

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD-FRL-6149-7]

RIN 2060-AE55

National Volatile Organic Compound Emission  
Standards for Architectural Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national volatile organic compound (VOC) emission standards for architectural coatings pursuant to section 183(e) of the Clean Air Act (Act). This final rule is based on the Administrator's determination that VOC emissions from the use of architectural coatings have the potential to cause or contribute to ozone levels that violate the national ambient air quality standards (NAAQS) for ozone. Ozone is a major component of smog which causes negative health and environmental impacts when present in high concentrations at ground level. The final rule is estimated to reduce VOC emissions by 103,000 megagrams per year (Mg/yr) (113,500 tons per year [tpy]) by requiring manufacturers and importers to limit the VOC content of architectural coatings.

EFFECTIVE DATE: The effective date is [insert date of publication in the FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the regulation

is approved by the Director of the Federal Register as of  
[insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Technical Support Documents. The regulation promulgated today is supported by two background information documents (BID); one specific to the architectural coatings rule, and one that addresses comments on the study and Report to Congress under section 183(e). (1) The BID for the promulgated architectural coating standards, National Volatile Organic Compound Emission Standards for Architectural Coatings--Background for Promulgated Standards (Architectural Coatings BID); and (2) The BID containing the Administrator's response to comments on the section 183(e) study and Report to Congress, Response to Comments on Section 183(e) Study and Report to Congress (183-BID). The Architectural Coatings BID contains a summary of the changes made to the standards since proposal, a summary of all the public comments on the standards, and the Administrator's response to the comments and the 183-BID contains a summary of all the public comments made on the section 183(e) study and Report to Congress and the list and schedule for regulation as well as the Administrator's response to the comments. Both documents may be obtained from the docket for this rulemaking and is also accessible through the Internet at <http://www.epa.gov/ttn/oarpg/ramain.html>; or from the United States Environmental Protection Agency

Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "National Volatile Organic Compound Emission Standards for Architectural Coatings--Background for Promulgated Standards," EPA-453/R-98-006b, or "Response to Comments on Section 183(e) Study and Report to Congress" EPA-453/R-98-007.

Docket. Docket No. A-92-18, contains supporting information used in developing the promulgated standards. Docket No. A-94-65 contains information considered by the EPA in development of the consumer and commercial products study and the subsequent list and schedule for regulation. The dockets are available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Monday through Friday, excluding legal holidays. The dockets are located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460; telephone (202) 260-7548 or fax (202) 260-4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Ducey at (919) 541-5408, Coatings and Consumer Products Group, Emission Standards Division (MD-13), United States Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (ducey.ellen@epa.gov). Any correspondence related to compliance with this rule must be

submitted to the appropriate EPA Regional Office listed in §59.409 of the rule.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are manufacturers and importers of architectural coatings. Architectural coatings are coatings that are recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers (which includes packagers and repackagers) and importers of architectural coatings that are manufactured for sale or distribution in the United States, including all United States territories.
State/local/tribal governments	State Departments of Transportation that manufacture their own coatings.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine

whether your product is regulated by this action, you should carefully examine the applicability criteria in §59.400 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section of this preamble.

Judicial review. This section 183(e) rule for architectural coatings was proposed on June 25, 1996 (61 FR 32729). This notice promulgating a rule for architectural coatings constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by (insert date 60 days after date of publication in the FEDERAL REGISTER). Under section 307(d)(7)(B) of the Act, only an objection to this rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements. Outline. The information presented in this preamble is organized as follows:

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## I. Background

### A. Purpose of Regulation

Ground-level ozone, which is a major component of "smog," is formed in the atmosphere by reactions of VOC and oxides of nitrogen ( $\text{NO}_x$ ) in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. Acute health effects are induced by short-term exposures to ozone (observed at concentrations as low as 0.12 parts per million [ppm]), generally while individuals are engaged in moderate or heavy exertion, and by prolonged exposures to ozone (observed at concentrations as low as 0.08 ppm), typically while individuals are engaged in moderate exertion. Moderate exertion levels are more frequently experienced by individuals than heavy exertion levels. The acute health effects include respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and pulmonary inflammation. Groups at increased risk of experiencing such effects include active children, outdoor workers, and others who regularly engage in outdoor activities and individuals



with preexisting respiratory disease. Available information also suggests that long-term exposures to ozone may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

In accordance with section 183(e) of the Act, the Administrator has determined that VOC emissions from the use of architectural coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone. Under authority of section 183(e), the EPA conducted a study of the VOC emissions from consumer and commercial products to determine their potential to contribute to ozone levels which violate the NAAQS for ozone. Based on the results of the study, the EPA determined that the architectural coatings category accounts for about 9 percent of the emissions from all consumer and commercial products. It is one of the largest emission sources among the consumer and commercial products categories and in many States represents one of the largest identifiable sources of unregulated VOC emissions. Consequently, the EPA and many States consider the regulation of architectural coatings to be an important component of the overall approach to reducing those emissions that contribute to ozone nonattainment. The EPA's determination that VOC emissions from the use of architectural coatings have the potential to contribute to nonattainment of the ozone NAAQS and the decision to

regulate architectural coatings are discussed in the preamble to the proposed rule (61 FR 32729), in the "Consumer and Commercial Products Report to Congress" (EPA-453/R-94-066-A), in the Federal Register notice announcing the schedule for regulation (60 FR 15264), and in a separate Federal Register notice published today that constitutes final action on the EPA's listing of architectural coatings for regulation.

B. Statutory and Regulatory Background

1. Section 183(e)

In 1990, Congress enacted section 183(e) of the Act, establishing a new regulatory program for controlling VOC emissions from consumer and commercial products. Section 183(e) directs the Administrator to list, and schedule for regulation, categories of consumer and commercial products after completion of a study and report to Congress concerning the products and their potential to contribute to levels of ozone which violate the ozone NAAQS. A separate document in today's Federal Register contains a description of section 183(e) of the Act and contains a summary of significant public comments and the EPA responses regarding the section 183(e) study, the Report to Congress, and the list and schedule for regulation.

2. Regulatory Negotiation

In 1992, the EPA initiated a regulatory negotiation to address architectural coatings. The regulatory negotiation process is an alternative to the traditional approach to rulemaking. The members of the architectural coatings regulatory negotiation committee represented the affected industries, consumers, Federal agencies, State and local air pollution control agencies, environmental groups, and labor organizations. Regulatory negotiation meetings were held from October 1992 to February 1994. Despite negotiation efforts, the committee could not reach consensus on some key regulatory issues for developing the rule, and on September 23, 1994, the regulatory negotiation concluded without consensus. Therefore, the EPA initiated development of the architectural coatings rule through conventional rule development procedures. The EPA utilized data and information obtained from the regulatory negotiation to complement additional information gathered during the rule development. Specifically, the EPA took into consideration information on the volume, VOC content, and hazardous air pollutant (HAP) content of coatings produced in 1990 in the VOC Emissions Inventory Survey conducted by industry.

### 3. Relationship to State and Local Regulation of Architectural Coatings

Emissions from the use of architectural coatings are not currently regulated at the Federal level. Although a

few States have had architectural coatings regulations in place for a number of years, many State and local areas are still seeking to obtain VOC reductions from this source category either from a national rule or from additional regulation at the State or local level.

Differing requirements of State and local architectural coating regulations have created administrative, technical, and marketing problems for both large and small companies that market and distribute products in multiple States. Both large and small manufacturers have noted the additional burden associated with differences in State and local requirements. These industry representatives have noted that a Federal rule would provide some degree of consistency, predictability, and administrative ease for the industry.

States with ozone pollution problems are supportive of the EPA rulemakings that will assist them in their efforts toward achievement of the ozone standard. The National Governors' Association and Environmental Council of States (a group composed of environmental commissioners from each State), the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control program Administrators, and the 37-State Ozone Transport Assessment Group (OTAG) all have urged the EPA to finalize national rules for architectural coatings. State

representatives have long recommended that the EPA develop a national rule for this product category. In part, this is because a national rule will help reduce compliance problems associated with transportation of noncompliant coatings into nonattainment areas from neighboring areas and neighboring States.

Given the EPA's commitment to develop a national VOC rule for architectural coatings, 14 States currently are depending on anticipated reductions from the rule to meet a Clean Air Act requirement for State Implementation Plans (SIP) to achieve a 15-percent reduction in overall VOC emissions, which is required for areas with ozone pollution classed as moderate nonattainment or worse. Other States can use these emission reductions to meet Clean Air Act requirements for additional rate-of-progress plans required for 1999 and beyond. If the EPA failed to promulgate a Federal rule for architectural coatings, these States would need to make up the shortfall in emission reductions needed to achieve attainment through other regulations, which would likely target substantially more expensive reductions from local industries and businesses.

