ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2018-0747; FRL-6934.1-02-OAR]

RIN 2060-AV38

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking final action on the technology review conducted on the Miscellaneous Coating Manufacturing (MCM) source category regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAP). These final amendments include provisions for inorganic hazardous air pollutant (HAP) standards for process vessels.

DATES: This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0747. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Angie Carey, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2187; fax number: (919) 541-0516; and email address: *carey.angela@epa.gov*.

SUPPLEMENTARY INFORMATION: *Preamble acronyms and abbreviations.* Throughout this document the use of "we," "us," or "our" is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

1-BP	1-bromopropane
CAA	Clean Air Act
CFR	Code of Federal Regulations
EJ	Environmental Justice
EPA	Environmental Protection Agency
FR	*Federal Register*
gr/dscf	grains per dry standard cubic feet
HAP	hazardous air pollutant(s)
ICR	Information Collection Request
km	kilometer
MACT	maximum achievable control technology
MCM	miscellaneous coating manufacturing
NESHAP	national emission standards for hazardous air pollutants
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
PRD	pressure release devices
PM	particulate matter
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RTR	residual risk and technology review
$\mu g/m^3$	microgram per cubic meter
UMRA	Unfunded Mandates Reform Act
VCS	voluntary consensus standards

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

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this final rule. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this final rule is likely to affect. These final standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this final rule. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act*

Amendments of 1990 (see 57 FR 31576; July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030; July 1992), the Manufacture of Paints, Coatings, and Adhesives source category "is any facility engaged in their manufacture without regard to the particular end-uses or consumers of such products. The manufacturing of these products may occur in any combination at any facility." This source category has since been renamed Miscellaneous Coating Manufacturing (MCM).

TABLE 1. NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source Category and NESHAP	NAICS Code[1]
Miscellaneous Coating Manufacturing Industry	3255, 3259

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/miscellaneous-coating-manufacturing-national-emission-standards*. Following publication in the *Federal Register*, the EPA will post the *Federal Register* version of the final rule and key technical documents at this same website.

II. Background

A. What is the statutory authority for this action?

This final rule amends the National Emission Standards for Hazardous Air Pollutants (NESHAP): Miscellaneous Coating Manufacturing, which was previously amended when the EPA finalized the Residual Risk and Technology Review (RTR) on August 14, 2020.[1]

In the *Louisiana Environmental Action Network* v. *EPA (LEAN)* decision issued on April 21, 2020, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that

[1] 85 FR 49724; Aug. 14, 2020.

the EPA has an obligation to address unregulated emissions from a source category when the Agency conducts the 8-year technology review required by Clean Air Act (CAA) section 112(d)(6).[2] To meet this obligation, the EPA issued a proposed rule to address unregulated emissions of HAP from the MCM source category. Inorganic HAP can be emitted from sources in the MCM category as part of a source's particulate matter (PM) emissions. These emissions can occur when raw materials in powder form are added to paint mixing vessels. Therefore, amendments were proposed to define the maximum achievable control technology (MACT) standard for inorganic HAP within the MCM source category pursuant to CAA sections 112(d)(2) and (3).

B. What is this source category and how does the current NESHAP regulate its organic and inorganic HAP emissions?

As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990*[3] and *Documentation for Developing the Initial Source Category List* (Final Report),[4] the "manufacture of paints, coatings, and adhesives" source category "is any facility engaged in their manufacture without regard to the end-uses or consumers of such products. The manufacturing of these products may occur in any combination at any facility."

The MCM source category includes the collection of equipment that is used to manufacture coatings at a facility. MCM operations also include cleaning operations. Coatings

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[2] *Louisiana Environmental Action Network* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020) *("LEAN")*.
[3] See 57 FR 31576; July 16, 1992.
[4] See EPA-450/3-91-030, July 1992, available at *https://nepis.epa.gov/Exe/ZyNET.exe/2000MTDN.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C91thru94%5CTxt%5C00000015%5C2000MTDN.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL.*

are materials such as paints, inks, or adhesives that are intended to be applied to a substrate and consist of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coatings do not include materials made in processes where a formulation component is synthesized by a chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating, where the synthesized or separated component is not stored prior to formulation.

The equipment regulated by the MCM NESHAP includes process vessels, storage tanks for feedstocks and products, equipment leak components (pumps, compressors, agitators, pressure relief devices (PRDs), sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems), wastewater tanks, heat exchangers, and transfer racks.

