

Rocky Mount, NC, Rocky Mount-Wilson Rgnl, RNAV (GPS) RWY 4, Amdt 1.

Rocky Mount, NC, Rocky Mount-Wilson Rgnl, RNAV (GPS) RWY 22, Amdt 1.

Rocky Mount, NC, Rocky Mount-Wilson Rgnl, VOR/DME RWY 22, Amdt 3.

Norwich, NY, LT Warren Eaton, GPS RWY 1, Orig, CANCELLED.

Norwich, NY, LT Warren Eaton, RNAV (GPS) RWY 1, Orig.

Norwich, NY, LT Warren Eaton, RNAV (GPS) RWY 19, Orig.

Norwich, NY, LT Warren Eaton, VOR/DME RNAV OR GPS RWY 19, Amdt 2, CANCELLED.

Savannah, TN, Savannah-Hardin County, Takeoff Minimums and Obstacle DP, Amdt 3.

Rutland, VT, Rutland-Southern Vermont Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3.

Morgantown, WV, Morgantown Muni-WLB Hart Field, RNAV (GPS) RWY 18, Amdt 2, CANCELLED.

Effective 27 AUG 2009

Akiak, AK, Akiak, AKIAK ONE Graphic Obstacle DP.

Akiak, AK, Akiak, Takeoff Minimums and Obstacle DP, Orig.

Allakaket, AK, Allakaket, Takeoff Minimums and Obstacle DP, Amdt 1.

Beaver, AK, Beaver, Takeoff Minimums and Obstacle DP, Orig.

Chalkyitsik, AK, Chalkyitsik, Takeoff Minimums and Obstacle DP, Orig.

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 14, Amdt 1.

Holy Cross, AK, Holy Cross, Takeoff Minimums and Obstacle DP, Amdt 2.

Kotlik, AK, Kotlik, Takeoff Minimums and Obstacle DP, Orig.

Russian Mission, AK, Russian Mission, Takeoff Minimums and Obstacle DP, Amdt 1.

Brinkley, AR, Frank Feeder Memorial, NDB-A, Amdt 2A, CANCELLED.

Albion, NE, Albion Muni, RNAV (GPS) RWY 33, Amdt 2.

New York, NY, La Guardia, VOR/DME-E, Amdt 2A, CANCELLED.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, GPS RWY 13, Orig-A, CANCELLED.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, GPS RWY 18, Orig-A, CANCELLED.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, ILS OR LOC RWY 13, Amdt 1.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, ILS OR LOC RWY 36, Amdt 30.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, RNAV (GPS) RWY 13, Orig.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, RNAV (GPS) RWY 18, Orig.

Reading, PA, Reading Rgnl/Carl A Spaatz Fld, RNAV (GPS) RWY 36, Orig.

Andrews, TX, Andrews County, GPS RWY 16, Orig-B, CANCELLED.

Andrews, TX, Andrews County, NDB RWY 16, Amdt 2A, CANCELLED.

Andrews, TX, Andrews County, RNAV (GPS) RWY 16, Orig.

Andrews, TX, Andrews County, Takeoff Minimums and Obstacle DP, Amdt 1.

Houston, TX, Lone Star Executive, RNAV (GPS) RWY 14, Orig.

Houston, TX, Sugar Land Rgnl, RNAV (GPS) RWY 17, Amdt 2.

Richmond/Ashland, VA, Hanover County Muni, Takeoff Minimums and Obstacle DP, Orig.

Winchester, VA, Winchester Regional, GPS RWY 14, Orig, CANCELLED.

Winchester, VA, Winchester Regional, ILS OR LOC RWY 32, Amdt 2.

Winchester, VA, Winchester Regional, RNAV (GPS) RWY 14, Orig.

Winchester, VA, Winchester Regional, RNAV (GPS) RWY 32, Orig.

Winchester, VA, Winchester Regional, VOR/DME-A, Amdt 5.

Clarksburg, WV, North Central West Virginia, RNAV (GPS) RWY 3, Orig.

Clarksburg, WV, North Central West Virginia, RNAV (GPS) RWY 21, Orig.

On May 28, 2009 (74 FR 101), the FAA published several Amendments in Docket No. 30667; Amdt No. 3222 to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries are hereby rescinded originally published in TL 09-14 with an effective date of July 2, 2009:

Titusville, FL, Space Coast Regional, ILS OR LOC RWY 36, Amdt 11.

Titusville, FL, Space Coast Regional, RNAV (GPS) RWY 36, Orig.

[FR Doc. E9-14558 Filed 6-22-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 59

[EPA-HQ-OAR-2006-0971; FRL-8920-7]

RIN 2060-AP33

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the National Volatile Organic Compound Emission Standards for Aerosol Coatings (aerosol coatings reactivity rule), which establishes national reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under section 183(e) of the Clean Air Act. These amendments add compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities, and clarify which volatile organic compounds are to be quantified in compliance determinations. Additionally, this final rule makes certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting

requirements for a regulated entity, and it also addresses which party is liable following such a certification. Further, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule. Finally, in this action we are extending the deadline for submitting the initial notifications required in one section of the aerosol coatings regulations for 30 days, until July 31, 2009.

DATES: *Effective Date:* This final rule is effective on June 23, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0971. 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 EPA Docket Center, Docket ID No. EPA-HQ-OAR-2006-0971, EPA/DC, EPA West, Room 3334, 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 Docket ID No. EPA-HQ-OAR-2006-0971 is (202) 566-9744.

FOR FURTHER INFORMATION CONTACT: For information concerning the aerosol coatings reactivity rule, contact Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541-2509, facsimile number (919) 541-3470, e-mail address: whitfield.kaye@epa.gov. For information concerning the Clean Air Act (CAA) section 183(e) Consumer and Commercial Products Program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5460, facsimile number (919) 541-3470, e-mail address: moore.bruce@epa.gov.

SUPPLEMENTARY INFORMATION:

Entities Potentially Affected by this Action. The entities potentially affected by this regulation encompass all steps in aerosol coatings operations. This includes manufacturers, processors, wholesale distributors and retailers who

fall within the regulatory definition of “distributor,” importers of aerosol coatings for sale or distribution in the United States, and manufacturers, processors, wholesale distributors, and importers who supply the entities listed

above with aerosol coatings for sale or distribution in interstate commerce in the United States. The entities potentially affected by this action include:

| Category | NAICS code ^a | Examples of regulated entities |
|--|-------------------------|--|
| Paint and Coating Manufacturing | 32551 | Manufacturing of lacquers, varnishes, enamels, epoxy coatings, oil and alkyd vehicle, plastisols, polyurethane, primers, shellacs, stains, water repellent coatings. |
| All Other Miscellaneous Chemical Production and Preparation Manufacturing. | 325998 | Aerosol can filling, aerosol packaging services. |

^aNorth American Industry Classification System <http://www.census.gov/epcd/www/naics.html>.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether you would be affected by this action, you should examine the applicable industry description in section I.E of the promulgation preamble, published at 73 FR 15604 (March 24, 2008). If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket. The docket number for the National Volatile Organic Compound Emission Standards for Aerosol Coatings (40 CFR parts 59 and 51, subpart E) is Docket ID No. EPA-HQ-OAR-2006-0971.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the action will be posted on the TTN’s policy and guidance page for newly proposed or promulgated rules at the following address: <http://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 CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 24, 2009. Under CAA section 307(b)(2), the requirements established by this final action 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 “only 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 EPA to convene a proceeding for reconsideration, “if the person raising the objection can demonstrate to EPA that it was impracticable to raise such an 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 EPA 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 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 action is organized as follows:

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 - C. The Certification Process for the Assumption of Recordkeeping and Reporting Obligations
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 - F. Extension of Deadline for Initial Notifications and Finding and Statement of Good Cause
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 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health 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. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Background

On March 24, 2008, EPA published national emission standards for aerosol spray paints under section 183(e) of the CAA (73 FR 15604, which are codified in the Code of Federal Regulations (CFR) at 40 CFR part 59, subpart E (sections 59.500–59.516)). Section 183(e) of the CAA requires the control of volatile organic compounds (VOC) emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and nonattainment of the ozone national ambient air quality standards. States have previously promulgated rules for aerosol spray paints based upon

reductions of VOC by mass and by relative reactivity. EPA concluded that a national rule based upon the relative reactivity approach achieves more reduction in ozone formation than may be achieved by a mass-based approach for this specific product category. The final aerosol coatings rule revised EPA's regulatory definition of VOC to include certain compounds that would otherwise be exempt, in order to account for all reactive compounds in aerosol coatings that contribute to ozone formation. Therefore, certain compounds that would not be VOC under the otherwise applicable definition count towards the applicable reactivity limits under the aerosol coatings regulation.

Originally, the compliance date for the action, as established in the rule (73 FR 15604), was January 1, 2009. Regulated entities were required to submit initial notification 90 days in advance of the compliance date; in this case, initial notifications were due on October 1, 2008.

Subsequently, on December 24, 2008, EPA published amendments (73 FR 78994) to the rule to move the applicability and initial compliance dates for aerosol coatings from January 1, 2009, to July 1, 2009, and make initial notifications due on the compliance date, as opposed to 90 days in advance of the compliance date. These changes were necessary to (1) allow EPA time to conduct this rulemaking, and add compounds (and their associated reactivity factors) that are currently used in aerosol coatings, but were not included in Tables 2A, 2B, or 2C; and (2) allow regulated entities sufficient time to develop initial notifications based on the revised tables.

The rule (73 FR 15604) also has a provision in § 59.511(j) that allows regulated entities to petition EPA to add compounds to Tables 2A, 2B, and 2C—Reactivity Factors of subpart E, 40 CFR part 59. One of this final action's objectives is to address petitions filed under this provision.

II. Summary of the Final Amendments and Changes Since Proposal

A. Amendments to Table 2A to Subpart E of Part 59—Reactivity Factors

In this action, EPA is finalizing the addition of 128 compounds and their reactivity factors to Table 2A in response to petitions received in accordance with § 59.511(j) of the rule. EPA also is adding Chemical Abstract Service (CAS) numbers for each compound or class of compounds listed in Table 2A to make it easier for regulated entities to find a specific

chemical. In Table 2A of the proposed rule (72 FR 38951), EPA did not list CAS numbers for two entries: "C8 Disubstituted Benzenes" and "C9 Styrenes." In this final rule, in response to inquiries from affected entities, EPA has added CAS numbers for these entries and listed chemical synonyms for selected entries. The reactivity factors for these compounds have not been changed. The final Table 2A lists "C8 Disubstituted Benzenes (xylenes, mixed isomers)" with CAS 1330–20–7 and RF 7.48, and "C9 styrenes (vinyl toluene, mixed isomers)" with CAS 25013–15–4 and RF 1.72. The final Table 2A is sorted in order of CAS number.

B. Clarification to Part 59, Subpart E

In the aerosol coatings reactivity rule, we amended the definition of VOC in 40 CFR 51.100(s) for the purposes of determining compliance with the regulation (as described in 40 CFR part 59—National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) so that any organic compound in the volatile portion of an aerosol coatings is counted towards the product's reactivity-based limit. However, the text of § 51.100(s)(7) adopted in the March 24, 2008, rule was not clear that compounds listed in both §§ 51.100(s)(1) and 51.100(s)(5) were to be counted as VOC for determining compliance. In this final action, we are changing the previously amended definition of VOC in part 51 to clarify that compounds that are excluded from the definition of VOC under both 40 CFR 51.100(s)(1) and (s)(5) are to be counted as VOC for the purposes of determining compliance with the aerosol coatings reactivity rule in 40 CFR part 59, subpart E.

C. The Certification Process for the Assumption of Recordkeeping and Reporting Obligations

As provided in §§ 59.501(b)(4), 59.510(b) and 59.511(g), a manufacturer, importer or distributor may choose to certify that it will assume the responsibility of maintaining records and submitting reports required under this subpart for a regulated entity. To assume that responsibility, the entity making the certification submits a document as described in § 59.511(g). In this action, EPA will finalize the following amendments to § 59.511(g): EPA is amending § 59.511(g) to call the certification document a "notice" rather than a "report." EPA is finalizing this change because it believes that the word "notice" is a more accurate word to describe the document.

EPA is finalizing a method to ensure that both the certifying entity and the regulated entity have full knowledge of what responsibilities are being assumed by the certifying entity. Specifically, EPA is amending § 59.511(g) to provide that the certifying entity will sign the § 59.511(g) notice and then send the notice to EPA and to the regulated entity. EPA has concluded that this method will provide the right balance between (1) making the burden of providing the certification notice reasonable, so as not to discourage manufacturers and others from taking on the recordkeeping and reporting obligations of regulated entities, and (2) making sure that both parties are aware of what responsibilities the certifying entity is assuming from the regulated entity as a result of the notice.

In this final action, § 59.511(g)(3) will be amended to provide a more detailed description of what responsibilities are being assumed by the certifying entity and other related information about the division of responsibility between the certifying entity and regulated entity, and how the recordkeeping and reporting requirements will be met. Specifically, certification notices will be required to include identification of the products covered by the notice and the location or locations where the records will be maintained, among the other information required.

EPA is adding a provision to § 59.511(g) (to be numbered (g)(4)) requiring that the certifying document contain a statement that the certifying entity understands that the failure to fulfill the responsibilities that it is assuming may result in an enforcement action against it.

EPA is revising the provision that was § 59.511(g)(4) and will now appear in § 59.511(g)(5) to clarify that the certification notice must be signed by the responsible official for the certifying entity. Before this revision, the provision required the signature of the responsible official for "the company" which did not clearly identify the certifying entity as the entity signing the notice.

In addition to these amendments to § 59.511(g), EPA is amending certain provisions related to the notices in § 59.511(g):

EPA is adding the word "distributors" to § 59.501(b)(4) to make clear that distributors as well as manufacturers and importers can be a certifying entity. The language currently in § 59.501(b)(4) only refers to "manufacturers and importers," while the language in § 59.511(g) refers to "manufacturers, importers and distributors." This amendment will make these two

provisions consistent and avoid any confusion as to whether distributors may be a certifying entity.

EPA is amending § 59.510(b) to replace the phrase “certifying manufacturer” with “certifying entity” in order to make clear that § 59.510(b) applies to all certifying entities and not just those certifying entities who are manufacturers.

EPA requested comment on whether the 59.511(g) notice should be a certain form or contain certain language to fulfill the requirements of this section. Based on the comments received, the EPA is not imposing any specific language or format for the certification notices in the final rule. However, EPA intends to work with interested parties to develop an optional model for the certification notices. Further, EPA reserves the right to take action in the future if the Agency in the future determines that particular language or format should be a requirement we will propose amendments to the rule.