## II. Summary of Standards

### A. Applicability

The architectural coatings rule applies to manufacturers and importers of architectural coatings that

are manufactured after [insert date 1 year after date of publication in the FEDERAL REGISTER] for sale or distribution in the United States, including the District of Columbia and all United States territories. For architectural coatings registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136, et seq.)(FIFRA), the applicable date is [insert date 18 months after date of publication in the FEDERAL REGISTER].

The regulated entity under this rule is the manufacturer or importer of a regulated architectural coating. The regulated entities include any manufacturers or importers that produce, package, or repackage architectural coatings for sale or distribution in the United States, including the District of Columbia and all United States territories. A person that repackages architectural coatings as part of a paint exchange and does not produce, package, or repackage any other architectural coatings for sale or distribution in the United States, is not included in the definition of manufacturer. Similarly, a person that repackages an architectural coating by transferring it from one container to another is not included in the definitions of importer and manufacturer, provided the VOC content of the coating is not altered and the coating is not sold or distributed to another party.

An architectural coating is defined in the rule as: "a coating recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs." The definition of architectural coating excludes: "adhesives and coatings recommended by the manufacturer or importer solely for shop applications or solely for application to non-stationary structures, such as airplanes, ships, boats, and railcars."

Architectural coatings that are subject to the rule are divided into a number of coating categories, such as "exterior flats" or "industrial maintenance coatings." These coating categories are defined in the rule for purposes of specifying the applicable emission limits. In determining if a coating is subject to this rule, a coating must first meet the general definition of an architectural coating.

The standards do not apply to the following:

- (1) coatings manufactured exclusively for sale or distribution outside the United States;
- (2) coatings manufactured prior to (insert date 1 year after date of publication in the FEDERAL REGISTER);
- (3) coatings sold in nonrefillable aerosol containers;
- (4) coatings that are collected and redistributed at paint exchanges in accordance with this rule; and

(5) coatings sold in containers with a volume of 1 liter or less.

B. Volatile Organic Compound Content Limits

Manufacturers and importers must limit the VOC content of subject coatings to the VOC content levels presented in table 1 of this subpart, unless they utilize the exceedance fee or tonnage exemption provisions described below. These limits apply to the VOC content that would result after thinning a coating according to the manufacturer's maximum thinning recommendations. Each subject coating must be classified by the manufacturer or importer as belonging to at least one of the categories listed in table 1. Each category is defined in the rule's definitions section. If none of the specific category definitions applies to a coating, then the coating is included in either the flat or nonflat category, depending on its gloss level.



TABLE 1 OF SUBPART D - VOLATILE ORGANIC COMPOUND (VOC)  
CONTENT LIMITS FOR ARCHITECTURAL COATINGS

(Unless otherwise specified, limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases.)

Coating category	Grams per liter	Pounds per gallon <sup>a</sup>
Antenna coatings	530	4.4
Anti-fouling coatings	450	3.8
Anti-graffiti coatings	600	5.0
Bituminous coatings and mastics	500	4.2
Bond breakers	600	5.0
Calcimine recoater	475	4.0
Chalkboard resurfacers	450	3.8
Concrete curing compounds	350	2.9
Concrete curing and sealing compounds	700	5.8
Concrete protective coatings	400	3.3
Concrete surface retarders	780	6.5
Conversion varnish	725	6.0
Dry fog coatings	400	3.3
Extreme high durability coatings	800	6.7
Faux finishing/glazing	700	5.8
Fire-retardant/resistive coatings:		
Clear	850	7.1
Opaque	450	3.8
Flat coatings:		
Exterior	250	2.1
Interior	250	2.1
Floor coatings	400	3.3
Flow coatings	650	5.4
Form release compounds	450	3.8
Graphic arts coatings (sign paints)	500	4.2
Heat reactive coatings	420	3.5
High temperature coatings	650	5.4
Impacted immersion coatings	780	6.5

TABLE 1 OF SUBPART D - VOLATILE ORGANIC COMPOUND (VOC) CONTENT  
LIMITS FOR ARCHITECTURAL COATINGS(Continued)

Coating category	Grams per liter	Pounds per gallon <sup>a</sup>
Industrial maintenance coatings	450	3.8
Lacquers (including lacquer sanding sealers)	680	5.7
Magnesite cement coatings	600	5.0
Mastic texture coatings	300	2.5
Metallic pigmented coatings	500	4.2
Multi-colored coatings	580	4.8
Nonferrous ornamental metal lacquers and surface protectants	870	7.3
Nonflat coatings:		
Exterior	380	3.2
Interior	380	3.2
Nuclear coatings	450	3.8
Pretreatment wash primers	780	6.5
Primers and undercoaters	350	2.9
Quick-dry coatings:		
Enamels	450	3.8
Primers, sealers, and undercoaters	450	3.8
Repair and maintenance thermoplastic coatings	650	5.4
Roof coatings	250	2.1
Rust preventative coatings	400	3.3
Sanding sealers (other than lacquer sanding sealers)	550	4.6
Sealers (including interior clear wood sealers)	400	3.3
Shellacs:		
Clear	730	6.1
Opaque	550	4.6
Stains:		
Clear and semitransparent	550	4.6
Opaque	350	2.9
Low solids	120 <sup>b</sup>	1.0 <sup>b</sup>
Stain controllers	720	6.0
Swimming pool coatings	600	5.0
Thermoplastic rubber coatings and mastics	550	4.6

TABLE 1 OF SUBPART D - VOLATILE ORGANIC COMPOUND (VOC) CONTENT  
LIMITS FOR ARCHITECTURAL COATINGS(Continued)

Coating category	Grams per liter	Pounds per gallon <sup>a</sup>
Traffic marking coatings	150	1.3
Varnishes	450	3.8
Waterproofing sealers and treatments	600	5.0
Wood preservatives:		
Below ground wood preservatives	550	4.6
Clear and semitransparent	550	4.6
Opaque	350	2.9
Low solids	120 <sup>b</sup>	1.0 <sup>b</sup>
Zone marking coatings	450	3.8

<sup>a</sup>English units are provided for information only. Enforcement of the rule will be based on the metric units.

<sup>b</sup>Units are grams of VOC per liter (pounds of VOC per gallon) of coating, including water and exempt compounds, thinned to the maximum thinning recommended by the manufacturer.

If a coating is marketed in more than one of the coating categories listed in table 1 of this subpart, the manufacturer or importer must comply with the lowest applicable VOC content limit, unless an exception is specified in §59.402(c) of the rule. These exceptions were developed to clarify which VOC content limit applies in situations where inherent overlap exists between category definitions. For example, varnishes used on wood floors were not intended to be subject to the more stringent emission limit for floor coatings. Therefore, an exception paragraph is included in the rule stating that varnishes recommended for use on floors are subject to the VOC content limit for varnishes, and not the limit for floor coatings.

Manufacturers and importers of recycled coatings are given the compliance option of calculating an adjusted-VOC content. Manufacturers and importers of recycled architectural coatings are defined as those that collect, reprocess, and market coatings that contain a percentage of post-consumer coating. Such use is environmentally beneficial because it reduces the amount of waste from architectural coatings that would otherwise result from evaporation of VOC from unused coatings or of coatings sent to landfills or elsewhere. The adjusted-VOC content provides regulated entities some credit for the amount of post-consumer material contained in the coating. The EPA is

providing this credit to encourage recycling of unused coatings. The adjusted-VOC content is determined by multiplying the percentage of post-consumer content of the coating by the VOC content of the recycled coating, which is then subtracted from the VOC content of the end product. An explicit equation for the calculation is given in the rule.

C. Exceedance Fee

The rule includes an exceedance fee compliance option. This is an economic incentive approach whereby manufacturers and importers may choose to comply with the rule by paying a fee in lieu of meeting the VOC content limits for their coating products. The fee is \$0.0028 per gram (\$2,500 per ton) of excess VOC. The fee is calculated using the amount of VOC in excess of the applicable VOC content limit. The exceedance fee is paid annually to the appropriate EPA Regional Office and is due no later than March 1 in the year following the calendar year in which the coating is manufactured or imported.