The current NESHAP regulates process vessels based on the volume of the process vessel and the maximum true vapor pressure of the organic HAP processed or stored. Control requirements range from the use of tightly fitted lids on process vessels to the capture and reduction of organic HAP emissions through the use of add-on controls (*i.e.*, a flare, oxidizer, or condenser).

The NESHAP did not previously regulate inorganic HAP from process vessels. During the addition of raw materials in powder form to paint mixing vessels, emissions of inorganic HAP in the form of PM emissions may occur and are typically collected and routed to a PM control device (*i.e.*, baghouse, fabric filters, cartridge filters, or scrubbers). This final rule addresses the previously unaddressed inorganic HAP emissions from this category and requires MACT for emission sources of inorganic HAP.

C. What changes did we propose for the MCM source category in our June 7, 2022, proposal?

On June 7, 2022, the EPA published a proposal in the *Federal Register* for the MCM NESHAP, 40 CFR part 63, subpart HHHHH, to set a MACT standard for inorganic HAP metal emissions from process vessels in the MCM source category. We also proposed to add 1-

bromopropane (1-BP) to table 7, *Partially Soluble HAP*, and table 11, *List of Hazardous Air Pollutants That Must Be Counted Toward Total Organic HAP Content If Present at 0.1 Percent or More by Mass*, to this subpart. We asked for comment on these changes, and additionally sought comment on the use of 1-BP in this source category.

III. What is the rationale for our final decisions and amendments for the NESHAP for the MCM source category?

This section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses.

A. Inorganic HAP Standards for Process Vessels

1. What comments did we receive on the inorganic HAP standards, and what are our responses?

Comment: We received comments that the EPA should include design evaluations of PM control devices (*i.e.*, baghouses, fabric filters, cartridge filters, or scrubbers) as alternatives to EPA Method 5 testing for initial compliance demonstrations. The commenters argued that coatings production often occurs infrequently, taking a fraction of the time needed to conduct an EPA Method 5 test. The commenters argued that EPA Method 5 test runs usually require an hour or more, whereas the addition of dry solids to an MCM subject process vessel usually takes no more than 10 or 15 minutes for each batch. The commenters stated that it could be a matter of days, or months, before another batch of dry solids is added to a process vessel. Further, commenters argued that typically only 1 or 2 batches in a year would be subject to these standards for several reasons, including that the amendments only apply to process vessels that are greater than or equal to 250 gallons, and that some of the manufactured materials might not be coatings. The commenters also stated that besides metal HAP, facilities might already route any PM to a control device resulting from the addition of dry solids (*i.e.*, for worker hygiene protection).

Response: Periodic performance tests verify control device performance and also help identify potential degradation of an add-on control device over time to ensure the control device remains effective, reducing the potential for acute emissions episodes or noncompliance. Therefore, we are finalizing the requirement to conduct performance testing. The commenters indicate that the most significant issue is related to the amount of time that the controls are operating to limit PM emissions. We recognize that there may be instances where inorganic HAP materials are processed for very limited periods of time and, therefore, are clarifying that the performance test may be conducted during any solids addition or processing steps, and not just during the addition of inorganic HAP-containing materials. We note that the PM emissions limit proposed for inorganic HAP was based on performance testing for similar units that had the potential for PM emissions, and not limited to periods where inorganic HAP-containing materials were added or processed. We are, therefore, clarifying the regulatory text at 40 CFR 63.8005(i)(1)(i) to specify that EPA Method 5 may be conducted during the addition of any dry materials.

Comment: Commenters argued that design evaluations are allowed in other NESHAP rules including 40 CFR part 63, subpart BBBBBBB, Chemical Preparations Industry; 40 CFR part 63, subpart VVVVVV, Chemical Manufacturing Area Sources; and 40 CFR part 63, subpart CCCCCCC, Paints and Allied Products Manufacturing, and therefore should be allowed in this standard. In addition, commenters argued that the current MCM rule references 40 CFR part 63, subpart SS, which they claimed allows design evaluations to control organic HAP.

Response: As discussed above, performance testing is important to verify initial and periodic control device performance. Although design evaluations have been allowed in some NESHAP such as the area source standards identified by the commenter, performance testing is required in a number of MACT standards to demonstrate compliance. In the August 14, 2020, final rule, we finalized requirements for facilities subject to subpart HHHHH to conduct control device performance testing no less frequently than once every 5 years when using emission

capture systems and add-on controls to demonstrate compliance, see 85 FR 49724, 49729, and removed provisions in conflict with this change. However, we erroneously did not make a conforming change to 40 CFR 63.8005(d)(1) at that time to remove now obsolete language addressing the conduct of design evaluations. We are therefore making a correction to 40 CFR 63.8005(d)(1) to remove the remaining reference regarding design evaluations in this provision.

