

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

[OAR–2003–0200; FRL–7966–2]

RIN 2060–AM98

**Revisions to the California State Implementation Plan and Revision to the Definition of Volatile Organic Compounds (VOC)—Removal of VOC Exemptions for California’s Aerosol Coating Products Reactivity-based Regulation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is finalizing approval of a new consumer products regulation as part of the California State Implementation Plan (SIP) for ozone under the Clean Air Act (CAA) as amended in 1990. This California regulation adopts a new approach to reducing ozone formation from volatile organic compounds (VOC) in aerosol coating products. The EPA is also approving the use of California’s Tables of Maximum Incremental Reactivity (MIR) to allow implementation of their rule. This action also revises EPA’s definition of VOCs so that compounds which we previously identified as negligibly reactive and exempt from EPA’s regulatory definition of VOCs now count towards a product’s reactivity-based VOC limit for the purpose of California’s aerosol coatings regulation. These revisions were previously proposed in the **Federal Register** on January 7, 2005 (70 FR 1640) and are expected to help in California’s efforts to attain the National Ambient Air Quality Standards (NAAQS) for ozone.

**DATES:** This final rule is effective on October 13, 2005.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. OAR–2003–0200. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, 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 form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Revisions to the California State Implementation Plan Docket, Docket ID

No. OAR–2003–0200, EPA/DC, EPA West, Room B102, 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 Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, Rulemaking Office, (AIR–4), Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 947–4122; fax number: (415) 947–3579; e-mail address: [tong.stanley@epa.gov](mailto:tong.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action applies to persons that sell, supply, offer for sale, apply, or manufacture for use in California, any aerosol coating, aerosol clear coating and aerosol stain product subject to the limits in California’s Aerosol Coating Products regulation. The regulation prohibits the commercial application of non-complying aerosol coating products.

*B. Throughout This Document, “We,” “Us” and “Our” Refer to EPA*

*C. Submitted Regulations*

On January 7, 2005 (70 FR 1640), EPA proposed to approve the following regulations into the California SIP.

TABLE 1.—SUBMITTED REGULATIONS

Regulation title	Adopted	Submitted
Aerosol Coating Products .....	5/1/2001	3/13/2002
Tables of Maximum Incremental Reactivities (MIR) Values	5/1/2001	3/13/2002

We proposed to approve these regulations because we determined that they complied with the relevant CAA requirements. We also proposed to change our definition of VOCs so that compounds which we previously identified as negligibly reactive and exempt from EPA’s regulatory definition of VOCs will now count towards a product’s reactivity-based VOC limit for the purpose of California’s aerosol coatings regulation. The January 7, 2005 proposed action contains more information on the California Air Resources Board’s (CARB’s) regulations and our evaluation.

*D. Outline*

The information in this preamble is organized as follows:

- I. Background Information
  - A. What is Photochemical Reactivity?
  - B. What Does CARB’s Regulation Do?
- II. Response to Major Comments
  - A. Comments Supporting the Proposed Approval
  - B. Response to Questions Posed by EPA in the Proposal
  - C. Comments Asking EPA to Update and Expand its Reactivity Policy
- III. Final Action
- IV. Statutory and Executive Order Reviews

**I. Background Information**

*A. What Is Photochemical Reactivity?*

There are thousands of individual species of VOC chemicals that can combine with nitrogen oxides (NO<sub>x</sub>) and the energy from sunlight to form ozone. The impact of a given VOC on formation of ground-level ozone is sometimes referred to as its “reactivity.” It is generally understood that not all VOCs are equal in their effects on ground-level ozone formation. Some VOCs react extremely slowly and changes in their emissions have limited effects on ozone pollution episodes. Some VOCs form ozone more quickly, or they may form more ozone than other VOCs. Others not only form ozone themselves, but also enhance ozone formation from other VOCs. By distinguishing between more reactive and less reactive VOCs, however, it should be possible to decrease ozone concentrations further or more efficiently than by controlling all VOCs equally.