D. Tonnage Exemption

The final rule also includes a tonnage exemption that allows each manufacturer and importer to sell or distribute limited quantities of architectural coatings that do not comply with the VOC content limits and for which no exceedance fee is paid. The tonnage exemption can be used for multiple products, but the total mass of VOC contained

in a single manufacturer's or importer's exempt coatings may not exceed the amounts in table 2. The total mass of VOC is calculated based on the volume of coatings manufactured or imported and the total VOC content of each of the coatings for which an exemption is claimed. To reiterate, the calculation is based on the total mass of VOC contained in all exempt coatings, not the difference between the VOC content of each coating and the applicable VOC content limit in the rule.

TABLE 2 OF SUBPART D - TONNAGE EXEMPTION

The total mass of VOC contained in all exempt coatings combined may not exceed...	During the time period of...
23 megagrams (25 tons) VOC	[ <u>insert date 1 year after date of publication in the FEDERAL REGISTER</u> ] through December 31, 2000
18 megagrams (20 tons) VOC	Calendar year 2001
9 megagrams (10 tons) VOC	Calendar year 2002 and each year thereafter

E. Labeling

For coatings complying with the VOC content limits in table 1 of this subpart, manufacturers and importers must provide the following information on the label or lid of each coating: (1) the date the coating was manufactured, or a code indicating this date (this information may alternatively be provided on the bottom of the can); (2) a statement of the manufacturer's recommendation regarding thinning of the coating (does not apply to thinning with water); and (3) either the VOC content of the coating in the container, or the VOC content limit from table 1 of the rule with which the coating must comply and with which it does comply. (Any coating for which the exceedance fee or tonnage exemption provision is being used must be labeled with its VOC content because it would not be in compliance with the VOC content limits in table 1 of this subpart.)

Industrial maintenance coatings must be labeled with one of several prescribed phrases indicating that the coating is not intended for general consumer use. For recycled coatings, manufacturers and importers must indicate the post-consumer coating content on the container label or lid.



F. Recordkeeping

There are no recordkeeping requirements for coatings complying with the VOC content limits in table 1 of this subpart. However, the rule does include recordkeeping requirements for compliance with the recycled coating, exceedance fee, and tonnage exemption provisions.

For recycled coatings, the manufacturer or importer must keep records of the volume of coatings received for recycling, the volume of coatings received that is unusable, the volume of virgin coatings used with recycled coatings, and the volume of final recycled coatings manufactured or imported. In addition, manufacturers and importers of recycled coatings must keep records of the calculation of adjusted-VOC contents.

For compliance with the exceedance fee provisions, manufacturers and importers must keep records on an annual basis for each coating of the VOC content, the VOC content in excess of the applicable limit, and the volume manufactured or imported. Manufacturers and importers must also keep records of the calculation of fees, the annual fee for each coating, and the total annual fee.

For the tonnage exemption, manufacturers and importers must keep records of the products claimed under the exemption, the VOC content and actual sales or distribution

for each exempt product, and the total mass of VOC contained in all products claimed under the exemption.

All required records must be retained for a period of 3 years in a form suitable for inspection.

Although the retention of test data is not required by this rule, the EPA encourages facilities to keep any information resulting from either Method 24 or any other acceptable method to determine compliance. This information will help the EPA make a preliminary assessment of compliance for the coatings subject to this rule. In the absence of demonstrable indications of compliance, the EPA may require Method 24 testing by the facility in accordance with §59.406(b).

G. Reporting

All manufacturers and importers of subject coatings must file an initial notification report listing the coating categories from table 1 of this subpart that they manufacture or import and the locations of facilities that manufacture architectural coatings in the United States. The initial notification report must be submitted no later than [insert date 1 year after date of publication in the FEDERAL REGISTER] or 180 days after the date that the manufacturer or importer first manufactures or imports a subject coating, whichever is later.

In addition, if a manufacturer or importer uses a date coding system, an explanation of the coding system must be submitted with the initial report. Explanations of new codes must be filed within 30 days after their first use.

There are no reporting requirements beyond the initial notification and date code explanation for manufacturers and importers who meet the VOC content limits in table 1. There are additional reporting requirements for manufacturers and importers who choose to take advantage of optional provisions, including: (1) the calculation of an adjusted-VOC content for recycled coatings (based on post-consumer coating content); (2) the payment of the exceedance fee; and (3) the tonnage exemption. An annual report is required for each of these provisions.

#### H. Compliance Provisions

The rule specifies the procedure to determine the VOC content of coatings subject to the rule. Although the EPA has chosen Method 24 as the reference method for determining compliance with the VOC content requirements of this rule, it is not the exclusive method for determining compliance. The manufacturer or importer may also use a different analytical method than Method 24 (if it is approved by the Administrator on a case-by-case basis), formulation data, or any other reasonable means to determine the VOC content of coatings. However, the EPA may require a Method 24 analysis

to be conducted, and if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOC content, the Method 24 test results will govern. The EPA can use other evidence as well to establish whether or not a manufacturer or importer is in compliance with the provisions of this rule.

### III. Summary of Considerations in Developing Standards

#### A. Basis of the Regulation

Section 183(e) of the Act directs the EPA to regulate products using best available controls (BAC), and defines BAC as:

the degree of emissions reduction the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

The statute thus empowers the EPA to examine a variety of considerations to use in determining the best means of obtaining VOC emission reductions from a given consumer or commercial product category. As discussed in the preamble to the proposed rule (61 FR 32737, June 25, 1996), the primary factors the EPA considered in determining BAC for architectural coatings were technological and economic feasibility, and environmental impacts.

Non-air environmental impacts (solid waste and water) and energy impacts are expected to be minimal and, therefore, do not vary significantly among various VOC control levels. With regard to health impacts, the EPA has concluded that reductions in VOC emissions and concomitant reductions in ozone will reduce health impacts of exposure to ozone.

For architectural coatings, the EPA determined that BAC is the degree of emission reduction achievable through a system of regulation that encourages product reformulation to meet the VOC content limits in table 1 of this subpart, provides an economic incentive (the exceedance fee option) to lower VOC content of coatings, and allows for limited exemption of coatings (the VOC tonnage exemption). The EPA concluded that for this product category, pollution prevention is the most effective means of achieving VOC emission reductions. In working to comply with State VOC rules over the past several years, the architectural coatings industry has established product reformulation as the most technologically and economically feasible strategy for reducing VOC emissions. Reformulation can consist of minor adjustments in coating VOC contents or larger adjustments involving a change in resin technology. The EPA considered many factors in evaluating the economic and technological feasibility of different VOC content levels

and different degrees of reformulation. These factors included existing State and local VOC emission standards, coating VOC content and sales information, analysis of coating technologies, performance considerations, cost considerations, market impacts, and stakeholder input. In addition, the EPA considered the relative contribution of different coating types to overall VOC emissions from architectural coatings.

At proposal, the EPA requested comment on alternatives to the proposed VOC content limits that would provide flexibility, if additional time were needed or it was not cost-effective to develop a low-VOC formulation. Based on comments received, the EPA included in the final rule an exceedance fee (discussed in sections II.C and V.I) and an exemption for a certain tonnage of VOC content (discussed in sections II.D and V.G).

The final VOC content limits in conjunction with the exceedance fee and tonnage exemption reflect the EPA's determination of BAC and are based primarily on the 1990 VOC Emissions Inventory Survey, analysis of existing State rules for architectural coatings, data obtained from participants in the regulatory negotiation, and information submitted by coating manufacturers and other interested parties during the course of the rule development and public comment period.

B. Stakeholder and Public Participation

The EPA proposed the architectural coatings rule and published the preamble in the Federal Register on June 25, 1996 (61 FR 32729). The EPA placed the proposed regulatory text, BID, and Economic Impact Analysis (EIA) in a docket open to the public at that time and made them available to interested parties. The EPA solicited comments at the time of the proposal. To provide easier access by the public, the EPA subsequently published the proposed regulatory text in the Federal Register on September 3, 1996 (61 FR 46410) and extended the comment period from August 30 to September 30, 1996. The EPA again extended the comment period to November 4, 1996 (notice published at 61 FR 52735, October 8, 1996).

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed architectural coating rule, the EPA held a public hearing in Durham, North Carolina on July 30, 1996. Nineteen speakers presented oral testimony at this hearing. The EPA held another public meeting to discuss issues related to the impact of the proposed rule on small manufacturers in Rosemont, Illinois, on August 13, 1996. There were 77 persons who participated in the meeting, and 18 speakers presented oral testimony.

