

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 59

[EPA-HQ-OAR-2006-0971; FRL-8788-4]

RIN 2060-AP33

National Volatile Organic Compound Emission Standards for
Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend 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. This proposed action amends Table 2A of the aerosol coatings reactivity rule by adding compounds and associated reactivity factors based on petitions we received; and by clarifying which volatile organic compounds are to be quantified in compliance determinations. Additionally, we are proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity, and taking comment on whether to change who is liable following such certification. Finally, this action

proposes minor revisions and corrections to the aerosol coatings reactivity rule.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], unless a public hearing is requested by [INSERT DATE 10 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If a hearing is requested on the proposed rule, written comments must be received by [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing concerning the proposed regulation by [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], a public hearing will be held on or about [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking Portal: <http://www.regulations.gov>.
Follow the online instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see FOR FURTHER

INFORMATION CONTACT). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17 St., NW, Washington, DC 20503.

- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, 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 the applicable docket. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 website 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.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Ms. Joan C. Rogers, 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) 541-4487, fax number (919) 541-3470, e-mail address: rogers.joanc@epa.gov, no later than [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Persons interested in attending the public hearing must also call Ms. Rogers to verify the time, date and location of the hearing. If no one contacts Ms. Rogers by [INSERT DATE

10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] with a request to present oral testimony at the hearing, we will cancel the hearing.

Docket: All documents in the docket are listed in the 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. 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) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

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, fax 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, fax 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.

Preparation of Comments. Do not submit information containing CBI to EPA through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA-HQ-OAR-2006-0971. 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed 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.

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

- I. Background
- II. Summary of Proposed Amendments to the National Volatile Organic Compound Emission Standards for Aerosol Coatings
 - A. Amendments to Tables 2A, 2B, and 2C - Reactivity Factors
 - B. Clarification to part 59, subpart E
 - C. The Certification Process for the Assumption of Recordkeeping and Reporting Obligations
 - D. Comments Sought on Change in Liability following Certification under §59.511(g)
 - E. Other Revisions

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- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health 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

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, and codified in the Code of Federal Regulations 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; however, 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 regulation 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 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 reports 90 days in advance of the compliance date; in this case, initial notification reports 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 notification reports 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 notification reports based on the revised tables. Making initial notification reports due on the compliance date

results in the aerosol coatings reactivity rule being more consistent with the requirements of other 40 CFR part 59 rules, thereby increasing clarity and avoiding confusion on the part of regulated entities.

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, which is one of the subjects of this action.

II. Summary of Proposed Amendments to the National Volatile Organic Compound Emission Standards for Aerosol Coatings

EPA is proposing to amend the aerosol coatings reactivity rule (73 FR 15604) by (1) revising Table 2A by adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which VOC are to be quantified in compliance determinations in 40 CFR part 59, subpart E; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; (4) taking comment on whether to change who is liable following such certification; and (5) proposing certain minor revisions and corrections.

A. Amendments to Tables 2A, 2B, and 2C - Reactivity Factors

Section 59.511(j) of the rule (73 FR 15604) allows regulated entities to petition EPA to add compounds to Tables 2A, 2B, and 2C. For each compound, the petition must include the chemical name, Chemical Abstract Service (CAS) number, a statement certifying the intent to use the compound in an aerosol coatings product, and adequate information for EPA to evaluate the reactivity of the compound and assign a reactivity factor consistent with the values for the other compounds currently on the tables. Through this action, we are proposing to add 128 compounds to Table 2A in response to the petitions we received from the regulated entities.

Tables 2A, 2B, and 2C list compounds and associated reactivity factors known to be used in aerosol coatings, and currently include 45 individual compounds, 20 aliphatic hydrocarbon solvent mixtures, and four aromatic hydrocarbon solvent mixtures. Three regulated entities and one trade association that obtained certifications on behalf of its member regulated entities petitioned EPA requesting an additional 168 compounds or mixtures be added to Table 2A. Of the 168 compounds or mixtures identified by petitioners, we have added reactivity factors for 122 compounds identified by the petitioners and six compounds similar to those identified by the petitioners. Twenty-nine compounds or mixtures identified by the petitioners were already listed or addressed in Table 2A,

2B, or 2C; six were treated as duplicates; and five were rejected because no information was provided to determine a reactivity factor.

Further information is provided in the docket that describes each of the compounds or mixtures that were identified in the petitions and how each compound or mixture is being addressed in this proposal. As indicated previously in section I of this preamble, the applicability, initial compliance date and initial notification for aerosol coatings were moved from January 1, 2009, to July 1, 2009 (73 FR 78994) due to the large number of compounds that we received petitions for and the necessary review.