Assigning a value to the reactivity of a compound is a complex undertaking. Reactivity is not simply a property of the compound itself; it is a property of both the compound and the environment in which the compound is found. The reactivity of a single compound varies with VOC–NO<sub>x</sub> ratios, meteorological conditions, the mix of other VOCs in the atmosphere, and the time interval of interest. Designing an effective regulation that takes account of these interactions is difficult, and implementing and enforcing such a regulation carries the extra burden of characterizing and tracking the full chemical composition of VOC emissions. The January 7, 2005 proposal (70 FR 1640) contains additional background information on photochemical reactivity. Recently, EPA has issued guidance to States regarding the use of VOC reactivity information in the development of ozone control measures. This guidance is published elsewhere in today’s **Federal Register**.

### B. What Does CARB's Regulation Do?

The CARB has been exploring the use of reactivity-based regulations since the early 1990s as a means of achieving further ozone reductions. For example, in 1991, the CARB incorporated a reactivity scale for weighting vehicle emissions of individual VOC species in their low emitting vehicle and clean fuels regulation. In 2001, the CARB adopted an aerosol coatings regulation<sup>1</sup> that set reactivity-based VOC limits for six general coating categories and 29 speciality coating categories. The reactivity-based limits for the general coatings took effect on June 1, 2002 and the limits for the speciality coatings took effect on January 1, 2003. The CARB had previously controlled VOC emissions from aerosol coatings in California by limiting the mass of VOCs in the product, with limits expressed as maximum allowable percent of mass of VOC. The CARB's new approach incorporates the concept of VOC photochemical reactivity. This concept relies on the fact that the same weight/amount of some VOCs (e.g., xylene) has the potential to form more ozone, or to form ozone more quickly, than the same weight/amount of other VOCs (e.g., propane) once they are emitted into the ambient air under the same conditions. The EPA's action to approve CARB's regulation into the SIP enables CARB to include the ozone reductions achieved by their aerosol coatings regulation into their State SIP plan.

The CARB's aerosol coatings regulation applies to aerosol coatings, aerosol clear coatings and aerosol stains. It applies to any person who sells, supplies, offers for sale, applies or manufactures for use in California any aerosol coating subject to the limits in the regulation. The regulation prohibits the commercial application of non-complying aerosol coating products.

All aerosol coating products covered by the CARB's regulation were required to meet the new reactivity-based limits by January 1, 2003. The regulation contains a sell-through provision whereby products manufactured prior to the effective date of the regulation could be sold, supplied, offered for sale, or applied up to 3 years after that date.

The CARB believes that some VOC mass-based limits in the previous version of their rule presented particularly difficult reformulation challenges for manufacturers of water-based coatings, and the State concluded that it may not be feasible to achieve additional VOC reductions from a

traditional VOC mass-based program. The CARB hopes to target VOC emissions reductions to better control a product's contribution to ozone formation by encouraging reductions of higher reactivity VOCs, rather than by treating all VOCs in a product alike through a mass-based rule. The submitted regulation, therefore, consists of reactivity-based limits that replace the existing mass-based VOC limits for aerosol spray coatings.

To discriminate among VOCs, the CARB has used a version of the MIR scale (W. P. L. Carter, "Development of Ozone Reactivity Scales for Volatile Organic Compounds," *Journal of the Air and Waste Management Association*, 44, p.881-899, July 1994.) The MIR scale is designed using certain assumptions about meteorological and environmental conditions where ozone production is most sensitive to changes in hydrocarbon emissions and, therefore, is intended to represent conditions where VOC emission controls will be most effective. The MIR scale is expressed as grams of ozone formed per gram of organic compound reacted. Each compound is assigned an individual MIR value, which enables the reactivities of different compounds to be compared quantitatively. Individual MIR values now exist for many commonly used compounds, and a list of these individual values comprises a scale. Today's action approves into the SIP, the CARB's reactivity-weighted emission limits and the associated MIR scale.

The EPA believes that reactivity-based approaches such as the one developed by the CARB can be more efficient and effective than traditional approaches that do not distinguish among VOCs based on reactivity. In particular, reactivity-based approaches may be useful in areas where significant VOC emission controls are already in place and further mass-based emissions reductions may be difficult or very expensive to achieve. In such situations, regulations that distinguish between individual VOCs and create an incentive to shift production and use from more reactive VOCs to less reactive VOCs may provide the flexibility necessary to continue progress towards attainment of the ozone NAAQS.