The EPA received over 200 comment letters on the proposed rule. Commenters included coating manufacturers and importers, State regulatory agencies, trade associations, environmental groups, the United States military, and others. The EPA has carefully considered the comments and has made changes to the proposed rule where determined by the Administrator to be appropriate. The most significant comments and responses are discussed in section V of this preamble. A detailed discussion of all significant comments and responses on the rule itself can be found in the architectural coatings BID, which is referenced in the ADDRESSES section of this preamble.

A separate document in today's Federal Register contains a summary of public comments and the EPA's responses regarding the section 183(e) study, the Report to Congress, the list of consumer and commercial product categories selected for regulation, and the schedule for regulation.

#### IV. Summary of Impacts

##### A. Environmental Impacts

##### 1. VOC Reductions

The standards will reduce nationwide emissions of VOC from architectural coating products by an estimated 103,000 Mg/yr (113,500 tpy). These reductions are compared to the 1990 baseline emissions estimate of 510,000 Mg/yr



(561,000 tpy). This reduction equates to a 20-percent reduction, compared to the emissions that would have resulted in the absence of these standards.

## 2. Health Effects

Because VOC are precursors to ozone formation, the VOC reductions from architectural coatings will contribute to a decrease in adverse health effects that result from exposure to ground-level ozone. These health effects result from short-term or prolonged exposure to ground-level ozone and include respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and pulmonary inflammation. Available information also suggests that long-term exposures to ozone may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

## 3. Secondary Air, Water, and Solid Waste Impacts

No significant adverse secondary air, water, or solid waste impacts are anticipated from compliance with these standards. Generally, coating reformulation, a pollution prevention technique, will be used to comply with these standards. In cases where conversion from solventborne to waterborne coatings is the method used to achieve compliance, an increase in wastewater discharge may occur if

waste from the manufacture of waterborne coatings is discharged by manufacturers to publicly owned treatment works. The provisions for recycling of coatings in the rule may potentially reduce the amount of coating discarded as solid waste.

The regulations do not impact existing product inventories. Products manufactured before the compliance deadline are not affected. Excluding existing product inventories from the regulations will eliminate any incremental solid waste increase due to discarded, unsold products. The new products are not expected to require any more packaging than existing products, and thus the volume of discarded packaging should not increase.

B. Energy Impacts

The EPA anticipates that there will be no increase in national annual energy usage as a result of this rule. The standards do not require the use of air pollution control devices, which can affect energy use.

C. Cost and Economic Impacts

Sixty-four percent of the products included in the 1990 industry survey meet the VOC content limits in this rule and, therefore, there will be no costs to reformulate these products. The manufacturer of an architectural coating that does not meet the VOC content limits in table 1 of this

subpart, will be required to reformulate the product if it will continue to be marketed, unless the manufacturer chooses to use an alternative compliance mechanism such as the exceedance fee or tonnage exemption provisions. The EPA presumes that manufacturers will choose the option that is most advantageous to them, but each option imposes costs, some of which will be passed on to consumers in the form of moderately higher prices and some of which will be borne directly by the manufacturers.

The cost for reformulating noncompliant products depends on the level of effort required to develop a new product (e.g., research and development and market testing expenditures) and how these expenditures are incurred over time. Based on comments received at proposal and the original data presented at proposal, the EPA revised its estimate of the cost to reformulate a product from a lump-sum initial investment of \$250,000 to \$87,000 (in 1991 dollars), which is annualized to an upper bound value of \$14,570 per reformulation (see Section V. M of this preamble for further discussion). Although variations are likely to exist, for purposes of this analysis, this reformulation cost estimate is assumed to be the same for all product types and variations, so the value is independent of VOC content and the annual sales volume of the product. Other costs and cost savings associated with reformulation are

likely, but could not be quantified. These costs are discussed qualitatively in the EIA. Reformulation costs are direct costs imposed on manufacturers of noncompliant products. Based on public comments, the EPA found that in the traffic markings category, the user of the coating may have to modify technology or purchase new equipment to apply the coating. This additional cost is not considered a direct impact because it occurs as a result of restrictions on coating manufacturers, but the cost is borne by the user of the coating rather than the manufacturer. Nevertheless, the EPA examined the indirect impacts of this category because the changed equipment costs are so directly related to the change of formulation. The EPA estimates that changes in traffic marking equipment may cost up to \$3 million annually (in 1991 dollars). For other regulated categories, it is not anticipated that new equipment or other indirect costs will be incurred to apply compliant coatings.

Based on the information above, implementation of this regulation is estimated to result in national annualized costs of approximately \$25.6 million (in 1991 dollars). (For the benefit of readers, this value is equivalent to approximately \$29 million in 1996 dollars.) This estimate includes \$0.6 million in costs for manufacturers and importers that the EPA anticipates will take advantage of

the alternative exceedance fee compliance provision. The rule does not impose monitoring requirements (and associated costs), but ensures compliance through recordkeeping, reporting, and labeling requirements. The annual cost for these requirements is expected to be approximately \$2.5 million. Therefore, the EPA estimates the total cost associated with the rule to be \$28 million per year (1991 dollars) (or \$32 million in 1996 dollars). In comparison, the 1991 value of shipments for this industry was \$6.3 billion. Thus, the estimated costs amount to roughly 0.4 percent of the baseline revenues for this industry.

The estimated cost-effectiveness of the rule is \$270 per megagram (\$250 per ton) of VOC emission reduction. This cost per megagram of VOC emission reduction makes the architectural coatings rule an economically efficient means of obtaining VOC emission reductions, when compared to the cost per megagram of reduction potentially available through other control measures. As a result of the costs discussed above, the EPA anticipates that the average change in market prices and output across all market segments are minimal, with an average estimated impact of less than one-tenth of 1 percent of baseline values.

The EPA believes the estimates of total cost and associated economic impacts are conservatively high. Since the best available data on VOC content of architectural

coatings is from 1990, and the final rule has VOC content requirements similar to State rules which have been enforced since 1990, the EPA believes the estimated number of reformulations and/or their reformulation cost that result from this action may be overstated in that the compliant products developed by manufacturers to comply with various State rules can be used to meet the requirements of the Federal rule. The EIA also takes a conservative approach to several assumptions to produce an upper bound estimate of social cost.

V. Significant Comments and Changes to Proposed Standards

A complete summary of public comments on the architectural coatings rule and the EPA's responses are presented in the Architectural Coatings BID, as referenced in the ADDRESSES section of this preamble. The EPA received many comments addressing a wide variety of issues in the proposed rule for architectural coatings. After careful consideration of these comments, the EPA has made a number of changes to the proposed rule. The major changes made to the rule since proposal include: (1) clarification of the definitions of "architectural coating," "coating," "importer," "manufacturer," and "paint exchange,"; (2) addition of definitions for "imported" and "manufactured,"; (3) clarification of which standards apply to overlapping coating categories; (4) changes to the

definitions and VOC content limits for certain categories; (5) addition of certain new coating categories; (6) addition of the exceedance fee provision; (7) deletion of the variance provisions; (8) addition of an exemption for prescribed quantities of coatings (tonnage exemption); (9) addition of administrative provisions; and (10) reorganization and reformatting of the rule for clarity.

The following sections of the preamble discuss the most significant issues raised by commenters and the EPA's responses to them.

A. National Rule Versus Control Techniques Guidelines

The EPA requested comment on whether and how a CTG approach would be as effective as a national rule in reducing VOC emissions from architectural coatings in ozone nonattainment areas. Section 183(e) of the Act authorizes the Administrator to issue a CTG in lieu of a national rule if the CTG will be substantially as effective in reducing VOC emissions in ozone nonattainment areas.

Over 20 commenters stated that they support a national architectural coatings rule. Commenters who supported a national rule with VOC content limits stated that complying with a single uniform regulation would be less burdensome, and more cost-effective than complying with many different standards in different States. Commenters also stated that

small manufacturers and importers are less likely to have the resources necessary to produce different lines of products to meet varying standards for different areas of the country. Furthermore, many commenters pointed out that coatings are widely distributed and easily transported from attainment areas to nonattainment areas. Therefore, regulating products only in nonattainment areas would be a less effective strategy, and a more difficult one to enforce.