Comment: Commenters suggested that the EPA should clarify that 40 CFR part 63, subpart SS, does not apply to PM control devices by adding clarifying language to 40 CFR 63.8000(a)(2) and (c).

Response: Because the final inorganic HAP metal general requirements are specified in a separate section from the organic HAP requirements cited by this commenter, this commenter's suggested clarifications are unnecessary. The requirements in §63.8000(a)(2) and (c) are not related to the metal HAP requirements for PM control devices. Therefore, we have not made the requested clarifications.

Comment: Commenters suggested that the EPA provide 3 years, rather than 1 year, to comply with the final rule amendments. Commenters argued that the EPA did not account for all facilities that will need to install new control devices for PM. Commenters stated that some facilities have process vessels that are already controlled with a PM control device, but have other process vessels at their facilities that are not currently controlled with a PM control device and would, therefore, need to install a new PM control device.

Response: The final rule provides 1 year to comply with the amendments. For most facilities, 1 year to conduct performance tests on existing inorganic HAP control devices is an adequate amount of time. The commenters were not specific in terms of how many facilities would have to install new control devices to meet this final rule, but we expect that number to be minimal to none. Therefore, we have not provided additional time. We note, however, that 40 CFR 63.6(i)(4)(ii) provides an opportunity to request an additional 2 years to comply if necessary for the installation of controls.

Comment: One commenter suggested that the EPA conduct further research on the toxicity of non-mercury metal HAP.

Response: This comment is outside of the scope of this rulemaking. Nonetheless, the EPA continues to research and collect information on pollutants such as non-mercury metal HAP.

Comment: One commenter suggested that the EPA clarify whether inorganic HAP metal includes compounds of metal HAP (*i.e.*, manganese, antimony, nickel, lead, cobalt, chromium, cadmium, or arsenic) or just these metals themselves. The commenter also suggested that the EPA clarify whether the metal HAP limit of 0.1 percent by weight refers to the content of one single metal HAP compound or the total content of the metal HAP compounds combined.

Response: The definition of material containing metal HAP includes compounds of the metals listed and the metals themselves. The 0.1 percent by weight refers to the total content of all the metal HAP compounds combined and the metals themselves, except for elemental lead.

Comment: One commenter stated that there is a lack of standards for pigments and other solids that are in paste or slurry form. The commenter also suggested that the word "liquid" can be removed from the phrase "pigments and other solids that are in paste, slurry, or liquid form," as no PM emissions occur in liquids.

Response: We disagree that there need to be standards for pigments and other solids that are in paste or slurry form as PM emissions do not occur from processing liquids, pastes, or slurries.

2. What did we propose and what changes are being made to the inorganic HAP amendments in this final rule?

This final rule addresses the previously unregulated inorganic HAP metal emissions from this source category by setting MACT standards for emission sources of metal HAP by amending the compliance requirements in 40 CFR 63.7995(f); the general requirements specified in 40 CFR 63.8005(a)(1)(iii) and (i); the reporting requirements specified in 40 CFR 63.8075; the

recordkeeping requirements in 40 CFR 63.8080(i) and (g); and the general provisions as specified in table 10 to this subpart, as proposed, to set PM standards stating that existing sources must demonstrate initial compliance with the PM emissions limit of 0.014 grains per dry standard cubic foot (gr/dscf) and new sources must demonstrate initial compliance with the PM emissions limit of 0.0079 gr/dscf. We are revising table 1 of 40 CFR part 63, subpart HHHHH, as proposed, to include the 0.014 gr/dscf emission limit that applies to process vessels. Facilities are required to continuously comply with the standards during all operations that emit metal HAP. These final amendments do not apply to pigments and other solids that are in paste, slurry, or liquid form.

We are finalizing, as proposed, the definitions in 40 CFR 63.8105 for Bag Leak Detection System (BLDS), fabric filter, and material containing metal HAP. We are also amending the regulatory text at 40 CFR 63.8005(i)(1)(i) to specify that EPA Method 5 may be conducted during the addition of any dry materials, not only when dry material containing metal HAP are added.

As finalized, continuous compliance with the emission limits will be demonstrated through control device parameter monitoring coupled with periodic emissions testing.

Under this final rule, a source owner is required to submit semi-annual compliance summary reports which document both compliance with the requirements of this rule and any deviations from compliance with any of those requirements.