B. Clarification to Part 59, Subpart E

In the aerosol coatings reactivity rule (73 FR 15604), we amended the regulatory 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 coating is counted towards the product's reactivity-based limit (i.e., "Because even less reactive VOC contribute to ozone formation, we are amending the regulatory definition of VOC for purposes of this rule by adding 40 CFR 51.100(s)(7).") In the text of §51.100(s)(7) adopted in the March 24, 2008 rule, it was

not clear that the compounds listed in both §§51.100(s)(1) and 51.100(s)(5) were to be counted as VOC for determining compliance with the aerosol coatings reactivity rule in 40 CFR part 59. In this action, we are proposing changes to 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 is proposing the following amendments to §59.511(g):

EPA is proposing to amend §59.511(g) to call the certification document a "notice" rather than a "report." EPA is proposing this change because it believes that the word "notice" is a more accurate word to describe the document.

EPA is seeking comment on options for 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. This is important because the regulations permit the certifying entity to assume "any or all" of the recordkeeping and reporting requirements (see §59.501(b)(4)) and the §59.511(g) certifying document must identify the "specific requirements" that are being assumed by the certifying entity. One option is to revise 59.511(g)(4) to require that both the regulated entity and the certifying entity sign the document. Currently, the language in §59.511(g)(4) provides that the document will be signed by "the company" without specifying whether this refers to the certifying entity or the regulated entity. Industry representatives have requested that EPA clarify that only the certifying entity must sign the notice before the certifying entity can assume the regulated entity's recordkeeping and reporting responsibilities, explaining that requiring the certifying entity to obtain the signature of the regulated entity would be burdensome. A second option is to require the certifying entity to send the 59.511(g) notice to the regulated entity at the same time as it sends it to EPA. EPA seeks comments on these options in order to determine the appropriate balance between (1) ensuring that both parties have full knowledge of what responsibilities are being assumed by the

certifying entity, and (2) ensuring that the certification process is not burdensome.

EPA is proposing to amend §59.511(g)(3) 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. EPA seeks comments on what additional details should be provided and what additional burdens this would impose.

EPA is proposing to add 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.

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

EPA is proposing to add 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 proposing to amend §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 is also requesting comment on whether the 59.511(g) notice should be a certain form or contain certain language to fulfill the requirements of this section.

D. Comments Sought on Change in Liability following Certification under §59.511(g)

Currently, §§59.501(b), 59.510(a), 59.511(a) provide that a regulated entity is responsible for record keeping and reporting requirements if no other entity (the "certifying entity") has certified that it will assume the responsibility for such requirements under the provisions in §59.511(g). EPA is seeking comment on whether the regulations should provide that both the certifying entity and the regulated entity are liable for the record keeping 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 will propose minor revisions and edits to include corrections to EPA regional office addresses, and several minor changes and corrections in Table 2A. Specifically, we deleted the listing for Di (2-ethylhexyl phthalate) (CAS 117-81-7) for which there is no applicable reactivity factor; eliminated a duplicate listing of Butanol (CAS 71-36-3); and corrected 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, we have sorted Table 2A according to CAS number to make it easier for regulated entities to find a specific chemical. Classes of compounds for which there is no specific CAS number are listed at the end of the table.

III. 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," as it raises novel legal or policy issues. Accordingly, EPA submitted this action to 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 (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and by (4) proposing certain minor revisions and corrections.

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 part 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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed 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 taking this action to propose minor corrections and amendments to the Aerosol Coatings final 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 proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed 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 proposes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and 4) proposing certain minor revisions and corrections. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This proposed 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.

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 proposed 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 proposes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated

entity; and (4) proposing certain minor revisions and corrections. 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 proposed 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 will not impose any new obligations or enforceable duties on tribal governments.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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 EPA is taking this action to propose minor corrections and amendments to the Aerosol Coatings final rule, and these corrections and amendments do not create any new requirements.

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 proposed 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 proposed rule. The proposed rule only makes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes

related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and by (4) proposing certain minor revisions and corrections.

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: March 25, 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 proposed to be 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) 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 59.511(h).

* * * * *

5. Section 59.510(b) 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 by revising paragraphs (g), (g)(3), (g)(4), and by adding paragraph (g)(5) to read as follows:

§59.511 What notifications and reports must I submit?

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(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 Regional Office listed in §59.512. This notice must include the information contained in (g)(1) through (g)(5) of this section.

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(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; and

(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 in accordance with the enforcement provisions applicable to violation of these provisions by regulated entities.

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7. Section 59.512 is amended to revise the addresses for 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.

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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.

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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.

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8. Table 2 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
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
a-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
gamma-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
a-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 (1Methoxy-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
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
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
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
2-tert-Butoxy-1-Propanol	94023-15-1	1.81
Oxo-Octyl Acetate	108419-32-5	0.96
C8 Disubstituted Benzenes	na	7.48

C9 Styrenes	na	1.72
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