Seven commenters stated that they support a CTG in lieu of a national rule. Commenters favoring a CTG generally contended that section 183(e) targets VOC emissions in nonattainment areas, and that a national rule is not warranted. The commenters stated that a CTG would be more appropriate since issuance of a CTG requires States to implement standards only in nonattainment areas. According to these commenters, allowing coatings manufactured or imported in attainment areas to remain unregulated would provide market niches for small manufacturers and importers. Some commenters also argued that consumers in attainment areas should not have to forego the alleged benefits of higher VOC content coatings.

Several commenters noted that, even with implementation of a national rule, States can promulgate more stringent standards. Therefore, even a national rule does not ensure



uniform nationwide VOC standards. Some commenters urged cooperation and discussion between the EPA and States that consider implementing standards more stringent than the national rule.

The EPA has concluded that a national rule is the more effective approach for reducing emissions from architectural coatings for the following reasons. First, the EPA believes that a national rule is an appropriate means to reduce emissions from products that are, by their nature, easily transported across area boundaries, and many are widely distributed and are used by widely varied types of end-users. For many such products, the end-user may use them in different locations from day-to-day. Because the products themselves are easily transportable, a national rule would preempt opportunities for end-users to purchase such consumer and commercial products in attainment areas and then use them in nonattainment areas, thereby circumventing the regulations and undermining the decrease in VOC emissions in nonattainment areas. . The EPA, therefore, believes that a national rule with applicability to products, regardless of where they are marketed, is a reasonable means to ensure that the regulations result in the requisite degree of VOC emission reduction.

Second, the EPA believes that national rules with nationwide applicability may help to mitigate the impact of

ozone and ozone precursor transport across some area boundaries. Recent modeling performed by the OTAG and others suggests that in some circumstances VOC emitted outside nonattainment area boundaries can contribute to ozone pollution in nonattainment areas, for example, by traveling into neighboring nonattainment areas. The EPA has recognized the potential for VOC transport in the December 29, 1997, "Guidance for Implementing the 1-hour Ozone and Pre-Existing PM<sub>10</sub> NAAQS" concerning credit for VOC emission reductions towards rate-of-progress requirements. The guidance indicates that the EPA may give credit for VOC reductions within 100 kilometers of nonattainment areas. In addition, the June 1997 recommendations made by OTAG supported the EPA's use of VOC regulations that apply to both nonattainment and attainment areas to implement section 183(e) of the Act for certain products. The particular product categories OTAG cited for national VOC regulations are automobile refinish coatings, consumer products, and architectural coatings. The EPA believes that regulation of products in at least some attainment areas is necessary to mitigate VOC emissions that have the potential to contribute to ozone nonattainment in accordance with section 183(e) of the Act.

Based on these considerations, and considerations of the effectiveness and enforceability of emission controls,

the EPA has determined that a CTG for architectural coatings would not be substantially as effective as a national rule in reducing VOC emissions in ozone nonattainment areas.

A major trade association representing many architectural coating manufacturers provided comments supporting a national rule that applies to all areas as the most efficient regulatory mechanism from the perspective of marketing and distribution of products. In addition, comments from a number of small and large manufacturers favored a national rule to encourage uniformity in regulation from State to State, and thereby minimize significant costs and burdens associated with understanding and meeting differing State and local requirements.

The EPA also received some comments suggesting that a national rule apply only in nonattainment areas. The EPA believes that rules applicable only in nonattainment areas would be unnecessarily complex and burdensome for many regulated entities to comply with and for the EPA to administer. The potentially regulated entities under section 183(e) are the manufacturers, processors, wholesale distributors, or importers of consumer and commercial products. For these three product categories, EPA believes that regulations that would differentiate between products destined for attainment and nonattainment areas should adequately insure that only compliant products go to

nonattainment areas. For such a rule to be effective, EPA believes that this would necessitate requiring regulated entities to track their products and control their distribution, sale, and ultimate destination for use to insure that only compliant products go to nonattainment areas. The EPA notes that for architectural coatings, regulated entities do not currently track or control distribution of their products once they sell them to retail distributors. Although the EPA recognizes that some product lines in some product categories may only be distributed regionally in areas that are already in attainment, the large majority of the product lines will be distributed nationally. Regulations targeted only at nonattainment areas could, thus, impose significant additional burdens upon regulated entities to achieve the goals of section 183(e).

By comparison, existing State regulations in some instances apply to a broader range of entities, including retail distributors and end-users. Given the limitations of section 183(e) as to regulated entities, the EPA believes that regulations applicable to both attainment areas and nonattainment areas is a reasonable means to ensure use of complying products where necessary, while avoiding potentially burdensome impacts and less reliable mechanisms to achieve the goals of section 183(e).

The EPA expects a national VOC rule for architectural coatings to encourage uniformity in requirements across the country. Many States may choose to rely on the EPA rule rather than adopt their own requirements. The EPA's consideration of this factor, however, is not meant to imply that it would be inappropriate for States to develop more stringent levels of controls where necessary to attain the ozone standard. Some States, particularly those with long-standing and significant nonattainment problems, may need additional emission reductions to achieve attainment of the NAAQS and may need to adopt or maintain more stringent requirements for consumer products like architectural coatings in order to help reach attainment of the ozone NAAQS. The final rule has been amended to include provisions in §59.410, State authority, to clarify that States are not restricted by this rule in establishing and enforcing their own additional standards and limits.

The consultation provisions of section 183(e)(9) of the Act are designed to promote uniformity in such cases where States or local areas need to adopt requirements other than those promulgated by the EPA. Section 183(e)(9) requires the EPA to provide relevant information and studies requested by any State. The EPA expects such consultation and cooperation to result in States developing options for regulation that will be compatible with other States and

with the national standards. The EPA considers a national VOC rule an important element in promoting consistency among architectural coating standards.

B. Applicability and Regulated Entities

1. Subject Coatings

The EPA received several comments requesting clarification regarding the definition of "coating" and what particular coatings are subject to the architectural coatings rule. The EPA has modified the definition of "coating" so that it no longer defines a coating as an application that creates a film when applied. The revised definition states that a coating is a "material applied onto or impregnated into" a substrate. The EPA did not intend to limit rule applicability to film-building products.

Commenters questioned whether coatings recommended for both architectural uses and non-architectural uses would be subject to the rule. The commenters also questioned whether shop-applied and factory-applied coatings would be subject. Additional commenters requested clarification as to whether adhesives are subject to the rule.

The architectural coatings rule applies to coatings "recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs." Therefore, the rule does not apply to coatings that are marketed solely for shop application,

such as in a manufacturing setting, or coatings marketed solely for application to non-stationary structures, such as aircraft and ships. However, a coating that is recommended by the manufacturer or importer for use as an architectural coating is subject to the architectural coatings rule even if the coating is also recommended for non-architectural uses. The fact that a coating regulated by the architectural coatings rule may also be subject to other rules with different requirements does not alter the manufacturer's or importer's obligation to meet the requirements of the architectural coatings rule.

The EPA did not intend to regulate adhesives of any kind in the architectural coatings rule. The EPA intends to regulate industrial adhesives as a separate product category under section 183(e) authority.

To clarify the EPA's intent regarding what products are covered by this final rule, the definition of architectural coating has been revised to exclude adhesives and coatings recommended solely for shop application or for application to non-stationary structures. For additional clarity, definitions of "adhesive" and "shop application" have also been added to the final rule.

The EPA has added definitions of "imported" and "manufactured" to the final rule to clarify the point at which an architectural coating becomes subject to the

requirements in the rule. The final rule also includes additional language in the definitions of "importer" and "manufacturer" to clarify that all divisions of a company, subsidiaries, and parent companies are considered to be a single importer or manufacturer for the purpose of this rule.

## 2. Regulation of Processors

Section 183(e)(1)(C) of the Act allows the regulation of processors of consumer and commercial products. For the proposed architectural coatings rule, the EPA considered regulating processors as well as manufacturers and importers. "Processors" would be defined as individuals who add organic thinner to coatings in a commercial or industrial setting at the point of application. The EPA's concern was to provide a means to enforce against thinning of coatings beyond manufacturers' recommendations. Thus, the EPA considered a provision to prohibit an applicator from using organic solvents to thin a coating beyond the manufacturer's recommendation.

In the proposal preamble (61 FR 32737), the EPA requested comment on the possible regulation of processors under the architectural coatings rule. Commenters generally opposed the regulation of applicators, arguing that: (1) over-thinning is not likely to occur since the proposed VOC content limits are reasonable; (2) rules promulgated under



section 183(e) of the Act are not intended to apply to end-users or applicators; and (3) restrictions on thinning at the point of application would be difficult to enforce. The commenters stated that the term "processors" was intended to mean entities that repackage coating materials or further enhance finished products before they are offered for sale to end-users.