D. Liability Following § 59.511(g) Certification

This final rule allows a party referred to in this rule as the “certifying entity,” to assume certain recordkeeping and reporting requirements from a regulated entity. However, EPA believes it is essential to ensure that the recordkeeping and reporting responsibilities are fulfilled after this transfer occurs. To that end, in this final rule, both the certifying entity and regulated entity will have joint liability for the recordkeeping and reporting requirements covered by a notice submitted under § 59.511(g), such that both would be liable for the failure to keep records or submit reports and for inaccurate records or reports.

E. Other Revisions

Finally, in this action, we are finalizing minor revisions and edits to include corrections to EPA regional office addresses, and several minor changes and corrections to Table 2A. Specifically, we are finalizing the deletion for the listing for Di (2-ethylhexyl phthalate) (CAS 117-81-7) for which there is no applicable reactivity factor; eliminate a duplicate listing of Butanol (CAS 71-36-3); and correcting the CAS number for Isobutane (CAS 75-28-5) and the reactivity factor for Ethylene Glycol Monobutyl Ether [2-Butoxyethanol] (CAS 111-76-2). Given the multiple ways to name individual organic compounds, in this action, Table 2A has been sorted according to CAS number to make it easier for regulated entities to find a specific chemical.

III. Response to Significant Comments

During the public comment period, we received a total of three comment letters. A summary of all comments received on this rule, as well as complete responses to each of these comments are presented in the docket (EPA-HQ-OAR-2006-0971).

A. Table 2 to Subpart E of Part 59—Reactivity Factors

Comment: One commenter expressed concern about the time required to add chemical compounds to Table 2, given that reactivity factors may have to be updated in the future based on current research efforts by leading scientists.

Another commenter requested that the Table 2A values for four compounds be replaced with more recently determined values. The commenter states that obtaining ozone reduction benefits from the proposed reactivity based aerosol coatings rule requires that the reactivity factors assigned to the regulated compounds accurately represent how efficiently they form ozone. The commenter believes that the assigned reactivity factors are “certainly and significantly in error,” with the largest magnitude errors for compounds whose maximum incremental reactivity (MIR) values were upper limit MIR values.

Response: The commenters raise two important processes that will continue to require periodic regulatory action into the future: (1) The addition of compounds to Table 2, including those compounds for which reactivity factors have already been proposed by EPA, or are in use by other authorities (e.g., California Air Resources Board (CARB)) for this source category, and (2) the revision of the reactivity factors in Table 2 to reflect our evolving understanding of photochemical ozone formation.

The first issue, the addition of compounds to Table 2A for which reactivity factors have been established, is the main focus of this rulemaking. When EPA promulgated the final rule on March 24, 2008 (73 FR 15604), EPA anticipated the need to add compounds to Table 2, especially prior to the initial compliance date for the rule. Affected parties were encouraged to request additions to Table 2 by June 1, 2008, to ensure that the compounds were added prior to the initial compliance date. On December 24, 2008 (73 FR 78994), the compliance date was extended from October 1, 2008, to July 1, 2009. In this current rulemaking, we have responded to all of the requests for additions that we received prior to the April 2, 2009, proposal. Even after that date, EPA has continued to receive requests to add

compounds to Table 2. We expect that the number of requests to add compounds will decline as regulated entities work to come into compliance with the new rule. However, EPA recognizes that there will be a continuing need to add compounds to Table 2 into the future as new compounds are identified for use in this source category.

The addition of compounds to Table 2 must be accomplished through formal rulemaking with opportunities for public comment. Given the resources involved in formal rulemaking, EPA does not believe that it is appropriate for the Agency to respond to each petition for addition of compounds with a separate rulemaking as we receive them. Therefore, EPA intends to issue a rulemaking addressing additions to Table 2, as appropriate.

The second action, updating the reactivity factors to reflect the evolving scientific information is beyond the scope of the current rulemaking. The reactivity scale used in both EPA’s and CARB’s aerosol coatings rules is based on the 2000 version of Carter’s Maximum Incremental Reactivity (MIR) scale.¹ Since 2000, Carter has updated the MIR scale a number of times to incorporate new information about chemical reaction mechanisms and rates, and to incorporate new compounds. The commenter points to Carter’s very recent update of the MIR scale completed in March 2009.² This analysis was completed for CARB, and CARB has not formally adopted these values to determine compliance with their aerosol coatings regulation.

At this time, the reactivity factors in EPA’s Table 2 are consistent with those values used by CARB in its aerosol coatings regulation. We believe the reactivity factors currently in Table 2 should be retained to maintain consistency and stability of both CARB and EPA’s reactivity-based regulations.

EPA recognizes that current reactivity factors may need to be revised in the future to reflect the most recent scientific information. Before adding new compounds or updating reactivity values for existing compounds in Table 2 through formal rulemaking procedures, EPA will ensure that the supporting data will have undergone appropriate scientific review. Before pursuing such a rulemaking, EPA will

¹ Carter, W.P.L., Additions and Corrections to the SAPRC-99 Maximum Incremental Reactivity (MIR) Scale, prepared for California Air Resources Board Contract No. 97-314, November 29, 2000.

² Carter, W.P.L. (2009) Updated Maximum Incremental Reactivity Scale for Regulatory Applications, prepared for California Air Resources Board, Contract 07-339, March 23, 2009.

work with CARB to determine an appropriate timeline and process for incorporating changes to the reactivity factors used in both our regulations and to determine, where appropriate and necessary, whether changes to the reactivity-based limits in those regulations should be made as well.

B. Assumption of Responsibility for Recordkeeping and Reporting

Comment: One commenter opposed adding a provision to § 59.511(g) requiring that the certification notice contain a statement that upon assuming the recordkeeping and reporting requirements in the rule, the certifying entity understands that the failure to fulfill these requirements may result in an enforcement action against it. The commenter stated that this statement is unnecessary because the regulations are clear that a certifying entity's election to maintain records and fulfill reporting requirements for a regulated entity is a regulatory requirement and that, as with any other regulatory requirement, failure to fulfill these requirements carries with it a regulatory penalty in the form of enforcement activity. The commenter further states that adding this regulatory requirement creates additional regulatory requirements and another potential violation in the event that the required statement is missing from a certifying entity's notice.

Response: EPA agrees that the current regulations provide that a certifying entity's notice that it will assume recordkeeping and reporting requirements for a regulated entity imposes a regulatory requirement on that certifying entity that could result in an enforcement action against it if the requirements are not met. However, EPA believes that the inclusion of an express statement to that effect in the certification notice under § 59.511(g) will assure that each entity signing a certification notice is aware of the potential consequences for failing to meet the obligations that it is taking on by signing the certification notice, even if the entity has not carefully read the regulations. Finally, neither this commenter nor anyone else has identified any substantial burden that will arise from including such a statement in the certification notice.

Comment: EPA received a comment opposing EPA's proposal to add language to § 59.511(g)(3) to clarify the responsibilities of the certifying entity. As the basis for their opposition, this commenter noted that the regulations indicate that "any or all" of the recordkeeping and reporting requirements can be assumed, and that certifying entities must be clear about

the extent of the recordkeeping and reporting that they will assume. The commenter stated that there will be instances where several different manufacturers will make products for a single customer, in which case the manufacturer (the certifying entity) must clearly state which products or product lines they are assuming the recordkeeping and reporting responsibilities for. With such a clear statement of the certifying entity, the customer (the regulated entity) will then be able to take steps to be sure that any other products that are being made for it by other manufacturers are the subject of a § 59.511(g) notice from the appropriate manufacturer.

