

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2003-0178; FRL-8227-5]

RIN 2060-AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action promulgates amendments to the national emission standards for hazardous air pollutants for miscellaneous coating manufacturing. The amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. The amendments extend the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit. The amendments also clarify that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt. These changes clarify applicability of the rule and minimize the compliance burden.

EFFECTIVE DATE: October 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0178. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2003-0178, EPA/DC, EPA West Building, Room B-102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week

of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5402; fax number: (919) 541-0246; e-mail address: mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS Code*	Examples of regulated entities
Industry ..	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of subpart HHHHH (national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing), as well as in today's amendment to the definitions section. If you have questions regarding the applicability of the amendments to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN policy and guidance page for newly proposed or promulgated rules at www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 4, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

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

- I. Background
- II. Response to Comments
 - A. Compliance Date
 - B. Affiliated Operations
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Congressional Review Act

I. Background

On December 11, 2003, we promulgated NESHAP for miscellaneous coating manufacturing as subpart HHHHH of 40 CFR part 63 (68 FR 69164). Subpart HHHHH applies to the facilitywide collection of equipment used to manufacture coatings. On May 17, 2006 (71 FR 28639), we proposed amendments to the: (1) Definition of the term "coating," (2) compliance date for shared equipment that is part of a process unit group (PUG) developed under the miscellaneous organic chemical manufacturing NESHAP (MON) (40 CFR part 63, subpart FFFF), and (3) exemptions for operations by end users that are related to the application of a pre-manufactured coating.

All equipment that is used to manufacture coatings is subject to 40 CFR part 63, subpart HHHHH. Because the definition of coating at 40 CFR 63.8105 in subpart HHHHH does not specify that coatings are produced only by blending, mixing, diluting, and related formulation operations without chemical synthesis or separation, some products of synthetic organic chemical manufacturing could be considered coatings. This overly broad definition of "coating" expands the applicability of 40 CFR part 63, subpart HHHHH to equipment intended to be covered by 40 CFR part 63, subpart FFFF. The proposed amendments to the definition of coating clarify that products of reaction and separation, such as polymers, resins, and synthetic organic chemicals are not coatings and are not covered by the final rule. In addition, the proposed amendments to the definition of coating clarify that 40 CFR part 63, subpart HHHHH also does not apply to the production of formulation components by chemical synthesis or separation activity if those components are not stored prior to formulation. We proposed these revisions so that the applicability of the final rule accurately and appropriately reflects the coating manufacturing industry and the basis for the maximum achievable control technology (MACT) floor.

The recent extension of the compliance date for 40 CFR part 63, subpart FFFF (see 71 FR 10439, March 1, 2006) raises a timing issue with

respect to 40 CFR part 63, subpart FFFF and 40 CFR part 63, subpart HHHHH overlap. The extension for the compliance date for 40 CFR part 63, subpart FFFF results in the compliance date for 40 CFR part 63, subpart HHHHH occurring before the MON compliance date, thus creating a problem for plants with equipment subject to both subparts FFFF and HHHHH of 40 CFR part 63 who opt to develop a PUG. Because we have extended the compliance date for 40 CFR part 63, subpart FFFF, a source that primarily manufactures organic chemicals, but also produces a coating product in the same equipment, would not be able to comply with subparts FFFF and HHHHH of 40 CFR part 63 as EPA intended during the period between the compliance date for 40 CFR part 63, subpart HHHHH (December 11, 2006) and 40 CFR part 63, subpart FFFF (May 10, 2008). Due to the significant amendments to 40 CFR part 63, subpart FFFF, it is unlikely that sources will be able to comply with the revised 40 CFR part 63, subpart FFFF by the compliance date for 40 CFR part 63, subpart HHHHH. Alternatively, if the source was planning to comply with subpart HHHHH by referencing 40 CFR 63.2535(l)(3)(i), it is also unlikely the source would have enough time to design and install interim controls for the coating operations so as to comply with 40 CFR part 63, subpart HHHHH between December 11, 2006 and May 10, 2008. Thus, relying on the presumption that equipment should be regulated according to the standard that effectively applies for a majority of products produced, we proposed amending the final rule to reference 40 CFR part 63, subpart FFFF requirements for a PUG which produces primarily 40 CFR part 63, subpart FFFF products. The proposed amendments also clarify that if the source so chooses, equipment that is part of a PUG in which a MON product is the primary product must comply with the MON by the MON compliance date, not 40 CFR part 63, subpart HHHHH by the subpart HHHHH compliance date.