B. Adding 1-BP to the list of HAP

1. What comments did we receive regarding the addition of 1-BP to our list of HAP, and what are our responses?

Comment: One commenter argued that the CAA requires the EPA to establish MACT standards for each uncontrolled HAP, including 1-BP. The commenter argued that the *LEAN* decision specifies that the EPA must set emissions standards for each HAP emitted by the source category. The commenter stated that the *LEAN* decision requires the Agency to set MACT

standards for HAP that have not previously been regulated. The commenter further stated that the EPA did not calculate MACT standards or establish emissions limits for 1-BP. The commenter stated that the EPA has never previously calculated how much 1-BP the best performing sources emit and has not set emissions standards for 1-BP. The commenter stated that adding 1-BP to table 7, *Partially Soluble HAP*, and table 11, *List of Hazardous Air Pollutants That Must Be Counted Toward Total Organic HAP Content If Present at 0.1 Percent or More by Mass*, to this subpart does not satisfy the EPA's obligation to set MACT standards. The commenter argued that the EPA does not have enough information to set a MACT floor for 1-BP. The commenter also argued that a similar analysis should have been completed for 1-BP as it was done for PM. The commenter argued that the EPA did not conduct a surrogate analysis between 1-BP and other organic HAP.

Response: As explained in our 2022 proposal, the D.C. Circuit in *LEAN* held that EPA has an obligation to address unregulated emissions from a source category when conducting the 8-year technology review required by section 112(d)(6). At the time this rule was proposed, we considered it possible that sources in this source category may use 1-BP; however, we had no data to support a conclusion that there are emissions of 1-BP from this source category. Nonetheless, we proposed to address potential MACT requirements, and stated "for this source category, we do not believe that the inclusion of 1–BP as an organic HAP would have affected the representativeness of the MACT standard." We asked for comments and data regarding emissions of 1-BP. However, no one provided data or other evidence demonstrating that 1-BP is emitted from this source category. In addition to requesting comments, we surveyed several MCM facilities to verify our position that 1-BP is not used in this industry. No respondents to our survey use or emit 1-BP (see *Miscellaneous Coating Manufacturing Source Category (MCM) Bromopropane (1-BP) Postcard Phone Survey Memo* in the docket for this action).

In response to this comment, we have examined whether the addition of 1-BP to the HAP list impacts the source category. We proposed to include 1-BP in the tables that list the regulated

HAP for this source category as a conservative, protective approach. However, our survey and our knowledge regarding likely sources of 1-BP emissions lead us to conclude that 1-BP is not used in this source category. Therefore, the obligation to address unregulated emissions set out in LEAN does not apply here, and we are not including 1-BP in the list of HAP regulated in this final rule. The EPA will continue to evaluate the best approach to address any new HAP additions for each source category as the applicable NESHAP is reviewed.

2. What did we propose and what changes are being made regarding the addition of 1-BP in this final rule?

On January 5, 2022, the EPA published in the *Federal Register* (87 FR 393) a final rule amending the list of HAP under the CAA to add 1-BP in response to public petitions previously granted by the EPA. This action became effective on February 4, 2022.

As discussed above, although we proposed to include 1-BP in the tables that list the regulated HAP for this source category, we determined that including 1-BP in the tables in this subpart is not the correct approach for this source category. Based on our brief phone survey and knowledge of the industry, we have determined that facilities are not using or emitting 1-BP in this source category. Therefore, we are not finalizing the addition of 1-BP to table 7, *Partially Soluble HAP*, and table 11, *List of Hazardous Air Pollutants That Must Be Counted Toward Total Organic HAP Content If Present at 0.1 Percent or More by Mass*, to this subpart to include 1-BP.

C. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on February 22, 2024.

All the provisions we are finalizing under CAA sections 112(d)(2) and (3) are subject to the compliance deadlines outlined under CAA section 112(i). For existing sources, CAA section 112(i)(3) provides there shall be compliance "as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard…" subject to certain exemptions

further detailed in the statute.[5] In determining what compliance period is as "expeditious as practicable," we examined the amount of time needed to plan and construct projects and change operating procedures. As provided in CAA section 112(i), all new affected sources would comply with these provisions by the effective date of the final amendments to the MCM NESHAP or upon startup, whichever is later.