Response: The scenario described by this commenter—where a given regulated entity gets products from multiple suppliers, and so any certification notices from those suppliers must clearly state which products are covered by the notice—is exactly why EPA concludes that § 59.511(g)(3) should expressly require that the certification notice include an "identification of the products covered by the notice." This identification of the scope of each certification notice will allow the regulated entity to determine which products are covered by certification notices (and, thus, are products for which the recordkeeping and reporting obligations will be fulfilled by a certifying entity) and which products have recordkeeping and reporting obligations that are still the responsibility of the regulated entity. Similarly, EPA will be able to review the notices and determine who has the recordkeeping and reporting responsibilities for the various products. Conversely, a certification notice that does not clearly identify the products covered by the notice will create confusion and ambiguity for all parties.

Comment: With respect to the alternative options for assuring that both the certifying entity and the regulated entity are aware of their responsibilities for recordkeeping and reporting following a certification notice, one commenter recommends that the certifying entity be required to send the § 59.511(g) notice to the regulated entity when it is submitted to EPA. The commenter supports this recommendation by explaining that, with this approach, the regulated entity will have the notice in its records, and the certifying entity will be able to comply with § 59.511(g) without waiting for a reply from the regulated entity. If the certifying entity sends the regulated entity a notice regarding these responsibilities, then both parties will have full knowledge of the

responsibilities being assumed by the certifying entity. The alternative option proposed by EPA—to have both parties sign the certification notice before it is submitted to EPA—would be burdensome, according to the commenter. In support of this conclusion, the commenter gave the example of one manufacturer who makes products for over 400 different customers, and stated that obtaining the signature of all of these customers would be "an overwhelming proposition." The commenter further notes that most manufacturers make private label products for customers and will be in the position of maintaining the records and fulfilling the reporting obligations for their customers.

Response: In choosing between the two options proposed, EPA has balanced the conflicting goals of (1) making the burden of providing the certification notice reasonable, so as not to discourage manufacturers and others from taking on the recordkeeping and reporting obligations of regulated entities, and (2) making sure that both parties are aware of what responsibilities are being shifted as a result of the notice. Although having both parties sign the notice fulfills the second goal, EPA's conclusion is that the option of having the certifying entity sign the notice and then send it to the regulated entity will provide the right balance between these two goals. In making this decision, EPA notes the following points in addition to the points discussed above. First, part of EPA's original basis for allowing certifying entities to assume the recordkeeping and reporting obligations was that the certifying entity may be able to fulfill the obligations more accurately, and with less burden than the regulated entity. This point is supported by one of this commenter's points on another issue: that it is the manufacturers who have the data and information that must be kept and reported (a point that commenters make in discussing their opposition to the joint liability of certifying entities and regulated entities, which is discussed below). Second, at the point in time when the certifying entity submits the certification notice to EPA with a copy to the regulated entity, the certifying entity becomes responsible for the recordkeeping and reporting requirements covered by the notice, even before the notice reaches the regulated entity. Thus, any lack of communications between the certifying entity and the regulated entity in advance of the notice being sent might result in some initial duplication of

effort, but will not result in any gap of recordkeeping and reporting.

C. Form of the § 59.511(g) Notice

Comment: EPA received comment that § 59.511(g) indicates the essential elements that must be included in the notice, and that these elements are clear and fairly concise. This commenter suggests that it is not necessary to require a specific form or format. Finally, the commenter states it is willing to work with EPA on a format that is acceptable to the Agency and user-friendly for the industry.

Response: At this time, EPA is not imposing any specific language or format for the certification notices, and intends to work with the commenter and other interested parties to develop an optional model for the certification notices. EPA may however, propose further amendments to the rule in the future if the Agency determines that particular language or format should be a requirement.

D. Liability Following § 59.511(g) Certification

Comment: One commenter does not believe that any additional language should be added regarding joint liability for the recordkeeping and reporting under § 59.511(g). The commenter states that, in most cases, all the data that needs to be maintained and reported is in the hands of the certifying entity. According to the commenter, the regulated entity, even if it wanted to, would not be able to fulfill the recordkeeping and reporting responsibilities. Because of this practical limitation, the commenter urges EPA to reject any additional language which imposes joint liability for a failure in the recordkeeping and reporting functions under § 59.511.

Response: Joint liability is a common enforcement approach under the CAA. Here, EPA believes that joint liability is essential to ensure that the recordkeeping and reporting responsibilities are fulfilled. This joint liability gives regulated entities the appropriate incentive to rely only on reputable parties to fulfill their recordkeeping and reporting responsibilities.

E. Other

Comment: EPA received comments from one commenter in a cover letter and through the resubmission of comments submitted in response to the July 16, 2007, proposed rule, "National Volatile Organic Compound Emission Standards for Aerosol Coatings" (40 CFR parts 51 and 59, subpart E; 72 FR 38952).

Response: With respect to the resubmission of its 2007 comments document, EPA took final action on the proposed rule on March 24, 2008 (40 CFR parts 51 and 59, subpart E; 73 FR 15621), and responded to the comments at that time. Moreover, the 2007 comments do not apply to the issues being considered in the current rulemaking.

Comment: In its cover letter, the commenter above makes three points. The first two points criticize statements that EPA made in its November 2007 Response to Comments document (which was prepared for the March 2008 final rule) and address issues that are outside the scope of the current rulemaking.

Finally, the commenter makes one point that specifically addresses the current rulemaking. The commenter states that EPA is significantly expanding the number of compounds on Table 2A in this rulemaking, and that this is a major change that should lead EPA to reconsider the fundamental approach that this regulation is taking. Specifically, the commenter contends that the rule will not achieve real ozone reductions in the areas that need the reductions, and that the rule encourages the substitution of hazardous air pollutants for other compounds used in aerosol coatings.

Response: With respect to the commenter's 2007 comments and the two comments that criticize aspects of EPA's November 2007 response to comments document, EPA will not address those comments here because they are outside the scope of this rulemaking. With respect to the comment that this rulemaking is a significant expansion of the rule that warrants a reconsideration of the fundamental approach in the March 24, 2008, final action, EPA does not dispute that this rulemaking is expanding the number of compounds on Table 2A, but the Agency disagrees that this is a major change in the rule, or a significant expansion of the scope of the rule that raises the issues that the commenter seeks to have EPA reconsider. Finally, EPA notes that CAA section 307(d)(7)(B) provides the proper vehicle for a person seeking reconsideration of issues from a past rule, and the commenter here has neither stated that it is proceeding under this provision nor explained why it believes it meets the threshold requirements for such reconsideration.

Comment: Another commenter requested a statement in the final rule that addresses the "harmonization" of CARB and US EPA MIR values, since both have either promulgated or

proposed aerosol coatings rules that use these values.