In section IV.A of the preamble to the final rule, we stated "the final rule does not apply to activities conducted by end users of coating products in preparation for application" (68 FR 69164, December 11, 2003). Although the final rule exempts "affiliated operations" at sources that are subject to surface coating rules, it does not specifically exempt operations at sources that are not subject to another subpart of 40 CFR part 63. Therefore, we proposed adding an exemption in 40 CFR 63.7985(d)(5)

for operations by end users who modify a purchased coating prior to application at the same facility. This exemption applies only if the purchased product is already a coating that an end user could apply as purchased, and the modified coating must be applied at the same facility where the modification is conducted.

Two trade associations and three coatings manufacturing companies provided comments on the proposed amendments to the rule. In general, the commenters supported the proposed changes. One commenter also requested changes to the compliance date and the exemption for affiliated operations at sources that are subject to surface coating MACT rules. After consideration of the comments, we are promulgating the amendments as proposed.

II. Response to Comments

A. Compliance Date

Comment: One commenter supported the amendment to clarify the definition of "coating" but also expressed concern that this change could have unanticipated impacts that would make it difficult to achieve compliance by December 11, 2006. According to the commenter, the change is a major modification of the rule because it could affect applicability determinations for some facilities. For example, the commenter suggested the possibility that some facilities currently thinking they are subject to the MON may realize that they have to comply with the Miscellaneous Coating Manufacturing NESHAP. To ensure that facilities have time to review the amendments and make appropriate changes to their compliance plans, the commenter requested that the compliance date for all existing sources under 40 CFR part 63, subpart HHHHH be extended to May 10, 2008.

Response: As noted in the preamble to the proposed amendments, concerns with the definition of "coating" in the final rule were that it was too expansive. It included all materials that are intended to be applied to a substrate, regardless of the production process. The amended definition narrows the scope of the definition, which may reduce the number of operations that are subject to the MON. Any operations that are excluded from the amended Miscellaneous Coating Manufacturing NESHAP will be subject to the MON. Facilities with such operations will have until May 10, 2008, to comply with the Miscellaneous Organic Chemical Manufacturing NESHAP. We are unaware of any materials that are coatings under the amended definition

that would not have been coatings under the definition in the final rule. Thus, we have determined that there is no need to extend the compliance date for existing sources that are subject to the Miscellaneous Coating Manufacturing NESHAP, except for operations that are part of a PUG under the MON as discussed in section I of this preamble.

B. Affiliated Operations

Comment: One commenter supports our position, as stated in the preamble to the proposed amendments, that 40 CFR part 63, subpart HHHHH does not apply to activities conducted by end users of coating products in preparation for application. According to the commenter, these activities cannot be regulated under 40 CFR part 63, subpart HHHHH because they are not coating manufacturing operations and were not part of the MACT analysis for 40 CFR part 63, subpart HHHHH. For the rule to be consistent with this position, the commenter believes 40 CFR 63.7985(d)(2) should exempt "affiliated operations" at all surface coating facilities, not just those at sources that are subject to the surface coating rules in subparts GG, KK, JJJ, MMMM, and SSSS of 40 CFR part 63. The commenter suggested listing each surface coating category in 40 CFR 63.7985(d)(2).

Response: We decided not to adopt the changes suggested by the commenter. Listing all surface coating categories in 40 CFR 63.7985(d)(2) is unnecessary and impractical. There are three categories of end users to consider: Sources that are subject to 40 CFR part 63 surface coating rules that do not include "affiliated operations" in the affected source, sources that are subject to 40 CFR part 63 surface coating rules that do include "affiliated operations" in the affected source, and sources that are not subject to a 40 CFR part 63 surface coating rule. Operations at end user facilities in two categories are exempted by existing provisions in the rule, and operations at end user facilities in the third category are exempted by the proposed amendments.

