

**SWCAA 493-200 AEROSOL COATINGS**

- (1) **Adoption by reference.** The National Volatile Organic Compound Emission Standards for Aerosol Coatings contained in 40 CFR Part 59, Subpart E as in effect on July 1, 2011 are hereby adopted by reference. The term "administrator" as defined in 40 CFR 59.503 shall include the Executive Director of SWCAA. Exceptions to this adoption by reference are listed in subsection (3).
- (2) **Applicability.** SWCAA 493-200 applies to the sale or use of aerosol coatings within the jurisdiction of the Southwest Clean Air Agency.
- (3) **Exceptions.** The following sections of 40 CFR 59, Subpart E are not adopted by reference:
  - (a) 40 CFR 59.509 *Can I get a variance?*.
- (4) **Variations.**
  - (a) Any regulated entity that cannot comply with the requirements of this section because of circumstances beyond its reasonable control may apply temporary variance. The variance application must include the following information:
    - (i) The specific products for which the variance is sought;
    - (ii) The specific provisions of the subpart for which the variance is sought;
    - (iii) The specific grounds upon which the variance is sought;
    - (iv) The proposed date(s) by which the regulated entity will achieve compliance with the provisions of this subpart. This date must be no later than 3 years after the issuance of a variance; and
    - (v) A compliance plan detailing the method(s) by which the regulated entity will achieve compliance with the provisions of this subpart.
  - (b) Within 30 days of receipt of the original application and within 30 days of receipt of any supplementary information that is submitted, the Executive Director will send a regulated entity written notification of whether the application contains sufficient information to make a determination. If an application is incomplete, the Executive Director will specify the information needed to complete the application, and provide the opportunity for the regulated entity to submit written supplementary information or arguments to the Executive Director to enable further action on the application. The regulated entity must submit this information to the Executive Director within 30 days of being notified that its application is incomplete.
  - (c) Within 60 days of receipt of sufficient information to evaluate the application, the Executive Director will send a regulated entity written notification of approval or disapproval of a variance application. This 60-day period will begin after the regulated entity has been sent written notification that its application is complete.
  - (d) A variance will be issued if the following criteria are met to the satisfaction of the Executive Director:
    - (i) Complying with the provisions of this subpart would not be technologically or economically feasible; and
    - (ii) The compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.
  - (e) A variance must specify dates by which the regulated entity will achieve increments of progress towards compliance, and will specify a final compliance date by which the regulated entity will achieve compliance with this subpart.
  - (f) A variance will cease to be effective upon failure of the party to whom the variance was issued to comply with any term or condition of the variance.

(5) **Variance Fee.** Each variance application must be accompanied by a fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 (~~(of \$800)~~).

AMENDATORY SECTION (Amending WSR 13-21-033 filed 10/9/13, effective 11/9/13)

### **SWCAA 493-400 AUTOMOBILE REFINISH COATINGS**

- (1) **Adoption by reference.** The National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings contained in 40 CFR Part 59, Subpart B as in effect on July 1, 2011 are hereby adopted by reference. The term "administrator" as defined in 40 CFR 59.101 shall include the Executive Director of SWCAA. Exceptions to this adoption by reference are listed in subsection (3) below.
- (2) **Applicability.** SWCAA 493-400 applies to the sale or use of automobile refinish coatings within the jurisdiction of the Southwest Clean Air Agency.
- (3) **Exceptions.** The following sections of 40 CFR 59, Subpart B are not adopted by reference:
  - (a) 40 CFR 59.106 *Variance*.
- (4) **Variations.**
  - (a) Any regulated entity that cannot comply with the requirements of this section because of circumstances beyond its reasonable control may apply in writing to the Executive Director for a temporary variance. The variance application must include the following information:
    - (i) The specific grounds upon which the variance is sought;
    - (ii) The proposed date(s) by which the regulated entity will achieve compliance with the provisions of this subpart. This date must be no later than 5 years after the issuance of a variance; and
    - (iii) A compliance plan detailing the method(s) by which the regulated entity will achieve compliance with the provisions of this subpart.
  - (b) Upon receipt of a variance application containing the information required in subsection (3)(a), the Executive Director will publish a public notice of such application on the Agency website and, if requested by any party, will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements of this subpart is necessary and will be granted. If requested, a hearing will be held no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing will be sent to the applicant by certified mail not less than 30 days prior to the hearing. At least 30 days prior to the hearing, the variance application will be made available to the public for inspection. Information submitted to the Executive Director by a variance applicant may be claimed as confidential. The Executive Director may consider such confidential information in reaching a decision on a variance application. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing.
  - (c) A variance will be issued if the following criteria are met to the satisfaction of the Executive Director:
    - (i) Compliance with the provisions of this section would not be technologically or economically feasible; and
    - (ii) The compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

- (d) Each variance will specify dates by which the regulated entity will achieve increments of progress towards compliance, and will specify a final compliance date by which the regulated entity will achieve compliance with this subpart.
  - (e) A variance will cease to be effective upon failure of the party to whom the variance was issued to comply with any term or condition of the variance.
  - (f) Upon the application of any party, the Executive Director may review and, for good cause, modify or revoke a variance after holding a public hearing in accordance with the provisions of subsection (3)(b).
- (5) **Variance Fee.** Each variance application must be accompanied by a fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 (~~of \$800~~).