All affected facilities would have to continue to meet the current provisions of 40 CFR part 63, subpart HHHHH, until the applicable compliance date of the amended rule. This final action is not a "major rule" as defined by 5 U.S.C. section 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For all affected sources that commence construction or reconstruction on or before June 7, 2022, we are finalizing, as proposed, that it is necessary to provide 1 year after the effective date of the final rule or upon startup, whichever is later, for owners and operators to comply with the PM provisions. For all affected sources that commenced construction or reconstruction after June 7, 2022, we are finalizing, as proposed, that owners and operators comply with the amended PM provisions by the effective date of the final rule or upon startup, whichever is later.

IV. Summary of Cost, Enviornmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected sources?

Currently, 42 major sources subject to the MCM NESHAP are operating in the United States. The affected source under the NESHAP is the facility-wide collection of equipment used to manufacture coatings and includes all process vessels; storage tanks for feedstocks and products; components such as pumps, compressors, agitators, PRDs, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks; transfer racks; and cleaning operations. A coating is defined as a material such

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[5] *Association of Battery Recyclers v. EPA*, 716 F.3d 667, 672 (D.C. Cir. 2013) ("Section 112(i)(3)'s 3-year maximum compliance period applies generally to any emission standard… promulgated under [section 112]" (brackets in original)).

as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation and materials are blended, mixed, diluted, or otherwise formulated.

B. What are the air quality impacts?

We project no emissions reductions of PM from the MCM source category because all facilities reporting PM emissions are already equipped with particulate controls. This action finalizes first-time standards for inorganic HAP that will limit emissions and require that controls are effective.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.*, increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The final amendments would have no effect on the energy needs of the affected facilities and would, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

All existing MCM facilities are expected to be currently achieving the level of control required by these final standards. That is, we believe that all existing sources currently route vent streams from specified equipment through a PM control device such that PM emissions are reduced to at least 0.014 gr/dscf. Although this final rule contains requirements for new sources, we are not aware of any new sources being constructed now or planned in the next year and, consequently, we did not estimate any cost impacts for new sources. Therefore, there are no capital costs of this final rule. The estimated annualized cost of the final rule would be $205,000 per year. The annualized costs account for submitting the notifications and for control device performance testing, inspections, monitoring, recordkeeping, and reporting for 12 facilities that are expected to have add-on controls. As stated in the technical support document, *Update of Summary of Data Collected for the MCM RTR Amendments*, there are 12 facilities that reported

metal HAP to the 2017 NEI. Therefore, we expect only 12 facilities to incur costs. This document is available in the docket for this action. No other capital costs are associated with this final rule, and no additional operational and maintenance costs are expected.

D. What are the economic impacts?

For the final rule, the EPA estimated the cost of performing an initial performance test and annual control device inspections at affected facilities. To assess the potential economic impacts, the expected annual cost is compared to the total sales revenue for the ultimate owners of affected facilities. For this rule, the expected annual cost is $6700 for each facility, with an estimated nationwide annual cost of $205,000 (2019$). The 42 affected facilities are owned by 27 parent companies, and the total costs associated with these amendments are expected to be less than 1 percent of annual sales revenue per ultimate owner. These costs account for 12 facilities expected to have add-on controls for metal HAP, as well as all 42 facilities to become familiar with the rule. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. This analysis is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2018-0747). Three of the affected facilities are owned by small entities. However, since the costs associated with these amendments for these 3 affected small entities are expected to be less than 1 percent of annual sales revenue per ultimate owner, there are no significant economic impacts on a substantial number of small entities from these final amendments.

Information on our cost impact estimates on the sources in the MCM source category is available in the docket for this final rule.

E. What analysis of environmental justice did we conduct?

Consistent with the EPA's commitment to integrating environmental justice (EJ) in the Agency's actions, and following the directives set forth in multiple Executive orders, the Agency

has carefully determined the impacts of this action on communities with EJ concerns. For MCM facilities, the demographic proximity analysis shows the population for people of color is similar to or lower than the national average. However, the subcategory of the African American population is above the national average, as well as low-income and the population without a high-school diploma. This action will set emission standards for inorganic HAP metals. However, all existing sources currently operate control technologies and devices such that no further emission reductions are anticipated as a result of this action, including in communities already overburdened by pollution, which are often minority (*i.e.*, people of color and/or indigenous peoples) and low-income. Following is a more detailed description of how the Agency considers EJ in the context of regulatory development, and specific actions taken to address EJ concerns for this action.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms, which are specifically minority populations (*i.e.*, people of color and/or indigenous people) and low-income populations (59 FR 7629; February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009; January 25, 2021). The EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to determine ways of protecting them from adverse public health and environmental effects of air pollution.