The final rule does not include processors as a regulated entity. The EPA believes that end-users' compliance with thinning restrictions for architectural coatings would be difficult to enforce in practice. Instead, the EPA has determined that it will be more effective to guard against excessive VOC emissions from thinning by taking into account the amount of thinning in advance. Thus, the final limits are expressed as VOC content of coating "thinned to the manufacturer's maximum recommendation." The EPA believes that these limits provide adequate assurance that compliant coatings will be manufactured to perform optimally with recommended thinning. Regulation of processors would not add significantly to the effectiveness of the rule.

#### C. General Comments on Determination of Best Available Controls

Many commenters provided general comments on the overall stringency of the VOC content limits in the proposed

rule. One group of commenters, composed mainly of manufacturers and trade organizations representing coating users and manufacturers, stated that the VOC content limits in the proposed rule represent BAC and are technologically and economically achievable. One of these commenters, representing a national association of coating manufacturers, stated that the proposal recognized the need for solventborne coatings in certain specialty areas, as well as in some more general usage categories, and adequately addressed the fact that the same coating must be able to perform in all regions and climates of the United States. Another commenter, representing a national association of coating users, stated that the proposed limits fit squarely within current technologies and are consistent with various existing State regulations. And finally, a commenter representing another national trade association of coating users, stated that the proposed table of VOC content limits will not significantly increase construction costs and will not appreciably reduce coating performance.

A second group of commenters, mainly composed of individual State regulatory agencies, organizations of State and regional regulatory agencies, and environmental groups, stated that they did not support the VOC content limits in the rule because they believe they are too lenient. Two of

the commenters, representing environmental groups, contended that the EPA's BAC determination did not include consideration of lower VOC coatings that have been developed since 1990. Several of the commenters cited the existence of more stringent State and local architectural coating regulations that have been in place for many years as evidence that the proposed limits do not represent BAC. Several of the commenters added that the proposed rule falls short of State VOC reduction goals and may result in the States adopting more stringent control measures for this source category and for other source categories. The majority of the commenters in this group supported an alternative, more stringent, table of VOC content limits submitted by one of the commenters. (The commenter also suggested a second phase of limits that would take effect in the future. For comments and responses regarding the suggested second phase of limits, see section V.P of this preamble). The alternative table contains more stringent limits for several categories and would achieve a 30-percent emission reduction (calculated on a solids basis). The more stringent VOC content limits in the table are based on the 1989 California Air Resources Board Suggested Control Measure.

Finally, a third group of commenters, composed mainly of coating manufacturers, did not support the limits in the

rule because they believe they are too stringent. These commenters stated that low-VOC products (i.e., products meeting the proposed standards) do not perform as well as higher-VOC (non-compliant) products. These commenters claimed that low-VOC coatings are too thick and require considerable thinning to apply, are less durable and require more frequent repainting, and exhibit poor gloss properties. Two of the commenters explained that these performance problems could result in more emissions, rather than less. Two of the commenters stated that available paint raw materials are not adequate to reformulate every non-compliant coating the paint industry offers and still meet customer performance requirements. One commenter stated that the proposed rule will require a massive reformulation of products in the paint and coating industry. The commenter claimed that some organizations were supporting lower limits based on improper data or based on environmental conditions that do not represent circumstances in other areas.

The EPA believes that the final rule represents BAC. Best available control is "the degree of emissions reduction that the Administrator determines on the basis of technological and economic feasibility, health, and energy impacts, is achievable." In developing the rule, the EPA considered many factors in evaluating the economic and technological feasibility of different VOC content levels

and different degrees of product reformulation. These factors included: (1) limits in State/local regulations; (2) coating VOC content and sales information; (3) performance considerations; (4) cost considerations; and (5) market impacts.

The sources of information for these factors included:

(1) pre-proposal letters; (2) the 1992 industry survey (collected 1990 data); (3) public comments on the proposed rule; (4) follow-up discussions with commenters to gather additional technical information; (5) State/local regulations and pre-proposal discussions with State/local regulators; (6) input from coating manufacturers and other stakeholders; and (7) EPA expertise. Considering all these factors, the EPA concluded that the VOC content limits in table 1 of the rule, along with the exceedance fee provisions and the tonnage exemption, represent BAC for architectural coatings. The EPA's process for developing BAC was described in the proposal preamble (61 FR 32737) and is further discussed in the following paragraphs.

Technical feasibility and coating performance issues.

Throughout development of this rule, there has been debate among stakeholders over the degree to which the VOC content in architectural coatings can be reduced and on the performance characteristics of low-VOC coatings. The term "performance" refers to the coating qualities that are

acceptable to consumers and that maximize the interval required between repainting. Performance is particularly difficult to assess. As discussed in the preamble to the proposed rule (61 FR 32738), these acceptable qualities can vary significantly depending on the consumer and the coating category. There is no consensus within the architectural coatings industry on standards by which to evaluate acceptable coating performance. Therefore, the EPA requested comment on the technological feasibility of the limits in the proposed table of standards and on performance issues. The proposal requested documentation, tests, and factual evidence to support or refute claims about performance and the technological feasibility of low-VOC systems.

The EPA evaluated all data that were submitted by commenters pertaining to the feasibility of the rule and sought additional information that was reasonably available. In evaluating the degree of emission reduction that represents BAC, the EPA took into consideration that these requirements would apply to all areas of the country and to all manufacturers and importers of architectural coatings within a specific time frame (i.e., approximately 1 year from promulgation). Based on the public comments received, a number of changes were made to the proposed rule. These changes are discussed in section 2.2.4 of the BID (Coating

Categories and VOC Content Limits). In some cases, commenters claimed that the rule is not feasible or does not represent BAC, but provided no data to support the general claim. In such cases, the EPA sought additional information that was reasonably available and considered the comments in the context of the overall BAC decision, but often found no basis for making substantive changes to the proposed rule.

Relationship of BAC to State and local regulations.

State and local regulations were one of the primary factors used by the EPA to develop BAC. As stated in the proposal preamble (61 FR 32737), State and local architectural coating requirements were used prior to proposal as a starting point in determining "what categories and associated VOC limits might constitute the degree of emissions reduction that represents BAC." After proposal, the EPA used State and local architectural coating requirements as a primary factor in the evaluation of public comments on the proposed VOC content limits.

However, the EPA does not agree with commenters who believe that, at a minimum, BAC for the national rule should be equivalent to or more stringent than the lowest emission limits that exist in any State regulation (as presented in a table of standards by one commenter). In the development of a national rule under section 183(e), the EPA has the obligation to determine that the emission limits are

technologically and economically feasible on a national scale. State and local VOC limits are based on coating performance under the local meteorological conditions and patterns of coating demand, some of which may be very different than in other locations. Moreover, based on local air quality and existing regulatory programs, a State or local agency may set rules based on a balancing of technological, economic, and environmental factors that might differ from the balance appropriate for a national rule.

Therefore, the EPA departed from the State and local requirements where other factors, such as information on VOC content and sales, performance, costs, and market effects indicated that the limits were not technologically or economically feasible on a national scale.

The role of the exceedance fee and tonnage exemption in BAC. While the EPA believes that the technology exists to meet the limits in table 1 of this subpart, some manufacturers may need more time beyond the compliance deadline to obtain the necessary technology. Still other manufacturers may find that reformulation of some of their specialty products that are produced in low volume is not cost-effective. The exceedance fee and tonnage exemption provisions were included in the final rule to minimize impacts on the supply of coating products and to avoid



unnecessary impacts upon small manufacturers. The exceedance fee (discussed in section 2.4 of the BID) is intended to allow manufacturers and importers additional time to develop low-VOC formulations while providing an appropriate economic incentive to encourage reformulation. The tonnage exemption (see section 2.2.1.2 of the BID) is intended to allow manufacturers and importers the flexibility to continue to market certain low-volume product lines where reformulation of a specialty product used for unique applications may not be cost-effective. The EPA anticipates that use of the tonnage exemption and exceedance fee will reduce the potential VOC emission reductions of the rule by only a small percentage and that foregoing this portion of the reductions to achieve other objectives of the BAC analysis is an appropriate balancing of the relevant factors to achieve BAC reductions. The EPA believes that all available data indicate that the system of regulation adopted in the final rule, consisting of VOC content limits, an exceedance fee provision, and a tonnage exemption, reflects BAC for the architectural coatings category.