Response: EPA agrees with the commenter that, in general, maintaining consistency between the reactivity factors used by EPA and CARB is important for the efficient and effective implementation of EPA and CARB's reactivity-based regulations. In developing this current regulation, EPA has made an effort to make the requirements as consistent as possible with the requirements of CARB's aerosol coatings regulation within the limits of our authority and responsibilities under the CAA. EPA and CARB's rules, however, are promulgated under different statutory authorities through separate formal rulemaking processes in different regulatory agencies; so, some differences can be expected. The reactivity factors that are currently included in EPA's rule are consistent with the reactivity values currently applied in CARB's aerosol coatings regulation. As discussed in Section III.A., EPA recognizes that the current reactivity factors may need to be revised in the future to reflect the evolving scientific information. As stated previously, before adding new compounds or updating reactivity values for existing compounds in Table 2 through formal rulemaking procedures, EPA will ensure that the supporting data will have undergone appropriate scientific review. Also, before pursuing such a revision, EPA will work with CARB to determine an appropriate timeline and process for incorporating changes to the reactivity factors used in both our regulations and to determine, where appropriate and necessary, whether changes to the reactivity-based limits in those regulations should be made as well.

F. 30-Day Extension of Deadline for Initial Notifications and Finding and Statement of Good Cause

In this final rule, EPA is extending the deadline for the initial notifications required under Section 59.511(b) for 30 days, until July 31, 2009. This extension is being granted without the notice and comment proceedings described in Section 307(d)(3) of the Clean Air Act for good cause, as authorized under Section 307(d)(1).³

³ Under Section 307(d)(1), in the text that appears after the list of actions to which Section 307(d) applies, the statute provides that the requirements of Section 307(d) do not apply "in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of Title 5." Section 553(b)(B) of Title 5 provides that notice and comment proceedings are not required "when the agency for good cause finds (and incorporates that the finding and a brief statement of reasons thereof in the rule [] issued) that notice and public

EPA finds that good cause exists to extend the deadline for initial notifications by 30 days without notice and comment proceedings because (1) the amendments made in this rule affect the initial notifications under 59.511(b) and the certification notices allowed under Section 59.511(g) (which for practical reasons need to be submitted at or before the deadline for initial notifications), and (2) these amendments are being promulgated a short time before the previous deadline for initial notifications of July 1, 2009. Given these circumstances, the Agency has concluded that it would not be fair or in the public interest to require regulated entities to submit the initial notifications by July 1, 2009, or to expect those entities who are electing to submit certification notices to do so by July 1, 2009.

The Agency finds that good cause is shown here on the grounds that notice and comment proceedings are unnecessary. Courts have recognized that notice and comment is “unnecessary” where the rule is “a minor rule or amendment in which the public is not particularly interested.” *Texaco, Inc v. Federal Power Comm.*, 412 F.2d 740, 743 n.6 (3^d Cir 1969) (quoting Attorney General’s Manual on Administrative Act (1947) at 12–13). See also *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (“unnecessary” applies to “those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.”); *Northern Arapahoe Tribe v. Hodel*, 808 F.2d 741, 751 (10th Cir. 1987) (“‘Unnecessary’ means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.”) (quoting S. Rep. No. 752, 79th Cong., 1st Sess. 14 (1945)). Here, EPA finds that the extension of the deadline for submitting initial notifications by 30 days is a minor amendment in which the public is not particularly interested because (1) it does not affect the compliance date for the rule, (2) it only affects the date by which EPA will receive certain reports from regulated entities, and (3) the extension of 30 days is short.⁴ For

procedure thereon are impracticable, unnecessary, or contrary to public interest.”

⁴ EPA further notes that when the Agency previously proposed a seven-month extension of the compliance date in November 2008, it received only one comment. See 73 FR 78,994, 78,995 (col. 2) (December 24, 2008). Because this significantly longer extension of the compliance date (not just the deadline for certain reports) resulted in only

these reasons, EPA finds that it has good cause to extend this deadline without notice and comment proceedings.

G. Basis for Making This Rule Effective on the Date of Publication

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states:

“The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.” Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on June 23, 2009. APA section 553(d)(3) provides an exception when the agency finds good cause exists for a period less than 30 days before effectiveness. We find good cause exists to make this rule effective upon publication because doing so alleviates potential confusion and implementation difficulties that could arise if these amendments were not in effect until 30 days after the date of publication. For example, the extension of the deadline for initial notifications needs to become effective before July 1, 2009 to avoid confusion and implementation difficulties.

IV. Summary of Impacts

This section presents a summary of the impacts expected as a result of this rule.

A. Environmental Impacts

There are no adverse environmental impacts anticipated from compliance with this rule.

B. Energy Impacts

There are no adverse energy impacts anticipated from compliance with this rule.

C. Cost and Economic Impacts

There are no adverse economic impacts anticipated from compliance with this rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” that raises novel legal or policy issues arising out of legal mandates, the

one comment, and because of the nature of that comment (see 73 FR at 78,992), EPA concludes that a notice and comment proceeding to extend the deadline for submitting initial notifications would not likely result in any comments.

President’s priorities, or the principles set forth in the EO. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden; it only proposes amendments and minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which VOC are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule.

However, the OMB has previously approved the information collection requirements contained in the existing regulations, *i.e.*, the National Volatile Organic Compound Emission Standards for Aerosol Coatings, 40 CFR parts 51 and 59, subpart E (73 FR 15604, March 24, 2008) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0617. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) 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 this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is only making minor corrections and amendments to the Aerosol Coatings rule, and these corrections and amendments do not create any new requirements or burdens. No costs are associated with these amendments. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does 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 one year. This action only makes amendments and minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which VOC are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only proposes amendments and minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which volatile organic compounds are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for

a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule.

E. Executive Order 13132: Federalism

EO 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 EO 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 rule 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 EO 13132. This action only makes amendments and minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which VOC are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule.

Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this rule from State and local officials.

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

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). This action only makes amendments and

minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which VOC are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule. Thus, EO 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a “significant energy action” as defined in EO 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because it only makes amendments and minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which VOC are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule.

I. National Technology Transfer and Advancement Act

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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this rule. The rule only makes amendments and minor corrections to the aerosol coatings reactivity rule by adding compounds and associated reactivity factors to Table 2—Reactivity Factors based on petitions EPA received from regulated entities; and clarifies which VOC are to be quantified in compliance determinations. Additionally, certain changes are being made related to the notice required for a company to certify that it will assume the responsibility for compliance with recordkeeping and reporting requirements for a regulated entity, and who is liable following such certification. Finally, in this action we make minor revisions and corrections to the aerosol coatings reactivity rule.

K. 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 the final rule amendment 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 this final rule amendment in the **Federal Register**. The final rule amendment is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule is effective on June 23, 2009.

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, Consumer products, Aerosol products, Aerosol coatings, Consumer and commercial products.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 15, 2009.

Lisa P. Jackson,
Administrator.

■ For the reasons set out in the preamble, parts 51 and 59 of title 40, Chapter I 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(s)(7) is revised to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(7) For the purposes of determining compliance with EPA’s aerosol coatings reactivity based regulation (as described in 40 CFR part 59—National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) any organic compound in the volatile portion of an aerosol coating is counted towards the product’s

reactivity-based limit, as provided in 40 CFR part 59, subpart E. Therefore, the compounds that are used in aerosol coating products and that are identified in paragraphs (s)(1) or (s)(5) of this section as excluded from EPA’s definition of VOC are to be counted towards a product’s reactivity limit for the purposes of determining compliance with EPA’s aerosol coatings reactivity-based national regulation, as provided in 40 CFR part 59, subpart E.

* * * * *

PART 59—[AMENDED]

■ 3. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C 7414 and 7511b(e).