To examine the potential for any EJ issues that might be associated with MCM facilities, we performed a demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and 50 km of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

A summary of the proximity demographic assessment performed for the major source MCM facilities is included as Table 2 of the proposal (see 87 FR 34622). The results of the demographic analysis indicate that, for populations within 5 km of the 42 major source MCM facilities, the percent of the population who are people of color (being the total population minus the white population) is similar to the national average (41 percent versus 40 percent). However, the percent African American population is higher than the national percent (20 percent versus 12 percent nationally). The percent of people living below the poverty level (19 percent) and those over 25 without a high school diploma (15 percent) are higher than the national averages (13 percent and 12 percent, respectively). The results of the analysis of populations within 50 km of the 42 major source MCM facilities indicate that, the percent population of people of color (being the total population minus the white population) is significantly lower than the national average (28 percent versus 40 percent). The percent of people living below the poverty level, those over 25 without a high school diploma, and people living in linguistic isolation are also lower than the corresponding national averages. The methodology and the results of the demographic analysis are presented in a technical report, *Analysis of Demographic Factors for Populations Living Near MCM Facilities*, available in this docket for this action (Docket ID No. EPA-HQ-OAR-2018-0747).

With regard to HAP emissions, this action requires facilities with process vessels emitting inorganic HAP, which consist of PM emissions from addition of raw materials in powder form to paint mixing vessels, to demonstrate compliance with PM emissions of 0.014 gr/dscf for existing sources and 0.0079 gr/dscf for new sources. Because all existing sources control these emissions, no further emission reductions are anticipated as a result of this action,

including in communities already overburdened by pollution, which are often minority (*i.e.*, people of color and/or indigenous peoples) and low-income.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and 13563 Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule will be submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2115.10. You can find a copy of the ICR in the MCM Docket (Docket ID No. EPA-HQ-OAR-2018-0747), and it is briefly summarized here.

Respondents/affected entities: Facilities manufacturing surface coatings.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHHH).

Estimated number of respondents: In the year after the amendments are final, approximately 42 respondents per year would be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 42, in year 2 is 12, and in year 3 is 12.

Total estimated burden: The average annual burden of the final amendments to the 42 MCM facilities over the first year if the amendments are finalized is estimated to be 1,593 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 49 hours (per year). Burden is defined in 5 CFR 1320.3(b).

Total estimated cost: The average annual cost of the final amendments to the MCM facilities is $178,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and operation and maintenance costs are $28,000. The total average annual Agency cost of the final amendments over the first 3 years after the amendments are final is estimated to be $2,330.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the *Federal Register* and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are MCM facilities owned by small businesses. Three of the affected facilities are owned by small entities. However, since the costs associated with the amendments for these three affected small entities are expected to be less than one percent of annual sales revenue per ultimate owner, there are no significant economic impacts on a substantial number of small entities from these amendments. Details of this analysis are described in section IV.D. above and additional detail is provided in the economic impact memorandums associated with this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in any of the industries that would be affected by this action (MCM). Thus, Executive Order 13175 does not apply to this action. This action's health and risk assessments are contained in sections IV.E of this preamble.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA offered consultation to tribal officials during the development of this action. However, the Agency did not receive a request for consultation. The EPA also provided an overview on a tribal partnership call on June 30, 2022, during the public comment period to inform the tribes of the content of the proposed action and to encourage them to submit comments.

G. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51

This action involves technical standards. Therefore, the EPA conducted searches for the MCM NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also reviewed voluntary consensus standards (VCS) organizations and accessed and searched their databases for EPA Methods 5 and 29. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's referenced method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA referenced methods. The EPA may reconsider determinations of impracticality when additional information is available for a particular VCS.

No applicable VCS was identified for EPA Method 5. The search identified one VCS that was potentially applicable for this rule in lieu of EPA Method 29. However, after reviewing the available standard, the EPA determined that the VCS identified for measuring emissions of pollutants subject to emissions standards in the rule would not be practical due to lack of equivalency. Additional information for the VCS search and determination can be found in the memorandum *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coatings Manufacturing Technology Review*, which is available in the docket for this action.

H. 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) directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ 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 (people of color and/or indigenous peoples) and low-income populations.

The EPA anticipates that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate effects on African American and low-income populations. Near MCM facilities, the percentages of residents who are African American or low income are higher than the nationwide percentages. However, based on prior analyses of this source category (85 FR 49727), risks from HAP pollutants have been found to be at acceptable levels and this rule will continue to maintain acceptable levels of exposure.