To support the CARB's aerosol coating reactivity-based program, EPA is modifying our regulatory definition of VOC under 40 CFR 51.100(s) so that compounds previously excluded from the definition of VOC will now be counted towards a product's reactivity-based VOC limit for the limited purpose of the CARB's regulation.

### II. Response to Major Comments

In our proposal to approve the CARB's aerosol coatings reactivity-based regulation and associated MIR tables into the SIP, and to change our definition of VOC, EPA indicated that interested parties could request that EPA hold a public hearing on the proposed action. The EPA received no requests for a public hearing.

The EPA also provided for a 60-day public comment period in the proposal. We received six comment letters. One letter was submitted from a regulatory agency and five letters were submitted from industry and trade associations. The major comments fell into 3 categories: (1) Comments supporting the proposed approval, (2) Response to questions posed by EPA in the proposal, and (3) Comments asking EPA to update and expand its reactivity policy. All comment letters are contained in the docket (OAR-2003-0200) for this action. In today's final action, we have summarized the significant comments and provided the Agency's responses.

#### A. Comments Supporting the Proposed Approval

*Comment:* All six comment letters supported the approval of the CARB's reactivity-based regulation into the SIP.

One commenter (84-1-2) stated that reactivity-based regulations for consumer products, where technologically feasible, were a more effective form of regulation. Another commenter (87-2-4) stated the approval provided the aerosol coatings industry with a relatively stable and reliable regulatory arena at least in the State of California and further indicated (87-2-5) that the CARB had already taken steps to make sure the reactivity-based regulatory program remained enforceable and scientifically accurate by updating the MIR tables in December 2003.

*Response:* This final rulemaking approves the CARB's aerosol coatings reactivity-based regulation into the SIP.

#### B. Response to Questions Posed by EPA in the Proposal

The EPA requested comments on the following areas in the proposed rule: how reactivity-based programs might affect industry compliance (e.g., compliance testing) and recordkeeping costs; and how industry and regulatory agency costs and staff requirements might change with respect to detailed emission inventories, manufacturing or material costs, product quality and price.

*Comment:* Two commenters (82-2-1) and (85-3-4) stated the MIR concept

<sup>1</sup> <http://www.arb.ca.gov/colspod/reg/apt.pdf> or Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Article 3.

allows formulators greater flexibility and cost effectiveness in meeting regulatory requirements, and that the simplicity of determining MIR values for hydrocarbon solvents creates the incentive for the substitution and use of solvents with relatively low contribution to ozone formation in aerosol coating applications.

One commenter (85-2-5) stated that reactivity-based regulations in general do not present significant or insurmountable problems regarding enforceability. This commenter stated that while calculating a product weighted average MIR is arithmetically slightly more complex than simply adding up the percent of each ingredient classified as a VOC, this slight increase in complexity does not deter enforceability determinations, which were primarily based on the product formulations.

The commenter (85-3-3) further stated that there was nothing inherent in reactivity-based regulations that should unreasonably increase industry costs and that in both mass-based and reactivity-based cases, industry needed to keep records and the most significant costs were in the research and development process to develop and assess new product formulation technologies.

Another commenter (87-3-1) stated that quantifying compliance and recordkeeping costs relative to the implementation of a regulation was a difficult task for large, medium and small members of the industry and there were significant obstacles to gathering this type of information. Consequently, they stated they were unable to respond with any accurate data at this time without further clarification on the exact level of data needs.

*Response:* From the industry and trade associations responses, EPA concludes that in general, industry compliance and recordkeeping costs are not expected to be significantly different between mass-based and reactivity-based regulations and that generally, expenditures for formulation and research and development efforts exceed expenditures for compliance determination.