■ 4. Section 59.501 is amended by revising paragraph (b)(4) and the first sentence of paragraph (f)(3)(i) to read as follows:

§ 59.501 Am I subject to this subpart?

* * * * *

(b) * * *

(4) If you are a manufacturer, importer, or distributor, 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).

* * * * *

(f) * * *

(3) * * *

(i) You must submit an initial notification no later than July 31, 2009, or on or before the date that you start manufacturing aerosol coating products that are sold in the United States, whichever is later. * * *

* * * * *

■ 5. Section 59.510 is amended by revising paragraph (b) to read as follows:

§ 59.510 What records am I required to maintain?

* * * * *

(b) By providing the written certification to the Administrator in accordance with § 59.511(g), the certifying entity accepts responsibility for compliance with the recordkeeping requirements of this section with respect to any products covered by the written certification, as detailed in the written certification. Failure to maintain the required records may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violation of these provisions by regulated entities. If the certifying entity revokes its certification, as allowed by § 59.511(h), the regulated entity must

assume responsibility for maintaining all records required by this section.

- 6. Section 59.511 is amended as follows:
 - a. By revising the first sentence in paragraph (b) introductory text.
 - b. By revising the first sentence of paragraph (e) introductory text.
 - c. By revising paragraph (g) introductory text.
 - d. By revising paragraphs (g)(3) and (g)(4).
 - e. By adding paragraph (g)(5).

§ 59.511 What notifications and reports must I submit?

(b) You must submit an initial notification no later than July 31, 2009, or on or before the date that you first manufacture, distribute, or import aerosol coatings, whichever is later.

(e) If you claim the exemption under § 59.501(e), you must submit an initial notification no later than July 31, 2009, or on or before the date that you first manufacture aerosol coatings, whichever is later.

(g) If you are a manufacturer, importer, or distributor who chooses to certify that you will maintain records for a regulated entity for all or part of the purposes of § 59.510 and this section, you must submit a notice to the appropriate EPA Regional Office listed in § 59.512. At the same time that this notice is sent to the appropriate EPA

Regional Office, a copy of the notice must be sent to the regulated entity for which you are accepting responsibility for recordkeeping and reporting requirements. After the certifying entity submits this notice to the appropriate EPA Regional Office, both the certifying entity and the regulated entity are liable for any failure to keep records or submit records and for any inaccurate records or reports covered by the notice, and one or both may be subject to an enforcement action in accordance with the enforcement provisions applicable to violation of these provisions. This notice must include the information contained in paragraphs (g)(1) through (g)(5) of this section.

(3) Description of specific requirements in § 59.510 and this section for which you are assuming responsibility and explanation of how all required information under this subpart will be maintained and submitted, as required, by you or the regulated entity; including identification of the products covered by the notice and the location or locations where the records will be maintained;

(4) A statement that the certifying entity understands that the failure to fulfill the responsibilities that it is assuming may result in an enforcement action against it in accordance with the enforcement provisions applicable to violation of these provisions by regulated entities; and

(5) The signature of the responsible official for the certifying entity.

- 7. Section 59.512 is amended by revising the addresses for EPA Regions I, IV, VII, and VIII to read as follows:

§ 59.512 Addresses of EPA regional offices.

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Office of Environmental Stewardship, 1 Congress St., Suite 1100, Boston, MA 02114-2023.

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air Pesticides and Toxics, Management Division, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-3104.

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air Toxics Division, 901 North 5th Street, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Toxics Division, 1595 Wynkoop Street, Denver, CO 80202-1129.

- 8. Table 2A to subpart E of part 59—Reactivity Factors is revised to read as follows:

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS

| Compound | CAS No. | Reactivity factor |
|--|---------|-------------------|
| Formaldehyde | 50-00-0 | 8.97 |
| Glycerol (1,2,3-Propanetriol) | 56-81-5 | 3.27 |
| Propylene Glycol | 57-55-6 | 2.75 |
| Ethanol | 64-17-5 | 1.69 |
| Formic Acid | 64-18-6 | 0.08 |
| Acetic Acid | 64-19-7 | 0.71 |
| Methanol | 67-56-1 | 0.71 |
| Isopropyl Alcohol (2-Propanol) | 67-63-0 | 0.71 |
| Acetone (Propanone) | 67-64-1 | 0.43 |
| n-Propanol (n-Propyl Alcohol) | 71-23-8 | 2.74 |
| n-Butyl Alcohol (Butanol) | 71-36-3 | 3.34 |
| n-Pentanol (Amyl Alcohol) | 71-41-0 | 3.35 |
| Benzene | 71-43-2 | 0.81 |
| 1,1,1-Trichloroethane | 71-55-6 | 0.00 |
| Propane | 74-98-6 | 0.56 |
| Vinyl Chloride | 75-01-4 | 2.92 |
| Acetaldehyde | 75-07-0 | 6.84 |
| Methylene Chloride (Dichloromethane) | 75-09-2 | 0.07 |
| Ethylene Oxide | 75-21-8 | 0.05 |
| Isobutane | 75-28-5 | 1.35 |
| HFC-152A (1,1-Difluoroethane) | 75-37-6 | 0.00 |
| Propylene Oxide | 75-56-9 | 0.32 |
| t-Butyl Alcohol | 75-65-0 | 0.45 |
| Methyl t-Butyl Ketone | 75-97-8 | 0.78 |
| Isophorone (3,5,5-Trimethyl-2-Cyclohexenone) | 78-59-1 | 10.58 |
| Isopentane | 78-78-4 | 1.68 |

