

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2008.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(72) to read as follows:

##### § 52.1470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(72) The following plan revision was submitted on April 1, 2008, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Clark County Transportation Conformity Plan (January 2008), adopted by the Clark County Board of County Commissioners on January 15, 2008.

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**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 59

[EPA-HQ-OAR-2006-0971; FRL-8738-7]

RIN 2060-AP33

#### National Volatile Organic Compound Emission Standards for Aerosol Coatings

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on the National Volatile Organic Compound Emission Standards for Aerosol Coatings, which establishes national reactivity-based emission

standards for the aerosol coatings category (aerosol spray paints) under the Clean Air Act (CAA). In this direct final action, EPA is moving the applicability and compliance dates for aerosol coatings from January 1, 2009, to July 1, 2009. EPA is also making initial notifications required due on the compliance date, as opposed to 90 days in advance of the compliance date.

**DATES:** This rule is effective on December 29, 2008 without further notice, unless EPA receives adverse comment by December 8, 2008, or December 22, 2008 if a hearing is requested. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified under Docket ID No. EPA-HQ-OAR-2006-0971 by one of the following methods:

- *www.regulations.gov.* Follow the online instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Fax:* (202) 566-9744.

- *Mail:* National Volatile Organic Compound Emission Standards for Aerosol Coatings, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include two copies.

- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., EPA Headquarters Library, Room 3334, EPA West Building, Washington, DC 20460. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0971. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-

mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA/DC, EPA West Building, EPA Headquarters Library, 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 Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For further information, 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, NC 27711; telephone number (919) 541-2509; facsimile number (919) 541-3470; e-mail address: [whitfield.kaye@epa.gov](mailto:whitfield.kaye@epa.gov). For information concerning the 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](mailto:moore.bruce@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Why is EPA using a direct final rule?
- II. Does this action apply to me?
- III. What should I consider as I prepare my comments for EPA?
- IV. What are the amendments made by this direct final rule?
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  - E. Executive Order 13132: Federalism
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  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

**I. Why is EPA using a direct final rule?**

EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. The final rule has a provision 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. It is necessary to move the compliance date to allow time to add compounds that are currently used in aerosol coatings, but were not included on the list of reactivity factors in Table 2 of the final rule. Removing the requirement for a 90 day advance submittal of initial notifications will make the aerosol coatings rule consistent with the requirements of other part 59 rules, increasing consistency and clarity for the regulated entities.

Although we do not anticipate adverse comments on this action, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to the National Volatile Organic Compound Emission Standards for Aerosol Coatings (40 CFR part 59) if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would

address all public comments in any subsequent final rule based on the proposed rule.

**II. Does this action apply to me?**

The entities potentially affected by this direct final rule are the same entities that are subject to the Aerosol Coatings final rule. The entities affected by the Aerosol Coatings final rule include: Manufacturers, processors, distributors, importers of aerosol coatings for sale or distribution in the United States, and manufacturers, processors, distributors, or importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States.

**III. What should I consider as I prepare my comments for EPA?**

**A. Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**B. Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

#### IV. What are the amendments made by this direct final rule?

In this direct final action, EPA is moving the applicability and compliance dates for aerosol coatings, as specified in sections 59.501(c) and 59.502(a), from January 1, 2009, to July 1, 2009. Also, EPA is making initial notifications required in sections 59.501(f)(3)(i), 59.511(b) and 59.511(e) due on the compliance date, as opposed to 90 days in advance of the compliance date. These two actions are necessary to allow EPA time to add compounds and applicable reactivity factors that are currently used in aerosol coatings but were not included on the list in Table 2 of the final rule; allow regulated entities sufficient time to develop initial notification reports based on revised tables; and, in the case of making initial notifications due on the compliance date, make the aerosol coatings rule consistent with the requirements of other part 59 rules, increasing consistency and clarity for the regulated entities.

Section 59.511(j) anticipated that there may be some compounds that aerosol coating manufacturers are currently using, or intend to use, that were not included in Table 2 of the final rule. Section 59.511(j) allowed for regulated entities to petition EPA to add such compounds to the list. EPA received such petitions, but has not been able to finalize the additions to the list with sufficient time to allow manufacturers to certify compliance based on the deadlines in the final rule. Delaying the compliance date and the date when initial notifications are due will allow EPA time to finalize the additions to the list through appropriate public notice and comment procedures, and allow regulated entities sufficient time to prepare initial notification reports, and review and certify their compliance with the limits based on the revised tables.

#### V. Statutory and Executive Order Reviews

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

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

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden because it does not add any new information collection requirements; it only moves dates by which regulated entities are required to submit information and otherwise comply with the rule. No additional information collection is necessary for this action. However, OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 59 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2266.01. 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 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 today’s final 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 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, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. We have determined that small businesses will not incur any adverse impacts because this action does not create any new requirements or burdens; it only moves the dates by which persons are required to submit information and otherwise comply with the rule. No costs are associated with these amendments.

##### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform

Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of 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. As noted above, this rule does not create any new requirements or burdens; it extends the date by which regulated entities must be in compliance.

##### 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 final 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. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. The final rule requirements will not supersede State regulations that are more stringent. Thus, EO 13132 does not apply to this rule.

##### 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). The final regulatory action does not have a substantial direct effect on one or more Indian tribes, in that this action imposes no regulatory burdens on tribes. Thus, EO 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying 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 is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

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

This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (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 determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action extends the compliance date of the rule from January 1, 2009, to July 1, 2009, and

does not relax the control measures on sources regulated by the 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 December 29, 2008.

**List of Subjects in 40 CFR Part 59**

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

Dated: October 30, 2008.

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

■ For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

**PART 59—[AMENDED]**

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

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

**Subpart E—[Amended]**

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

**§ 59.501 Am I subject to this subpart?**

\* \* \* \* \*

(c) Except as provided in paragraph (e) of this section, the provisions of this subpart apply to aerosol coatings manufactured on or after July 1, 2009, for sale or distribution in the United States. \* \* \*

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) You must submit an initial notification no later than the compliance date stated in § 59.502(a), or on or before the date that you start manufacturing aerosol coating products

that are sold in the United States, whichever is later.

\* \* \* \* \*

■ 3. Section 59.502 is amended by revising paragraph (a) to read as follows:

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

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

\* \* \* \* \*

■ 4. Section 59.511 is amended by revising the first sentence of paragraph (b) introductory text and the first sentence of paragraph (e) introductory text to read as follows:

**§ 59.511 What notification and reports must I submit?**

\* \* \* \* \*

(b) You must submit an initial notification no later than the compliance date stated in § 59.502(a), 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 the compliance date stated in § 59.502(a), or on or before the date that you first manufacture aerosol coatings, whichever is later. \* \* \*

\* \* \* \* \*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 440**

[CMS–2213–F]

RIN 0938–AO17

**Medicaid Program; Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** Outpatient hospital services are a mandatory part of the standard Medicaid benefit package. This final rule aligns the Medicaid definition of outpatient hospital services more