The EPA's concern in posing this question was whether reactivity-based programs resulted in a significant increase in compliance determination costs. This does not appear to be the case for industry, however, we are unsure of the potential impact on regulatory agencies since we did not receive any replies from regulatory agencies on this question. We believe that because reactivity-based programs rely on identifying and quantifying all

the individual VOC ingredients in a coating to determine compliance, it appears reasonable to conclude that they can be more complex and costly than the traditional "bake and weigh" method employed in EPA Method 24 to determine compliance with a mass-based VOC limit. We recognize that some regulatory agencies such as the CARB have extensive laboratory capabilities and capable staff to conduct the required analysis using gas chromatography, however other States and local regulatory agencies may not have these capabilities and may need to investigate acquiring these resources and skills before developing their own reactivity-based regulations to ensure their programs are enforceable and have the opportunity to succeed.

#### *C. Comments Asking EPA To Update and Expand Its Reactivity Policy*

*Comment:* One commenter (83-3-2) believed EPA should encourage other States to evaluate opportunities to incorporate reactivity-based approaches into their VOC emissions and ozone control regulatory programs, and should not limit the use of photochemical reactivity to situations where further mass-based limits are difficult to achieve. The commenter further urged EPA to state clearly that the technical support provided by California would not necessarily represent what would be required in each case to support a reactivity-based approach.

Another commenter (85-2-4) stated that scientific studies provide a clear picture that both VOC mass and reactivity should be considered in ozone control strategies. This commenter also indicated that while reactivity reductions may not be appropriate for many consumer products or some other sources of VOC emissions, for some sources, reactivity reductions will represent the most cost-effective way to reduce ozone formation. The commenter (85-3-5) further stated that EPA should update and broaden its policies regarding reactivity and ozone attainment and (85-4-1) urged EPA to initiate a scientific-based policy review of its ozone attainment strategies to assure that the latest scientific studies are incorporated to encourage the most effective, and cost-effective control strategies.

Another commenter (87-3-2) stated that it was important that the Federal agency charged with stewardship over environmental issues be receptive to reactivity-based regulations. They further stated that many of the consumer products that could be addressed in this rulemaking have been regulated several times already and that

further efforts to lower the mass-based VOC limits could be impossible without seriously altering the performance characteristics of the product or eliminating it from the marketplace altogether.

*Response:* Recently, EPA has issued interim guidance to States, which is published elsewhere in today's **Federal Register** encouraging them to consider recent scientific information on VOC reactivity in the development of ozone control measures. This interim guidance summarizes recent scientific findings, provides examples of innovative applications of reactivity information in the development of VOC control measures, and clarifies the relationship between innovative reactivity-based policies and EPA's current definition of VOC at 40 CFR 51.100(s). The EPA will continue to work with the CARB and other interested parties through the Reactivity Research Working Group (RRWG) (<http://www.cgenv.com/Narsto/reactinfo.html>) to improve the scientific foundation of VOC reactivity-based regulations. The EPA will update its guidance to States as new information becomes available.

### **III. Final Action**

By this final rulemaking, EPA is approving: the CARB's aerosol coatings reactivity-based regulation and associated MIR tables into the SIP; the use of the CARB Method 310 to determine compliance with the CARB's reactivity-based regulation, granting SIP credit for the equivalent mass-based reductions achieved by the CARB's regulation, and modifying our regulatory definition of VOC at 40 CFR 51.100(s) to support the CARB's regulation.

### **IV. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the change in definition of VOCs, EPA has determined that this final rulemaking is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to the OMB review. For the approval of the CARB's rule into the SIP, the OMB has exempted this regulatory action from Executive Order 12866 review.

#### *B. Paperwork Reduction Act*

For the change in the definition of VOCs, this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The change in the definition of VOCs only reinstates, for the purposes of determining compliance with California's aerosol coatings rule, compounds which were previously exempted from the definition of VOC. The change in the definition of VOCs does not impose any information collection requirements.

For the approval of the CARB's regulation into the SIP, this final rulemaking does not contain any information collection requirements that would require any person to provide information to EPA, however the CARB's regulation contain requirements for the aerosol coating industry to provide information to the CARB.

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 number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### *C. Regulatory Flexibility Act (RFA)*

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final action will not impose any requirements on small entities.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply act on requirements that the State is already imposing.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 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 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.

For the change in the definition of VOCs, today's rulemaking contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments or the private sector.