First, as the commenter noted, explicit exemptions for affiliated operations, as defined in 40 CFR 63.7985(d)(2), apply to affiliated operations that are located at affected sources under subparts GG, KK, JJJ, MMMM, and SSSS of 40 CFR part 63. All of these rules lack requirements for affiliated operations, but affiliated operations were considered during development of the rules. Therefore, an exemption was needed in the Miscellaneous Coating Manufacturing NESHAP to avoid a conflict between the

decisions made in the development of the five surface coating rules and the applicability of 40 CFR part 63, subpart HHHHH.

Facilities in the second group of end users are also subject to surface coating rules, but the affiliated operations at these facilities are part of the affected sources under the applicable surface coating rule. These affiliated operations are exempt from 40 CFR part 63, subpart HHHHH by 40 CFR 63.7985(a)(4), which specifies that operations are miscellaneous coating manufacturing operations and subject to 40 CFR part 63, subpart HHHHH only if they are not part of an affected source under another subpart of 40 CFR part 63. Therefore, exempting these source categories by listing them in 40 CFR 63.7985(d)(2) would be redundant.

The third group of end users includes all facilities that are not part of a source category that is subject to a surface coating NESHAP. Listing all of these surface coating categories in 40 CFR 63.7985(d)(2) would be impractical because there is no way of knowing all possible categories. Therefore, the proposed exemption in new paragraph (d)(5) of 40 CFR 63.7985 provides a general exemption for all facilities in this group. This new provision exempts operations that modify a purchased coating prior to application at the purchasing facility. Therefore, we have decided to promulgate this proposed amendment without changes.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

The final rule amendments impose no new information collection requirements on the industry. The final rule amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor reductions in the information collection burden. Therefore, the Information Collection Request (ICR) has not been revised.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart HHHHH) under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0535 (EPA ICR number 2115.01). A copy of the OMB approved ICR may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of the final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

For sources subject to the final rule amendments, the relevant NAICS and associated employee sizes are listed below:

NAICS 32551—Paint and Coatings Manufacturing—500 employees or fewer.

NAICS 32552—Adhesives and Sealants Manufacturing—500 employees or fewer.

NAICS 32591—Printing Ink Manufacturing—500 employees or fewer.

After considering the economic impacts of the final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rule amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor burden reductions for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section

205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

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.”

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Therefore, the final rule amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to the Executive Order because they are based on technology performance and not on health or safety risks.

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

The final rule amendments do not constitute a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final rule amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Further, we have concluded that the final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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

During the rulemaking, the EPA conducted searches to identify VCS in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA-HQ-OAR-2003-0178). The final rule amendments do not require the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional VCS for the final rule amendments.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of

Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments are effective on October 4, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 28, 2006.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart HHHHH—[Amended]

■ 2. Section 63.7985 is amended by revising paragraph (d) introductory text and adding paragraph (d)(5) to read as follows:

§ 63.7985 Am I subject to the requirements of this subpart?

* * * * *

(d) The requirements for miscellaneous coating manufacturing sources in this subpart do not apply to operations described in paragraphs (d)(1) through (5) of this section.

* * * * *

(5) Modifying a purchased coating in preparation for application at the purchasing facility.

■ 3. Section 63.7995 is amended by adding introductory text to read as follows:

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

Except as specified in § 63.8090, you must comply with this subpart according to the requirements of this section.

* * * * *

■ 4. Section 63.8090 is amended by adding paragraph (c) to read as follows:

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(c) *Compliance with 40 CFR part 63, subpart FFFF.*

After the compliance dates specified in § 63.7995, an affected source under this subpart HHHHH that includes equipment that is also part of an affected source under 40 CFR part 63, subpart FFFF is deemed in compliance with this subpart HHHHH if all of the conditions specified in paragraphs (c)(1) through (5) of this section are met.