The EPA anticipates that this action will not change this characterization of impacts and is not likely to result in new disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. All existing sources currently operate control technologies and devices such that no further emission reductions are anticipated as a result of

this action, including in communities already overburdened by pollution, which are often minority (*i.e.*, people of color and/or indigenous peoples) and low-income. The methodology and the results of the demographic analysis are available in the docket for this action (Docket ID No. EPA-HQ-OAR-2018-0747) in the technical report *Analysis of Demographic Factors for Populations Living Near MCM Facilities*.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action does not present any changes to the rule that would affect environmental health or safety risks, including those that would present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ‘‘major rule’’ as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Business and industry, Carbon oxides, Environmental protection, Hazardous substances, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

2. Amend §63.7995 by revising paragraphs (a) introductory text and (b) and adding paragraph (f) to read as follows:

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

* * * * *

(a) Except as specified in paragraphs (e) and (f) of this section, if you have a new affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

* * * * *

(b) Except as specified in paragraphs (e) and (f) of this section, if you have an existing affected source on December 11, 2003, then you must comply with the requirements for existing sources in this subpart no later than December 11, 2006.

* * * * *

(f) All affected sources that commenced construction or reconstruction on or before June 7, 2022, must be in compliance with the requirements listed in paragraphs (f)(1) through (4) of this section upon initial startup or February 22, 2024, whichever is later. All affected sources that commenced construction or reconstruction after June 7, 2022, must be in compliance with the

requirements listed in paragraphs (f)(1) through (4) of this section upon initial startup, or **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever is later.

(1) The general requirements specified in § 63.8005(a)(1)(iii) and (i).

(2) The reporting requirements specified in § 63.8075.

(3) The recordkeeping requirements specified in § 63.8080(i) and (g).

(4) The general provisions as specified in table 10 to this subpart.

3. Amend §63.8000 by revising paragraph (d)(1) introductory text and adding paragraph (d)(1)(vii) to read as follows:

§ 63.8000 What are my general requirements for complying with this subpart?

* * * * *

(d) * * *

(1) *Requirements for performance tests*. The requirements specified in paragraphs (d)(1)(i) through (vii) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of this part.

* * * * *

(vii) You must conduct periodic performance tests and establish the operating limits required by § 63.8005(i) within 5 years following the previous performance test. You must conduct the initial or first periodic performance test before February 22, 2024, unless you are already required to complete a periodic performance test as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 71, and have conducted a performance test on or before February 22, 2024. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

* * * * *

4. Amend §63.8005 by:

a. Revising paragraphs (a)(1) introductory text and (a)(1)(i);

b. Adding paragraph (a)(1)(iii);

c. Revising paragraph (d)(1); and

d. Adding paragraph (i).

The revisions and additions read as follows:

§ 63.8005 What requirements apply to my process vessels?

(a) * * *

(1) You must meet each emission limit and work practice standard in table 1 to this subpart that applies to you, and you must meet each applicable requirement specified in § 63.8000(b), except as specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) Except as provided in paragraph (a)(1)(iii) of this section, you are not required to meet the emission limits and work practice standards in table 1 to this subpart if you comply with § 63.8050 or § 63.8055.

* * * * *

(iii) You must meet the inorganic HAP emissions limit in table 1 to this subpart during the addition of material containing metal HAP to a process vessel. You are not required to meet this limit for the addition of pigments and other solids that are in paste, slurry, or liquid form.

* * * * *

(d) * * *

(1) To demonstrate initial compliance with a percent reduction emission limit in table 1 to this subpart, you must conduct the performance test under conditions as specified in § 63.7(e)(1), except as specified in paragraph (d)(5) of this section, and except that the performance test must be conducted under worst-case conditions. Also, the performance test for a control device used to control emissions from process vessels must be conducted according to § 63.1257(b)(8), including the submittal of a site-specific test plan for approval prior to testing. The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for process vessels.

* * * * *

(i) *Inorganic HAP standards*. You must demonstrate initial compliance with the inorganic HAP limit in table 1 to this subpart and as specified in paragraph (a)(1)(iii) of this section by following the requirements specified in paragraph (i)(1) or (2) of this section. You must demonstrate continuous compliance with the requirements in § 63.11583(a) through (e) and (h).

(1) You must follow the requirements specified in paragraphs (a)(1)(i) through (iii) of this section and include the results in your notification of compliance status report in accordance with § 63.8070.

(i) You must conduct the tests under conditions that represent normal operation, during which dry materials are added; tests may be conducted whether or not those dry materials contain metal HAP.

