

[Federal Register Volume 73, Number 248 (Wednesday, December 24, 2008)]

[Rules and Regulations]

[Pages 78994-78997]

From the Federal Register Online via the Government Printing Office [www.gpo.gov]

[FR Doc No: E8-30699]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA-HQ-OAR-2006-0971; FRL-8757-1]

RIN 2060-AP33

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule and parallel proposal on November 7, 2008 (73 FR 66184) to amend the national volatile organic compound (VOC) emission standards for aerosol coatings, which EPA promulgated on March 24, 2008 (73 FR 15604), by extending the compliance date and changing the submittal date for initial notification reports. Because we received an adverse comment during the comment period on the direct final rule and parallel proposal, in this action we are both withdrawing the direct final rule and issuing a final rule based on the notice of proposed rulemaking after considering the comment.

DATES: This final rule revision is effective on December 24, 2008. The withdrawal of the direct final rule published on November 7, 2008 (73 FR 66184) is effective on December 24, 2008.

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 (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 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, Public Reading Room, 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 Air Docket is (202) 566-1742.

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.

SUPPLEMENTARY INFORMATION: On November 7, 2008, EPA published a direct final rule and parallel proposal (73 FR 66184) to amend the national VOC emission standards for aerosol coatings (73 FR 15604). In today's action, we withdraw the direct final rule, respond to the comment received, and issue a final rule based on the November 7, 2008, notice of proposed rulemaking.

We stated in the direct final rule that if we received adverse comments by December 8, 2008, the direct final rule would not take effect and we would

[[Page 78995]]

publish a timely withdrawal in the Federal Register. We subsequently received an adverse comment on the direct final rule and are withdrawing it. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Concurrent with the direct final rule, we published a separate notice of proposed rulemaking to provide for the contingency of adverse comments on the direct final rule (73 FR 66184). With today's action, we are issuing a final rule based on the notice of proposed rulemaking and are addressing the comment received.

Judicial Review. Under Section 307(b)(1) of the Clean Air Act (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 February 23, 2009. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), any requirements established by the 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 a mechanism for EPA to convene a proceeding for reconsideration, ``if the person raising the objection can demonstrate to the Administrator that it was impracticable to raise such 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 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 listed in the preceding FOR FURTHER INFORMATION CONTACT section and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344-A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

I. What Action Is EPA Taking?

In today's action, EPA is withdrawing the direct final rule published on November 7, 2008 (73 FR 66184) and taking final action on the proposed rule on national VOC emission standards for aerosol coatings, published on November 7, 2008 (73 FR 66209).

First, because we received an adverse comment on the direct final rule and parallel proposal, the direct final rule is being withdrawn.

Second, after considering the adverse comment, we are taking final action on the proposed rule published on November 7, 2008 (73 FR 66209). The adverse comment was submitted by the Harris County (Texas) Public Health and Environmental Services. The commenter asserted that the action was unclear, and that the commenter was unable to discern whether the proposed rule would improve or adequately protect public health. EPA disagrees with the commenter's assertion that the action was not fully explained in the November 7, 2008, notice (73 FR 66184). The direct final rule clearly stated that the rule would only amend the national VOC emission standards for aerosol coatings (73 FR 15604, March 24, 2008) in two respects: (1) By moving the compliance date from January 1, 2009, to July 1, 2009; and (2) by making initial notification reports due on the compliance date, as opposed to 90 days in advance of the compliance date. There were no substantive changes to the levels of control afforded by the March 24, 2008, rule. Therefore, this rule maintains the same level of protection of the public health as the March 24, 2008, rule.

In today's action, we are taking final action on the parallel proposed rule published November 7, 2008 (73 FR 66184), as follows. First, today's action will move the applicability and initial compliance date for aerosol coatings, as specified in sections 59.501(c) and 59.502(a) from January 1, 2009, to July 1, 2009. Second, initial notification reports required under sections 59.501(f)(3)(i), 59.511(b) and 59.511(e) will be due on the compliance date, as opposed to 90 days in advance of the compliance date. These changes are necessary to allow EPA time to conduct rulemaking to add compounds (and their associated reactivity factors) that are currently used in aerosol coatings but were not included on the list in Table 2 of the rule as promulgated on March 24, 2008; and to allow regulated entities sufficient time to develop initial notification reports based on the revised tables. Furthermore, making initial notification reports due on the compliance date will result in the aerosol coatings 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. Finally, as discussed above, the rule as modified by today's action makes no substantive changes to the levels of control afforded by the March 24, 2008, rule.

II. 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 (73 FR 15604) 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 today's 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 today's 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 requirements on small entities. We have

[[Page 78996]]

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 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 EO 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 of 1995 ('NTTAA'), Public Law 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 Office of Management and Budget (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 determined that this 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ``major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 24, 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: December 19, 2008.

Stephen L. Johnson,
Administrator.

0

For the reasons set out in the preamble, part 59 of title 40 of the Code of Federal Regulations is amended as follows:

PART 59--[AMENDED]

0

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

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

Subpart E--[Amended]

0

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:

[[Page 78997]]

Sec. 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 Sec. 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. * * *

* * * * *

0

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

Sec. 59.502 When do I have to comply with this subpart?

(a) Except as provided in Sec. 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.

* * * * *

0

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:

Sec. 59.511 What notifications and reports must I submit?

* * * * *

(b) You must submit an initial notification no later than the compliance date stated in Sec. 59.502, 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 Sec. 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. * * *

* * * * *

[FR Doc. E8-30699 Filed 12-23-08; 8:45 am]

BILLING CODE 6560-50-P