Consideration of new low-VOC coatings. The EPA recognizes that the 1992 industry survey that the EPA used as one of the factors for developing BAC collected 1990 data. Although the data in this survey are now 7 years old, they still represent the most complete set of data for the

architectural coatings industry (the survey captured approximately 75 percent of the coating volume). In addition, the industry survey was only one of the many factors used in determining BAC. Information on advances since 1990 were obtained from over 300 pre-proposal letters, over 200 public comment letters, over 40 follow-up telephone calls, and information obtained from State regulatory agencies. The EPA believes that the final rule represents BAC based on the survey database and other data available to the EPA.

The EPA acknowledges that there are coating technologies in existence with VOC contents lower than those listed in table 1. However, section 183(e) of the Act does not require the EPA to set BAC at the level of the lowest-VOC product. It requires that the EPA determine BAC based on "the degree of emissions reduction that the Administrator determines on the basis of technological and economic feasibility, health, and energy impacts, is achievable." To determine whether a more stringent rule would meet the criteria for BAC, the EPA would need to undertake additional study of the recent technological developments for the architectural coatings category. As discussed in section 2.6 of the Architectural Coatings BID (see ADDRESSES section of this preamble), such an additional study is under consideration. However, the EPA does not believe it would

be appropriate to delay issuing this rule to await the results of that additional study.

D. Changes in Proposed Coating Categories

Several commenters addressed the selection of the coating categories to which the rule applies and the VOC content limits for specific categories. In response to these comments, the EPA has modified the definitions of several of the proposed categories and has added seven new coating categories. In addition, the EPA has modified the proposed VOC content limits for several categories based on information provided by commenters. This section of the preamble discusses the changes made to the requirements for the proposed coating categories. (The new categories are described in section V.E below.) A detailed discussion of all of the comments and responses pertaining to the proposed coating categories and their VOC content limits is contained in section 2.2.4.3 of the Architectural Coatings BID (see ADDRESSES section of this preamble).

Some commenters suggested changes and clarifications to the proposed category definitions. In response to these comments, the EPA has changed the definitions of a number of the coating categories. The purpose of these changes is to clarify which particular coatings are included in these categories.

There were also many requests to revise the VOC content limits in the proposed rule. The EPA contacted many of the commenters, most of whom were coating manufacturers, to obtain additional information in order to evaluate these requests more fully. Based upon consideration of the public comments and additional information obtained since proposal, the EPA has changed the VOC content limits where deemed appropriate. In addition, the final rule provides a tonnage exemption and an exceedance fee option. These provisions provide flexible compliance options that accommodate the need for higher VOC contents in unique or niche products, and in limited-use products. The significant comments and changes made with regard to the VOC content limits are discussed in the following paragraphs. The EPA's rationale for each of these issues is explained more fully in the Architectural Coatings BID (see ADDRESSES section of this preamble).

Roof coatings and bituminous coatings and mastics. One commenter, a national trade association of roof coating manufacturers, supported the proposed VOC content limits for roof coatings (250 grams per liter (g/l)) and for bituminous coatings and mastics (500 g/l), and the inclusion of all bituminous coatings in the bituminous coatings and mastics category. Another commenter suggested reducing the VOC content limit for bituminous coatings and mastics from 500

g/l to 350 g/l. A third commenter suggested adopting one roof coating category that includes bituminous materials at a VOC content limit of 300 g/l, consistent with State architectural coating rules. This commenter argued that the proposed rule permitted bituminous roofing materials to comply with a less stringent limit (500 g/l) than other roofing materials (250 g/l) and that this discrepancy afforded an unfair competitive advantage to the bituminous roofing products.

The EPA reviewed its basis for establishing the proposed category for bituminous coatings and mastics and VOC content limit of 500 g/l and has decided to retain this category and limit in the final rule. The EPA reviewed information submitted by a national trade association comprised of 60 bituminous and nonbituminous coatings manufacturers and suppliers, before proposal (Docket Item No. II-D-56), regarding the composition, specialized manufacture, performance, and use limitations of these coatings. According to this information, a significant portion of these coatings are needed for repair and maintenance of existing roofs as well as for installing new roofing systems. The trade association pointed out that waterborne bituminous coatings and mastics are not practical in almost all of the applications where solventborne bituminous coatings and mastics are used and that coating

performance comparisons between waterborne and solventborne bituminous coatings and mastics range from good to very poor, depending on conditions. Another national trade association for roofing contractors, which has over 3,000 members represented in all 50 States, argued that there is no viable alternative to solventborne bituminous coatings in many circumstances and pointed to bituminous primers as an example of this. According to this trade association, if the VOC content limit were reduced by any significant amount in these primers, the adhesion properties, the application process, and the life of the roof would suffer dramatically. Therefore, in order to satisfy performance requirements of bituminous coatings and mastics nationwide, the EPA has retained this category with a VOC content limit of 500 g/l in the final rule.

With respect to the comments on the separate category for roof coatings, the EPA has decided to retain the category as proposed. Although there are several State architectural coating rules that have a VOC content limit of 300 g/l for roof coatings, the EPA believes that the national Roof Coatings Manufacturers Association's support (Docket Item No. IV-D-181) of the proposed VOC content limit for roof coatings at 250 g/l provides persuasive evidence that this limit is achievable nationwide. Therefore, the

EPA has retained the VOC content limit of 250 g/l for roof coatings in the final rule.

Concrete curing compounds. Several commenters commented on the proposed VOC content limit of 350 g/l for concrete curing compounds, which are used predominantly in highway construction. Seven commenters stated that the proposed limit for concrete curing compounds is achievable based on existing technology, and one of these commenters maintained that the limit could be lowered to 300 g/l. On the other hand, one commenter took issue with the achievability and performance at the proposed limit of 350 g/l. The latter commenter suggested a VOC content limit of 625 g/l for this category, arguing that the proposed limit would eliminate most concrete curing membranes from the market, and that many companies do not sell curing compounds in States that have the 350 g/l limit.

In addition to consideration of these comments, the EPA reviewed the VOC content limits for this category in State rules. Several States, including Arizona, California, Massachusetts, New Jersey, and New York have had a VOC content limit of 350 g/l for concrete curing compounds for several years. The availability of compliant products in these States suggests that the limits are achievable, notwithstanding that not all manufacturers have chosen to market in those States. Based on the information provided

by the commenters in favor of the proposed limits and upon the existing State rules, the EPA has concluded that the proposed VOC content limit of 350 g/l for concrete curing compounds is technologically achievable and has retained this limit in the final rule.

Graphic arts coatings. Two commenters indicated concern about the performance of shop-applied graphic arts coatings at the proposed VOC content limit of 500 g/l. One commenter's specific concerns with coatings at this level included difficulty in achieving variation in gloss levels, variation in the required drying times in the drying room (implying shop-applied coatings), need for greater application amounts, and higher costs. Graphic arts coatings recommended by the manufacturer solely for shop applications are not required to meet the 500 g/l VOC content limit. As discussed earlier, the EPA has revised the definition of architectural coating to clarify that coatings recommended by the manufacturer solely for shop application are not subject to the rule. In addition, the definition of graphic arts coatings has been modified by removing the reference to in-shop coatings, and a definition of "shop application" has been added to the rule.

Based on a review of the 1990 VOC emission inventory survey and State architectural coating rules, the EPA



determined that the 500 g/l VOC content limit for field-applied graphic arts coatings should not be changed.

Shellac - clear. Two commenters requested that the EPA raise the VOC content limit for clear shellac from the proposed level of 650 g/l to 730 g/l. The commenters requested the higher level to accommodate the degree of thinning required for certain uses of shellac to meet performance specifications. According to information provided by one commenter, the elevated cost and limited availability of shellac (referring to secretions of the lac beetle) minimize the potential use of this product.

Based on a review of State architectural coating rules, which limit clear shellac VOC content to 730 g/l, and the information provided by the commenters, the EPA has raised the VOC content limit for clear shellac from 650 g/l to 730 g/l.

Nuclear coatings. Four commenters objected to the proposed 420 g/l VOC content limit for nuclear coatings, in light of the 450 g/l limit for industrial maintenance coatings. The commenters pointed out that nuclear coatings must meet more exacting performance specifications (set by the Nuclear Regulatory Commission) than industrial maintenance coatings and, therefore, should not be subject to a more stringent VOC content limit. One commenter was also concerned that the proposed limit offered no

flexibility for cold weather thinning as provided in the Shipbuilding and Ship Repair (Surface Coating) National Emission Standards for Hazardous Air Pollutants (NESHAP) for this category.