(ii) You must perform the test using EPA Method 5 in appendix A to 40 CFR part 60.

(iii) You must conduct a minimum of three separate test runs with a minimum sample volume of 70 dry standard cubic feet (2 dry standard cubic meters) per run for each performance test required in this section, as specified in § 63.7(e)(3).

(2) For existing sources only, you may demonstrate initial compliance using the results of an emissions test conducted in the past 5 years provided the test meets the requirements in paragraph (i)(1) of this section.

5. Amend §63.8075 by revising paragraph (d)(1) to read as follows:

§ 63.8075 What reports must I submit and when?

* * * * *

(d) * * *

(1) You must submit the notification of compliance status report no later than 150 days after the applicable compliance date specified in § 63.7995. You must submit a separate

notification of compliance status report after the applicable compliance date specified in § 63.7995(e) and (f).

* * * * *

6. Amend §63.8080 by revising paragraph (g) and paragraph (i) introductory text to read as follows:

§ 63.8080 What records must I keep?

* * * * *

(g) If you establish separate operating limits as allowed in § 63.8005(e) or (i), you must maintain a log of operation or a daily schedule indicating the time when you change from one operating limit to another.

* * * * *

(i) On and after the compliance date specified in § 63.7995(e), for each deviation from an emission limitation reported under § 63.8075(e)(5) or § 63.8005(i), a record of the information specified in paragraphs (i)(1) and (2) of this section, as applicable.

* * * * *

7. Amend §63.8105 in paragraph (g) by adding the definitions "Bag Leak Detection System", "Fabric filter", and "Material containing metal HAP", in alphabetical order, to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Bag Leak Detection System (BLDS) means a system that is capable of continuously monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A BLDS includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

* * * * *

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

* * * * *

Material containing metal HAP means a material containing compounds of manganese, antimony, nickel, lead, cobalt, chromium, cadmium, and arsenic compounds, 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.

* * * * *

8. Table 1 to subpart HHHHH of part 63 is revised and republished to read as follows:

Table 1 to Subpart HHHHH of Part 63—Emission Limits and Work Practice Standards for Process Vessels

As required in § 63.8005, you must meet each emission limit and work practice standard in the following table that applies to your process vessels.

For each . . .	You must . . .	And you must . . .
1. Portable process vessel at an existing source	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling	Nonapplicable.

For each . . .	You must . . .	And you must . . .
2. Stationary process vessel at an existing source	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling; or	i. Considering both capture and any combination of control (except a flare), reduce emissions of organic HAP with a vapor existing pressure ≥0.6 kPa by ≥75 percent by weight, and reduce emissions of organic HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight.
	b. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling	i. Reduce emissions of organic HAP with a vapor pressure ≥0.6 kPa by ≥75 percent by weight, and reduce emissions of organic HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight, by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <10 °C if the process vessel contains HAP with a partial pressure <0.6 kPa, or <2 °C if the process vessel contains HAP with a partial pressure ≥0.6 kPa and <17.2 kPa, or <−5 °C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

For each . . .	You must . . .	And you must . . .
	c. As specified in § 63.8005(i), on or before February 22, 2024, during the addition of dry material, route material containing metal HAP to a capture and control system that is maintained and operated according to the provisions of § 63.8005	i. Reduce emissions of material containing metal HAP to 0.014 gr/dscf or less.
3. Portable and stationary process vessel at a new source	a. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling	i. Reduce emissions of total organic HAP by ≥95 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <−4 °C if the process vessel contains HAP with a partial pressure <0.7 kPa, or <−20 °C if the process vessel contains HAP with a partial

For each . . .	You must . . .	And you must . . .
		pressure ≥0.7 kPa and <17.2 kPa, or <−30 °C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.
	b. As specified in § 63.8005(i), upon startup or **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever is later, during the addition of dry material, route material containing metal HAP to a capture and control system that is maintained and operated according to the provisions of § 63.8005	i. Reduce emissions of material containing metal HAP to 0.0079 gr/dscf or less.
4. Halogenated vent stream from a process vessel subject to the requirements of item 2 or 3 of this table for which you use a combustion control device to control organic HAP emissions	a. Use a halogen reduction device after the combustion control device; or	i. Reduce overall emissions of hydrogen halide and halogen HAP by ≥95 percent; or ii. Reduce overall emissions of hydrogen halide and halogen HAP to ≤0.45 kilogram per hour (kg/hr).
	b. Use a halogen reduction device before the combustion control device	Reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

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