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Subpart E—National Volatile Organic Compound Emission Standards for Aerosol Coatings

SOURCE: 73 FR 15621, Mar. 24, 2008, unless otherwise noted.

§ 59.500 What is the purpose of this subpart?

This subpart establishes the product-weighted reactivity (PWR) limits regulated entities must meet in order to comply with the national rule for volatile organic compounds (VOC) emitted from aerosol coatings. This subpart also establishes labeling, recordkeeping, and reporting requirements for regulated entities.

§ 59.501 Am I subject to this subpart?

(a) The regulated entities for an aerosol coating product are the manufacturer or importer of an aerosol coating product and a distributor of an aerosol coating product if it is named on the label or if it specifies the formulation of the product. Distributors include retailers who fall within the definition of ''distributor'' in § 59.503.

(b) Except as provided in paragraph (e) of this section, the responsibilities of each regulated entity are detailed in paragraphs (b)(1) through (b)(4) of this section.

(1) If you are a manufacturer or importer, you are a regulated entity responsible for ensuring that all aerosol coatings manufactured or imported by you meet the PWR limits presented in § 59.504, even if your name is not on the label.

(2) If you are a distributor named on the label, you are a regulated entity responsible for compliance with all sections of this subpart except for the limits presented in § 59.504. If you are a distributor that has specified formulations to be used by a manufacturer, then you are a regulated entity responsible for compliance with all sections of this subpart.

(3) If there is no distributor named on the label, then the manufacturer or importer is a regulated entity responsible for compliance with all sections of this subpart.

(4) If you are a manufacturer or importer, you can choose to certify that you will provide any or all of the recordkeeping and reporting requirements of §§ 59.510 and 59.511 by following the procedures of § 59.511(g) and (h).

(c) Except as provided in paragraph (e) of this section, the provisions of this subpart apply to aerosol coatings manufactured on or after January 1, 2009, for sale or distribution in the United States. Aerosol coatings that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136y) (FIFRA). For FIFRA registered aerosol coatings, the provisions of this subpart apply to aerosol coatings manufactured on or after January 1, 2010, for sale or distribution in the United States.

(d) You are not a regulated entity under this subpart for the aerosol coatings products that you manufacture (in or outside of the United States) that are exclusively for sale outside the United States.

(e) If you meet the definition of small quantity manufacturer for a given year, the products you manufacture in that year are not subject to the PWR limits presented in § 59.504 or the labeling requirements of § 59.507. To qualify for this exemption, small aerosol coating manufacturers must comply with the applicable recordkeeping and reporting requirements in §§ 59.510 and 59.511.

(f) If you are a person who manufactures or processes aerosol coatings outside of the United States, you may qualify for the small quantity manufacturer exemption in paragraph (e) of this section if you meet the requirements of paragraphs (f)(1) through (f)(3) of this section.

(1) The total VOC by mass included in all aerosol coatings you manufacture, at all facilities, in a given calendar year, in the aggregate, is less than 7,500 kilograms.

(2) You comply with the recordkeeping and reporting requirements in §§ 59.510 and 59.511.

(3) You commit to and comply with the requirements of paragraphs (f)(3)(i) through (f)(3)(vii) of this section.

(i) You must provide an initial notification no later than 90 days before the

compliance date, or at least 90 days before you start manufacturing aerosol coating products that are sold in the United States. This initial notification must state that you are a foreign manufacturer that is intending to qualify for the small quantity manufacturer exemption in paragraph (e) of this section, provide all of the information specified in § 59.511(b), and provide all the information in paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

(A) The name, address, telephone number, and e-mail address of an agent located in the United States who will serve as your point of contact for communications with EPA.

(B) The address of each of your facilities that is manufacturing aerosol coatings for sale in the United States.

(ii) You must notify the Administrator of any changes in the information provided in your initial notification within 30 days following the change.

(iii) The agent identified above must maintain a copy of the compliance records specified in § 59.510(b). Those records must be kept by the agent such that the agent will be able to provide the written report which must be submitted upon 60 days notice under § 59.511(d) and able to make those records available for inspection and review under § 59.511(e).

(iv) You must give any EPA inspector or auditor full, complete, and immediate access to your facilities and records to conduct inspections and audits of your manufacturing facilities.

(v) You must agree that United States substantive and procedural law shall apply to any civil or criminal enforcement action against you under this subpart, and that the forum for any civil or criminal enforcement action under this subpart shall be governed by the CAA, including the EPA administrative forum where allowed under the CAA.

(vi) Any person certifying any notification, report, or other communication from you to EPA must state in the certification that United States substantive and procedural law shall apply to any civil or criminal enforcement action against him or her under this subpart, and that the forum for any civil or criminal enforcement action under this section shall be governed by the CAA, including the EPA administrative forum where allowed under the CAA.

(vii) All reports and other communications with EPA must be in English. To the extent that you provide any documents as part of any report or other communication with EPA, an English language translation of that document must be provided with the report or communication.

[73 FR 15621, Mar. 24, 2008, as amended at 73 FR 15425, Mar. 24, 2008]

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

(a) Except as provided in § 59.509 and paragraphs (b) and (c) of this section, you must be in compliance with all provisions of this subpart by January 1, 2009.

(b) The Administrator will consider issuance of a special compliance extension that extends the date of compliance until January 1, 2011, to regulated entities that have never manufactured, imported, or distributed aerosol coatings for sale or distribution in California that are in compliance with California's Regulation for Reducing Ozone Formed From Aerosol Coating Product Emissions, Title 17, California Code of Regulations, sections 94520–94528. In order to be considered for an extension of the compliance date, you must submit a special compliance extension application to the EPA Administrator no later than 90 days before the compliance date or within 90 days before the date that you first manufacture aerosol coatings, whichever is later. This application must contain the information in paragraphs (b)(1) through (b)(5) of this section. If a regulated entity remains unable to comply with the limits of this rule by January 1, 2011, the regulated entity may seek a variance in accordance with § 59.509.

(1) Company name;

(2) A signed certification by a responsible company official that the regulated entity has not at any time manufactured, imported, or distributed for sale or distribution in California any product in any category listed in Table 1 of this subpart that complies with California's Regulation for Reducing