(1) Equipment used for both miscellaneous coating manufacturing operations and as part of a miscellaneous organic chemical manufacturing process unit (MCPU), as defined in § 63.2435, must be part of a process unit group developed in accordance with the provisions in § 63.2535(l).

(2) For the purposes of complying with § 63.2535(l), a miscellaneous coating manufacturing "process unit" consists of all coating manufacturing equipment that is also part of an MCPU in the process unit group. All miscellaneous coating manufacturing operations that are not part of a process unit group must comply with the requirements of this subpart HHHHH.

(3) The primary product for a process unit group that includes miscellaneous coating manufacturing equipment must be organic chemicals as described in § 63.2435(b)(1).

(4) The process unit group must be in compliance with the requirements in 40 CFR part 63, subpart FFFF as specified in § 63.2535(l)(3)(i) no later than the applicable compliance dates specified in § 63.2445.

(5) You must include in the notification of compliance status report required in § 63.8070(d) the records as specified in § 63.2535(l)(1) through (3).

5. Section 63.8105 is amended by revising the definition of the term "coating" in paragraph (g) to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Coating 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, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coating does not include materials made in processes where a formulation component is synthesized by 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. Typically, coatings include products described by the following North American Industry Classification System (NAICS) codes, code 325510, Paint and Coating Manufacturing, code 325520, Adhesive and Sealant Manufacturing, and code 325910, Ink Manufacturing.

* * * * *

[FR Doc. E6-16407 Filed 10-3-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2006-0158; FRL-8227-4]

RIN 2060-AN29

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2006. Essential use allowances enable a person to obtain controlled class I ODSs as part of an exemption from the regulatory ban on the production and import of these chemicals that became effective as of January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODSs solely for the designated essential purpose. The allocations in this action total 1,002.40 metric tons (MT) of chlorofluorocarbons (CFCs) for use in metered dose inhalers for 2006.

DATES: *Effective Date:* This final rule is effective October 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0158. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through

www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. 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:

Kirsten Cappel of the Office of Air and Radiation, Stratospheric Protection Division by regular mail at the Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (6205J) Washington DC 20460; telephone number: 202-343-9556; fax number: 202-343-2338; e-mail address: cappel.kirsten@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Basis for Allocating Essential Use Allowances
 - A. What are essential use allowances?
 - B. Under what authority does EPA allocate essential use allowances?
 - C. What is the process for allocating essential use allowances?
- II. Response to Comments
 - A. EPA Should Not Allocate Essential Use Allowances
 - B. The Proposed Level of Allocations Is Incorrect
 - C. Consideration of Stocks of CFCs in the Allocation of Essential Use Allowances
 - D. Comments on the Rulemaking Process and Timing
 - E. EPA May Not Allocate Allowances to Companies That Fail To Demonstrate Research and Development of Alternatives
 - F. Transition to Non-CFC Metered Dose Inhalers
- III. Allocation of Essential Use Allowances for Calendar Year 2006
- IV. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Congressional Review Act
 - V. Judicial Review
 - VI. Effective Date of this Final Rule

I. Basis for Allocating Essential Use Allowances

A. What are essential use allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting substances (ODSs) in the U.S. for purposes that have been deemed “essential” by the U.S. Government and by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

The Montreal Protocol is an international agreement aimed at reducing and eliminating the production and consumption¹ of ODSs. The elimination of production and consumption of class I ODSs is accomplished through adherence to phaseout schedules for specific class I ODSs,² which include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Montreal Protocol and the Clean Air Act provide exemptions that allow for the continued import and/or production of class I ODSs for specific uses. Under the Montreal Protocol, exemptions may be granted for uses that are determined by the Parties to be “essential.” Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

“(a) That a use of a controlled substance should qualify as ‘essential’ only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality

¹ “Consumption” is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (see section 601(6) of the Clean Air Act).

² Class I ozone depleting substances are listed at 40 CFR part 82 subpart A, appendix A.