For the approval of the CARB's regulation into the SIP, EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments in accordance with section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rulemaking does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rulemaking does not impose any new mandates on State or local governments. The change to the definition of VOCs merely assists the CARB in implementing its aerosol coatings reactivity regulation. The approval of this regulation into the SIP acts on a State regulation implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (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." This final rule does not have Tribal implications, as specified in Executive Order 13175. The change to the definition of VOCs merely assists the CARB in implementing its aerosol coatings reactivity regulation and does not impose any direct compliance costs. The approval of the CARB's regulation into the SIP acts on a State regulation and does not alter the relationship between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health and Safety Risks" (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, the Agency 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.

While this final action is not subject to the Executive Order because it is not economically significant as defined in

Executive Order 12866, we have reason to believe that ozone has a disproportionate effect on active children who play outdoors. (See 62 FR 38856 and 38859; July 18, 1997). However, we do not expect today's approval of the CARB's regulation into the SIP to result in an adverse impact, as it is intended to at least achieve the same ozone reductions as the mass-based limits they supplant. Also, we do not expect today's change to the definition of VOC to result in any adverse impact, because it increases the number of compounds subject to regulation as VOCs for the purpose of California's aerosol coatings reactivity-based regulation.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

For the change in definition of VOCs, this final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. For the approval of the CARB's regulation into the SIP, the State regulation references standard test methods and makes modifications to methods adopted by the American Society for Testing and Materials (ASTM) D3074-94, D3063-94, and D2879-97 to support the regulatory objectives. These ASTM methods can be obtained through the ASTM Web site at: <http://www.astm.org>.

*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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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). This rule will be effective 30 days after publication in the **Federal Register**.

*K. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2)].

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: September 2, 2005.

**Stephen L. Johnson,**  
*Administrator.*

■ Parts 51 and 52, Chapter I, title 40 of the Code of Federal Regulations are amended as follows:

**PART 51—[AMENDED]**

■ 1. The authority citation for Part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.100 is amended by adding paragraph (s)(6) to read as follows:

**§ 51.100 Definitions.**

\* \* \* \* \*

(s) \* \* \*

(6) For the purposes of determining compliance with California’s aerosol coatings reactivity-based regulation, (as described in the California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 3), any organic compound in the volatile portion of an aerosol coating is counted towards that product’s reactivity-based limit. Therefore, the compounds identified in paragraph (s) of this section as negligibly reactive and excluded from EPA’s definition of VOCs are to be counted towards a product’s reactivity limit for the purposes of determining compliance with California’s aerosol coatings reactivity-based regulation.

\* \* \* \* \*

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraph (c)(338) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(338) New and amended regulations for the following agency were submitted on March 13, 2002, by the Governor’s designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(1) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Consumer Products, Article 3, Aerosol Coating Products, Sections 94520 to 94528, and Subchapter 8.6, Maximum Incremental Reactivity, Article 1, Tables of Maximum Incremental Reactivity (MIR) Values, Sections 94700 to 94701, both adopted on May 1, 2001.

\* \* \* \* \*

[FR Doc. 05–18016 Filed 9–12–05; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA–319–0488c; FRL–7966–5]

**Interim Final Determination To Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today’s **Federal Register**. The revisions concern San Joaquin Valley Unified Air Pollution Control District Rule 4623—Storage of Organic Liquids.

**DATES:** This interim final determination is effective on September 13, 2005. However, comments will be accepted until October 13, 2005.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions, EPA’s technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 “I” Street, Sacramento, CA 95814; and San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**I. Background**

On January 22, 2004 (69 **Federal Register** (FR) 3012), we published a limited approval and limited disapproval of SJVUAPCD Rule 4623 as adopted locally on December 20, 2001 and submitted by the State on March 15, 2002. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after February 23, 2004 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On May 19, 2005, SJVUAPCD adopted revisions to Rule 4623 that were intended to correct the deficiencies identified in our limited disapproval action. On July 15, 2005, the State submitted these revisions to EPA. In the Proposed Rules section of today’s **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our January 22, 2004 disapproval action. Based on today’s proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our January 22, 2004 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rule 4623, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

**II. EPA Action**

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rule 4623 based on our concurrent proposal to approve the State’s SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA’s