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

| Compound | CAS No. | Reactivity factor |
|--|----------|-------------------|
| Isobutanol | 78-83-1 | 2.24 |
| 2-Butanol (s-Butyl Alcohol) | 78-92-2 | 1.60 |
| Methyl Ethyl Ketone (2-Butanone) | 78-93-3 | 1.49 |
| Monoisopropanol Amine (1-Amino-2-Propanol) | 78-96-6 | 13.42 |
| Trichloroethylene | 79-01-6 | 0.60 |
| Propionic Acid | 79-09-4 | 1.16 |
| Acrylic Acid | 79-10-7 | 11.66 |
| Methyl Acetate | 79-20-9 | 0.07 |
| Nitroethane | 79-24-3 | 12.79 |
| Methacrylic Acid | 79-41-4 | 18.78 |
| α-Pinene (Pine Oil) | 80-56-8 | 4.29 |
| Methyl Methacrylate | 80-62-6 | 15.84 |
| Naphthalene | 91-20-3 | 3.26 |
| Xylene, ortho- | 95-47-6 | 7.49 |
| o-Cresol | 95-48-7 | 2.34 |
| 1,2,4-Trimethylbenzene | 95-63-6 | 7.18 |
| 3-Pentanone | 96-22-0 | 1.45 |
| Methyl Ethyl Ketoxime (Ethyl Methyl Ketone Oxime) | 96-29-7 | 22.04 |
| γ-Butyrolactone | 96-48-0 | 1.15 |
| Ethyl Lactate | 97-64-3 | 2.71 |
| Isobutyl Isobutyrate | 97-85-8 | 0.61 |
| Isobutyl Methacrylate | 97-86-9 | 8.99 |
| Butyl Methacrylate | 97-88-1 | 9.09 |
| PCBTf (p-Trifluoromethyl-Cl-Benzene) | 98-56-6 | 0.11 |
| Cumene (Isopropyl Benzene) | 98-82-8 | 2.32 |
| α-Methyl Styrene | 98-83-9 | 1.72 |
| Ethyl Benzene | 100-41-4 | 2.79 |
| Styrene | 100-42-5 | 1.95 |
| Benzaldehyde | 100-52-7 | 0.00 |
| Triethanolamine | 102-71-6 | 2.76 |
| 2-Ethyl-Hexyl Acetate | 103-09-3 | 0.79 |
| 2-Ethyl-Hexyl Acrylate | 103-11-7 | 2.42 |
| 2-Ethyl-1-Hexanol (Ethyl Hexyl Alcohol) | 104-76-7 | 2.20 |
| Ethyl Propionate | 105-37-3 | 0.79 |
| s-Butyl Acetate | 105-46-4 | 1.43 |
| n-Propyl Propionate | 106-36-5 | 0.93 |
| Xylene, para- | 106-42-3 | 4.25 |
| p-Dichlorobenzene | 106-46-7 | 0.20 |
| Dimethyl Succinate | 106-65-0 | 0.23 |
| 1,2-Epoxybutane (Ethyl Oxirane) | 106-88-7 | 1.02 |
| n-Propyl Bromide | 106-94-5 | 0.35 |
| Butane | 106-97-8 | 1.33 |
| 1,3-Butadiene | 106-99-0 | 13.58 |
| Ethylene Glycol | 107-21-1 | 3.36 |
| 2-Methyl-2,4-Pentanediol | 107-41-5 | 1.04 |
| Isohexane Isomers | 107-83-5 | 1.80 |
| Methyl n-Propyl Ketone (2-Pentanone) | 107-87-9 | 3.07 |
| Propylene Glycol Monomethyl Ether (1-Methoxy-2-Propanol) | 107-98-2 | 2.62 |
| n,n-Dimethylethanolamine | 108-01-0 | 4.76 |
| 1-Nitropropane | 108-03-2 | 16.16 |
| Vinyl Acetate | 108-05-4 | 3.26 |
| Methyl Isobutyl Ketone | 108-10-1 | 4.31 |
| Isopropyl Acetate | 108-21-4 | 1.12 |
| Propylene Carbonate (4-Methyl-1,3-Dioxolan-2-one) | 108-32-7 | 0.25 |
| Xylene, meta- | 108-38-3 | 10.61 |
| Propylene Glycol Monomethyl Ether Acetate (1-Methoxy-2-Propyl Acetate) | 108-65-6 | 1.71 |
| 1,3,5-Trimethyl Benzene | 108-67-8 | 11.22 |
| Di-Isobutyl Ketone (2,6-Dimethyl-4-Heptanone) | 108-83-8 | 2.94 |
| Methylcyclohexane | 108-87-2 | 1.99 |
| Toluene | 108-88-3 | 3.97 |
| Monochlorobenzene | 108-90-7 | 0.36 |
| Cyclohexanol | 108-93-0 | 2.25 |
| Cyclohexanone | 108-94-1 | 1.61 |
| n-Butyl Butyrate | 109-21-7 | 1.12 |
| Propyl Acetate | 109-60-4 | 0.87 |
| Pentane | 109-66-0 | 1.54 |
| Ethylene Glycol Monomethyl Ether (2-Methoxyethanol) | 109-86-4 | 2.98 |
| Tetrahydrofuran | 109-99-9 | 4.95 |
| Methyl Isoamyl Ketone (5-Methyl-2-Hexanone) | 110-12-3 | 2.10 |
| Isobutyl Acetate | 110-19-0 | 0.67 |
| Methyl Amyl Ketone | 110-43-0 | 2.80 |

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

| Compound | CAS No. | Reactivity factor |
|---|------------|-------------------|
| Hexane | 110-54-3 | 1.45 |
| n-Propyl Formate | 110-74-7 | 0.93 |
| 2-Ethoxyethanol | 110-80-5 | 3.78 |
| Cyclohexane | 110-82-7 | 1.46 |
| Morpholine | 110-91-8 | 15.43 |
| Dipropylene Glycol | 110-98-5 | 2.48 |
| Ethylene Glycol Monoethyl Ether Acetate (2-Ethoxyethyl Acetate) | 111-15-9 | 1.90 |
| Diethylenetriamine | 111-40-0 | 13.03 |
| Diethanolamine | 111-42-2 | 4.05 |
| Diethylene Glycol | 111-46-6 | 3.55 |
| n-Octane | 111-65-9 | 1.11 |
| 2-Butoxy-1-Ethanol (Ethylene Glycol Monobutyl Ether) | 111-76-2 | 2.90 |
| Diethylene Glycol Methyl Ether (2-(2-Methoxyethoxy) Ethanol) | 111-77-3 | 2.90 |
| n-Nonane | 111-84-2 | 0.95 |
| 2-(2-Ethoxyethoxy) Ethanol | 111-90-0 | 3.19 |
| Ethylene Glycol Monobutyl Ether Acetate (2-Butoxyethyl Acetate) | 112-07-2 | 1.67 |
| 2-(2-Ethoxyethoxy) Ethyl Acetate | 112-15-2 | 1.50 |
| 2-(2-Butoxyethoxy)-Ethanol | 112-34-5 | 2.70 |
| Dimethyl Ether | 115-10-6 | 0.93 |
| Triethylamine | 121-44-8 | 16.60 |
| 2-Phenoxyethanol; Ethylene Glycol Phenyl Ether | 122-99-6 | 3.61 |
| Diacetone Alcohol | 123-42-2 | 0.68 |
| 2,4-Pentanedione | 123-54-6 | 1.02 |
| Butanal | 123-72-8 | 6.74 |
| Butyl Acetate, n | 123-86-4 | 0.89 |
| 2-(2-Butoxyethoxy) Ethyl Acetate | 124-17-4 | 1.38 |
| 2-Amino-2-Methyl-1-Propanol | 124-68-5 | 15.08 |
| Perchloroethylene | 127-18-4 | 0.04 |
| Ethanolamine | 141-43-5 | 5.97 |
| Ethyl acetate | 141-78-6 | 0.64 |
| Heptane | 142-82-5 | 1.28 |
| n-Hexyl Acetate (Hexyl Acetate) | 142-92-7 | 0.87 |
| 2-Ethyl Hexanoic Acid | 149-57-5 | 4.41 |
| 1,2,3-Trimethyl Benzene | 526-73-8 | 11.26 |
| t-Butyl Acetate | 540-88-5 | 0.20 |
| Methyl Isobutyrate | 547-63-7 | 0.70 |
| Methyl Lactate | 547-64-8 | 2.75 |
| Methyl Propionate | 554-12-1 | 0.71 |
| 1,2 Butanediol | 584-03-2 | 2.21 |
| n-Butyl Propionate | 590-01-2 | 0.89 |
| Methyl n-Butyl Ketone (2-Hexanone) | 591-78-6 | 3.55 |
| Ethyl Isopropyl Ether | 625-54-7 | 3.86 |
| Dimethyl Adipate | 627-93-0 | 1.95 |
| Methyl n-Butyl Ether | 628-28-4 | 3.66 |
| Amyl Acetate (Pentyl Ethanoate, Pentyl Acetate) | 628-63-7 | 0.96 |
| Ethyl n-Butyl Ether | 628-81-9 | 3.86 |
| Ethyl t-Butyl Ether | 637-92-3 | 2.11 |
| 1,3-Dioxolane | 646-06-0 | 5.47 |
| Ethyl-3-Ethoxypropionate | 763-69-9 | 3.61 |
| Methyl Pyrrolidone (n-Methyl-2-Pyrrolidone) | 872-50-4 | 2.56 |
| Dimethyl Gluterate | 1119-40-0 | 0.51 |
| C8 Disubstituted Benzenes (xylenes, mixed isomers) | 1330-20-7 | 7.48 |
| Ethylene Glycol 2-Ethylhexyl Ether [2-(2-Ethylhexyloxy) Ethanol] | 1559-35-9 | 1.71 |
| Propylene Glycol Monopropyl Ether (1-Propoxy-2-Propanol) | 1569-01-3 | 2.86 |
| Propylene Glycol Monoethyl Ether (1-Ethoxy-2-Propanol) | 1569-02-4 | 3.25 |
| 2-Methoxy-1-Propanol | 1589-47-5 | 3.01 |
| Methyl t-Butyl Ether | 1634-04-4 | 0.78 |
| Ethylcyclohexane | 1678-91-7 | 1.75 |
| Isoamyl Isobutyrate | 2050-01-3 | 0.89 |
| 2-Propoxyethanol (Ethylene Glycol Monopropyl Ether) | 2807-30-9 | 3.52 |
| n-Butoxy-2-Propanol | 5131-66-8 | 2.70 |
| d-Limonene (Dipentene or Orange Terpene) | 5989-27-5 | 3.99 |
| Dipropylene Glycol Methyl Ether Isomer (2-[2Methoxypropoxy]-1-Propanol) | 13588-28-8 | 3.02 |
| C9 Styrenes (Vinyl Toluene, mixed isomers) | 25013-15-4 | 1.72 |
| Texanol (1,3 Pentanediol, 2,2,4-Trimethyl, 1-Isobutyrate) | 25265-77-4 | 0.89 |
| Isodecyl Alcohol (8-Methyl-1-Nonanol) | 25339-17-7 | 1.23 |
| Tripropylene Glycol Monomethyl Ether | 25498-49-1 | 1.90 |
| Glycol Ether DPNB (1-(2-Butoxy-1-Methylethoxy) 2-Propanol) | 29911-28-2 | 1.96 |
| Propylene Glycol t-Butyl Ether (1-tert-Butoxy-2-Propanol) | 57018-52-7 | 1.71 |
| 2-Methoxy-1-Propyl Acetate | 70657-70-4 | 1.12 |
| Oxo-Heptyl Acetate | 90438-79-2 | 0.97 |

