs (a)(2)(i) and (ii) of this section.

(i) Your company's name and address;

(ii) A statement by a responsible official with that official's name, title, phone number, e-mail address and

signature, certifying the truth, accuracy, and completeness of the notification, a description of the method of compliance (*i.e.*, compliance with management practices, installation of a wet or dry scrubber) and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart.

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

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

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

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

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

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

(i) Company name and address;

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

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

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

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

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

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

(3) You must keep a copy of the particulate control device manufacturer specifications and recommendations on site at all times.

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

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

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

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

§ 63.11604 [RESERVED]

Other Requirements and Information

§ 63.11605 What General Provisions apply to this subpart?

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

§ 63.11606 Who implements and enforces this subpart?

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

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

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

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

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

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

§ 63.11607 What definitions apply to this subpart?

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

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

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

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

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

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

Material containing HAP means a material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the

manufacturer or supplier, such as the Material Safety Data Sheet for the material.

Paints and allied product 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.

Paints and allied product manufacturing means the production of paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings, the intended use of which is to leave a dried film of solid material on a substrate. Paints and allied product manufacturing does not include the manufacture of:

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

(2) Electroplated and electroless metal films; and

(3) Raw materials, such as resins, pigments, and solvents used in the production of paints and coatings.

Paints and allied product manufacturing process means all the equipment which collectively function to produce a paints or allied product. A process may consist of one or more unit operations. For the purposes of this subpart, the manufacturing process includes any, all, or a combination of, weighing, blending, mixing, grinding, tinting, dilution or other formulation. Cleaning operations are considered part of the manufacturing process. Quality assurance and quality control laboratories are not considered part of a paints and allied product manufacturing process.

Particulate control device means the air pollution control equipment used to remove PM from the effluent gas stream generated by a reaction vessel.

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

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

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

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

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

(4) Wastewater storage tanks; and

(5) Process vessels.

§ 63.11608–63.11638 [RESERVED]

Table 1 to Subpart CCCCCCC of Part 63—Applicability of General Provisions to Paints and Allied Products Manufacturing Area Sources

As required in § 63.11599, you must meet each requirement in the following table that applies to you.

Part 63 General Provisions to be incorporated for Paints and Allied Products Manufacturing Area Sources:

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

[1] § 63.11599(c), ''Am I subject to this subpart?'' exempts affected sources from the obligation to obtain title V operating permits.

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