

Additions/deletions are in Underline/~~STRIKEOUT~~

[Amend 310 CMR 7.00, Definitions follows.]

MISCELLANEOUS METAL PARTS AND PRODUCTS means farm machinery (harvesting, fertilizing, and plant machines, tractors, combines, lawn mowers, rototillers, etc.); small appliances; commercial and office equipment (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.); fabricated metal products (metal doors, frames, etc.); industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.); and any other metal parts or products which are coated under Standard Industrial Classification Codes of Major Groups 33, 34, 35, 36, 37, 38, and 39. The use of autobody anti-chip coatings and underbody plastisols in automobile and light-duty truck surface coating is considered coating of miscellaneous parts and products. ~~In addition, this definition includes exterior coating of assembled entire aircraft and assembled entire metal marine vessels.~~ This definition does not include metal cans, flat metal sheets, and strips in the form of rolls or coils; magnet wire for use in electrical machinery; metal furniture; large appliances; automobile and light duty trucks, automobile refinishing; exterior coating of assembled entire aircraft or assembled entire metal marine vessels; or customized topcoating of automobiles and trucks, if production is less than 35 vehicles per day.



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

Background Information & Technical Support Document For Proposed Amendments To

310 CMR 7.18

Volatile and Halogenated Organic Compound

Miscellaneous Metal Parts and Products
310 CMR 7.18(11)

Regulatory Authority:
M.G.L. Chapter 111, §§ 142A through 142E

October 14, 2011

I. Introduction

The Massachusetts Department of Environmental Protection (Department) is proposing to amend in 310 CMR 7.00, Definitions, the definition of *miscellaneous metal parts and products* (MMP&P), to remove assembled entire aircraft and assembled entire metal marine vessels from the definition's list of included coating operations, and add assembled entire aircraft and assembled entire metal marine vessels to the list of excluded operations. The amendment is necessary to correct a word processing error which occurred when amending the definition in 1989. The Department became aware of this word processing error during review of an administrative appeal of a 310 CMR 7.02(5) plan approval filed October 22, 2009.

II. Background

Massachusetts General Laws, Chapter 111, §§ 142A-D provides the Department with the authority to adopt regulations to prevent, control or abate conditions of air pollution where and when such occur. In accordance with that authority, the Department promulgated regulations at 310 CMR 6.00-8.00 for the control of air pollution. In particular, 310 CMR 7.18(11) U Surface Coating of Miscellaneous Metal Parts and Products regulates volatile organic compound (VOC) emissions from MMP&P coating lines.

In 1989, the Department amended the definition of MMP&P to address a deficiency in its 1982 State Implementation Plan (SIP) for the attainment of the ozone National Ambient Air Quality Standard (NAAQS). This was done in response to a letter from EPA to the Department, dated June 16, 1988, requiring the Department to amend its definition of MMP&P to include *industrial machinery* as part of EPA's plan to 'level the playing field' (i.e., eliminate any differences between the federally enforceable VOC regulations in different states).

In the record of documents generated by the 1989 *industrial machinery* rulemaking, there is no mention of changing the regulation to either include or exclude aircraft or marine vessels from the defined operations. All documentation during the rule-making was limited to discussion of adding *industrial machinery* to the definition's list of included coating operations. This documentation included the 1989 technical support document, public and EPA comments, the Department's response to comments on the proposed change, and EPA's comments on the Department's submittal of the amended language to EPA as a SIP revision addressing the definition of MMP&P. Moreover, EPA's comments on the definition change state in part that "the definition of MMP&P is now identical to the EPA," where in fact it was not due to this word processing error.

Prior to the amendments in 1989, the definition of MMP&P listed *exterior of airplanes* and *exterior of marine vessels* among the definition's excluded coating operations. In the absence of this explicit exclusion, airplane and marine vessel exteriors would be included in the definition of MMP&P under Standard Industrial Classification (SIC) Code of Major Group 37, Transportation Equipment. See the 1989 MMP&P definition below which includes SIC Major Group 37 as a subject category:

MISCELLANEOUS METAL PARTS AND PRODUCTS means farm machinery (harvesting, fertilizing, and plant machines, tractors, combines, lawn mowers, rototillers, etc.); small appliances; commercial machinery (compactors and auxiliary equipment, typewriters, calculators, vending machines, etc.); fabricated metal products (metal doors, frames, etc.); and any other metal parts or products which are coated under the Standard Industrial Classification Code of Major Groups 33, 34, 35, 36, 37, 38, and 39. This definition does not include automobiles and light duty trucks; metal cans; flat metal sheets and strips in the form of rolls or coils; magnet wire for use in electrical machinery; metal furniture; large appliances; exterior of airplanes; automobile refinishing; customized top coating of automobiles and trucks, if production is less than 35 vehicles per day; and, exterior of marine vessels.