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

| Compound | CAS No. | Reactivity factor |
|--------------------------------|-------------|-------------------|
| 2-tert-Butoxy-1-Propanol | 94023-15-1 | 1.81 |
| Oxo-Octyl Acetate | 108419-32-5 | 0.96 |

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[WT Docket No. 02-55; ET Docket Nos. 00-258, 95-18; FCC 09-49]

Relocation of 2 GHz Broadcast Auxiliary Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission waives the deadline by which Sprint Nextel must complete relocation of the broadcast auxiliary service (BAS) to frequencies above 2025 MHz until February 8, 2010. The Commission also eliminates the requirement that MSS entrants to the 2000-2020 MHz band may not begin operations until the BAS incumbents in the top 30 markets by population and all fixed BAS links in the 1990-2025 MHz band have been relocated. MSS entrants will be allowed to conduct operations in markets where the BAS incumbents have not been relocated only if they successfully coordinate with the BAS incumbents. In addition, the Commission waives the requirement that New ICO Satellite Services G.P. must first make available to the public commercial satellite service throughout its satellite's coverage area before it may commercially operate Ancillary Terrestrial Service (ATC) in conjunction with its satellite system.

DATES: Effective July 23, 2009.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, (202) 418-0636, e-mail Nicholas.Oros@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order, WT Docket No. 02-55, ET Docket Nos. 00-258 and 95-18, FCC 09-49, adopted June 10, 2009, and released June 12, 2009. The full text of the document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference

Center (Room CY-A257), 445 12th St., SW., Washington, DC 20554. The full text may also be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300; fax (202) 488-5563; e-mail FCC@BCPIWEB.com.

Summary of the Report and Order and Order

1. In this Report and Order and Order, the Commission waives the deadline by which Sprint Nextel must complete relocation of the broadcast auxiliary service (BAS) to frequencies above 2025 MHz until February 8, 2010. The BAS incumbents are being relocated so that new entrants such as the Mobile Satellite Service (MSS), Advanced Wireless Service (AWS), and Sprint Nextel can provide new and innovative services. In 2004, Sprint Nextel undertook the obligation to relocate the BAS incumbents within 30 months—i.e. by September 7, 2007. In March 2008 the Commission waived the BAS transition deadline until March 5, 2009. On February 12, 2009, Sprint Nextel, the Association for Maximum Service Television (MSTV), the National Association of Broadcasters (NAB), and the Society of Broadcast Engineers (SBE) filed a supplemental request that the BAS transition deadline be waived until February 7, 2010.

2. The Commission concludes that waiver of the BAS relocation deadline until February 8, 2010 is in the public interest for a number of reasons. The timely relocation of BAS licensees remains a necessary step for the full introduction of new services in the 1990-2025 MHz band, and Sprint Nextel remains the sole entity actively undertaking such relocations. No commenter has suggested an alternate plan by which BAS licensees can be relocated quicker in order to give new entrants full and complete access to the band. The pace of the BAS transition is constrained by the small number of manufacturers who make the BAS equipment, a shortage of qualified equipment installers and tower climbers, and coordination problems between the new radio equipment and preexisting controllers. The Commission concludes that a fair reading of the

overall record indicates that Sprint Nextel has made considerable progress in the BAS relocation process that has proven to be a more complex undertaking than any party may have initially anticipated.

3. Further delays in BAS transition will frustrate our goal of providing opportunity for new entrants to begin offering service in the band and the Commission fully intends to take all necessary steps to ensure that the BAS licensees, Sprint Nextel, and the MSS operators act to complete the BAS relocation process in a timely manner. While the Commission intends to exercise appropriate enforcement action if Sprint Nextel is not able to complete the BAS transition by February 8, 2010 for reasons it could have reasonably avoided, we also believe that there should be appropriate consequences for BAS licensees for failure to complete the relocation by the new deadline. In the accompanying Further Notice, the Commission considers further modifying the BAS relocation rules to allow new entrants to begin unencumbered operations in the band before all BAS operations are relocated. The Commission also emphasize that, under existing relocation rules, MSS operators have an absolute responsibility to protect incumbent BAS licensees, and that it will consider taking vigorous enforcement action against any violations of this rule. Furthermore, the Commission reminds BAS licensees that under the Commission's rules they have an obligation to negotiate in good faith with Sprint Nextel and the other new entrants relocation agreements for the 1990-2025 MHz band. If a party believes that another party, whether a BAS licensee or a new entrant, is not negotiating in good faith, it may petition the Commission for a declaratory ruling.

4. As proposed in a March 2008 Further Notice of Proposed Rulemaking in this docket, in this Report and Order and Order the Commission also eliminates the requirements in §§ 74.690(e)(1)(i) and 78.40(f)(1)(i) of the Commission's Rules that MSS entrants relocate all BAS licensees in Nielsen Designated Market areas 1-30, as they existed on September 6, 2000, and all fixed BAS stations operating in the band on a primary basis prior to beginning