However, in the definition promulgated in 1989, *exterior of airplanes* and *exterior of marine vessels* were no longer excluded from the definition. Instead, the definition has a new sentence that states:

In addition, this definition includes exterior coating of assembled entire aircraft and assembled entire metal marine vessels.

This was done in error; the only amendment intended and discussed in the technical support document was the addition of *industrial machinery* as a category covered by the MMP&P definition.

The effect of this error is that owners and operators of Massachusetts establishments engaged in surface coating of entire aircraft and assembled entire marine vessels are now subject to a more stringent emissions standard than the applicable VOC RACT and MACT emissions standards. Subjecting these types of coating operations to the MMP&P coating process requirements of 310 CMR 7.18(11) is not technically feasible considering the state of the art in the shipbuilding and repair and aerospace industries.

The Department is now proposing to correct the error in the definition of MMP&P to exclude the coating of the exterior of air planes and exterior of marine vessels from the RACT requirements of 310 CMR 7.18(11) which will align it with the federal Control Techniques Guidelines (CTG) as originally intended.

State Implementation Plan for Ozone National Ambient Air Quality Standard

Upon final promulgation of this proposed amendment, the Department will submit the corrected definition of MMP&P to EPA as a revision to the Department's SIP. With respect to air quality attainment planning, since the Department has not quantified nor relied on VOC reductions from subjecting marine vessel or aircraft coaters to MMP&P standards for an ozone SIP commitment, the proposed correction to the definition will not impact the Department's SIP commitment nor be considered back sliding under §193 of the Clean Air Act (CAA).

III. ECONOMIC IMPACTS

This amendment corrects a word processing error made when amending the MMP&P definition to align it with the federal version. The regulations as currently written hold MMP&P to a more stringent standard than similar operations across the country without notice or the opportunity to comment. Amending the Department regulations will not have an adverse economic impact on the industry.

IV. ENVIRONMENTAL IMPACTS

The amendment will not have a significant environmental impact. EPA established VOC RACT guidance and MACT standards that apply to the same categories covered by the proposed amendment so that the source category's emissions will be controlled.

V. IMPACTS ON OTHER PROGRAMS

A. Toxics Use Reduction

Implementation of toxics use reduction is a Department-wide priority. Toxics use reduction is defined as in-plant practices that reduce or eliminate the total mass of contaminants discharged to the environment. These amendments are not expected to impact that effort.

B. Air Toxics

In the past, air pollution control programs have focused on the six criteria pollutants: particulate matter, nitrogen oxides, sulfur dioxide, ozone, carbon monoxide, and lead. Recently concern has been raised over the components of air pollution that are not specifically regulated by programs developed to control criteria pollutants. These compounds are collectively known as air toxics. The health effects of air toxics are wide ranging and can vary from long-term carcinogenic effects to short-term adverse health effects. The correction to the definition is not expected to have any negative impact on air toxics.

C. Impacts on Cities and Towns (Proposition 2 1/2)

Pursuant to Executive Order 145, the Department must assess the fiscal impact of new regulations on the Commonwealth's municipalities. There are no impacts on the Commonwealth's municipalities as a result of these proposed changes since no municipalities operate facilities subject to the changes.

D. MEPA

MEPA review is not required because adopting the definition as initially intended does not significantly reduce: 1. standards for environmental protection; 2. opportunities for public participation in permitting or other review processes; or 3. public access to information generated or provided in accordance with the regulations.

E. Agricultural Impacts

Massachusetts General Laws, Chapter 30A, Section 18 requires state agencies to evaluate the impact of proposed programs on agriculture within the Commonwealth. As the proposed amendment aligns the Commonwealth's definition of MMP&P with the federal definition, the proposed amendment will have no adverse impact on agriculture in Massachusetts.

VI. IMPLEMENTATION

The amendment is not expected to add to the Department's workload.

VI. PUBLIC PARTICIPATION

To assure adequate notice for processing this definitional change as an amendment to the SIP, formal notice and the opportunity to review background and technical information will be provided 30 days before the public hearing, which will be held under the provisions of M.G.L. Chapter 30A, Section 2.