The EPA agrees that the nuclear coatings category VOC content limit should not be more stringent than the VOC content limit for industrial maintenance coatings since nuclear coatings are subject to some of the same extreme environmental conditions as industrial maintenance coatings, and must also meet further specifications and rigorous requirements of the Nuclear Regulatory Commission. The nuclear coatings category is intended to include coatings manufactured for use at nuclear facilities to ensure operational safety, and the definition requires that these coatings meet various testing requirements. The EPA expects that a limited amount of coatings will be affected by this change due to the various testing requirements to qualify for classification in this category and the limited number of nuclear facilities where such coatings are used. Also, as pointed out in the proposal preamble (61 FR 32739), this is one of 17 specialty coating categories that did not appear in existing State architectural coating rules, and no data were collected in the 1990 VOC emissions inventory survey. In consideration of performance specifications for

this category and the need to allow for thinning, the EPA has raised the VOC content limit for the nuclear coatings category to 450 g/l. This limit is the same as the limit for industrial maintenance coatings.

Antifouling coatings. Two commenters requested a higher VOC content limit for the antifouling coating category (400 g/l proposed), and one of these commenters specifically requested that the EPA increase the level to 450 g/l. One of the commenters indicated that antifouling architectural coatings are generally not applied at fixed installations where painting conditions are more easily controlled, and that a thinning allowance should be included to accommodate application of the coating in cold weather.

The EPA agrees with the commenters that the limit for antifouling coatings should be raised to allow for cold weather thinning. Also, similar to nuclear coatings, these coatings are subject to some of the same extreme environmental conditions as industrial maintenance coatings and must meet other rigorous requirements, such as those under the FIFRA. Moreover, this is one of 17 specialty coating categories that did not appear in existing State architectural coating rules, and no data were collected in the 1990 VOC emissions inventory survey. Therefore, the EPA believes a low volume of coatings will be affected by a

change to the proposed limit. The final rule specifies a VOC content limit of 450 g/l for this category.

Floor coatings. One commenter suggested that the EPA either add an exemption paragraph to clarify that floor coatings that meet the definition for industrial maintenance coatings are subject to the industrial maintenance coating VOC content limit of 450 g/l or specify that the floor coating category applies to floor coatings intended for residential use. The commenter believed that high performance floor coatings cannot achieve the 400 g/l VOC level proposed for floor coatings. Although the commenter reportedly has developed lower-performing systems that meet the 400 g/l level, the commenter stated that they are not acceptable for all applications.

Two commenters recommended that opaque floor paint be regulated at a 400 g/l VOC level. However, one of these commenters requested clarification of whether the floor coating category included clear floor finishes, such as varnishes.

The EPA has retained the floor coatings category, with a modified definition, and VOC content limit of 400 g/l as proposed. The floor coatings category includes opaque coatings that have a high degree of abrasion resistance that are formulated for application to flooring, including but not limited to decks, porches, and steps in a residential

setting. The EPA did not intend to include floor coatings that meet the definition of industrial maintenance coatings under the floor coating category. The definition of floor coating has been changed to specify that it applies to floor coatings intended for use in a residential setting. Thus, floor coatings that meet the definition of industrial maintenance coatings are subject to only the industrial maintenance coating category limit of 450 g/l.

Based on information from commenters, the EPA agrees that opaque floor coatings should be subject to the 400 g/l limit as proposed. However, clear varnishes that may be recommended for use as floor coatings are subject to the VOC content limit of 450 g/l for clear varnishes. An exception paragraph has been included in §59.402 of the rule to clarify this category overlap.

Waterproofing sealers and treatments. Eight commenters provided assessments of the achievability of the proposed VOC content limit for waterproofing sealers and treatments. Five commenters suggested that the EPA raise the VOC content limit, and two commenters suggested that the EPA lower it. One commenter maintained that there is no need to distinguish between clear and opaque waterproofing sealers and treatments (600 g/l and 400 g/l, respectively) in the rule since many opaque sealers penetrate the substrate and perform the same function as clear sealers. This

manufacturer requested a VOC content limit of 700 g/l for all waterproofing sealers and treatments and explained that this level would still require reformulation of existing technologies. Another manufacturer has reported that it has not been successful in reformulating to meet the 600 g/l level for clear waterproofing sealers and treatments. On the other hand, one manufacturer strongly encouraged the EPA to adopt a lower VOC content limit of 350 g/l applicable to both clear and opaque waterproofing sealers and treatments based on the VOC content of its products, which are available now in the marketplace. Another commenter agreed that the proposed levels for waterproofing sealers are technologically and economically feasible.

Based on evaluation of the comments and a review of survey data and State architectural coating regulations, the EPA has combined the clear and opaque waterproofing treatment sealer categories into one category with a VOC content limit of 600 g/l. The EPA agrees that there is no need to distinguish between clear and opaque waterproofing sealers and treatments since many opaque sealers penetrate the substrate and perform the same function as clear sealers. The EPA believes that, based on information provided by these commenters/manufacturers, the appropriate limit for this combined category is 600 g/l. Before proposal, industry representatives (Docket Item No. III-B-1)

argued that multipurpose waterproofing sealers at 400 g/l do not meet minimum performance criteria for clear waterproofing sealers (that is, 60-percent water repellency for wood and 1 percent or less water absorption for brick). The representatives stated that 400 g/l products are high-solids products that may leave an oily residue or cause darkening of the surfaces to which they are applied and, thus, product performance may not meet industry standards. Combining clear and opaque waterproofing treatment sealers into one category is consistent with all existing State rules, which do not divide the category into clear and opaque waterproofing sealers and treatments. The State architectural coating VOC content limits for waterproofing sealers and treatments are either 400 g/l (for example, Arizona and California) or 600 g/l (Massachusetts, New Jersey, and New York).

E. Addition of New Coating Categories

The EPA received requests to establish 20 new coating categories in the final rule. In response to these comments, the EPA has established seven new categories: (1) calcimine recoaters; (2) concrete surface retarders; (3) concrete curing and sealing compounds; (4) conversion varnishes; (5) zone markings; (6) faux finishing/glazing; and (7) stain controllers. The EPA also evaluated requests, but did not establish new categories, for the following

coatings: (1) adhesion promoters; (2) asbestos and lead-based paint encapsulation; (3) concrete/masonry conditioners; (4) porcelain repair coatings; (5) marine/architectural coatings; (6) alkali-resistant primers; (7) tung oil finishes; (8) lacquer stains; (9) elastomeric high performance industrial finishes; (10) low solids coatings; (11) oil-modified urethanes; (12) thermoplastic (treatment) sealers; and (13) zinc-rich coatings. In general, new categories were not established for these coatings because the EPA determined that it is technologically and economically feasible for coating manufacturers and importers to achieve compliance with the rule. Further discussion of the rationale for the EPA's decisions on the new categories is contained in section 2.2.4.2 of the Architectural Coatings BID referenced under the ADDRESSES section of this preamble.

In general, the EPA considered creation of new categories if commenters submitted information supporting higher VOC content limits for such products than the otherwise applicable limits. The EPA considered the data submitted by commenters and obtained all reasonably available additional data to evaluate these requests. In cases where the EPA concluded that the proposed emission limits were not achievable, the EPA established a separate



category with an appropriate emission limit. The following is a discussion of the rationale for each of the new coating categories and its VOC content limit.

Calcimine recoaters. Under the proposed standards, calcimine recoaters would have been subject to the VOC content limit for interior flat coatings (250 g/l). However, several commenters stated that calcimine recoaters have a higher VOC content of 475 g/l, cannot be reformulated, are low-volume coatings, and serve a unique function of recoating water soluble calcimine paints. These paints are used in Victorian and Early American homes, especially on ceilings. Due to their low density, calcimine recoaters do not disbond the existing calcimine ceiling coatings, as conventional (250 g/l VOC) high-solids flat alkyd paints would tend to do. If a calcimine recoater is not used, the only alternative is to remove the existing coating, which is labor-intensive and expensive. Because these low-volume coatings reportedly cannot be reformulated, their composition is unique, and there is no substitute for these products, the EPA has added a separate category for calcimine recoater products to the rule with a VOC content limit of 475 g/l.

Concrete curing and sealing compounds. Under the proposed rule, these coatings would be subject to the 350 g/l VOC content limit for concrete curing compounds.

However, commenters presented information not previously considered by the EPA demonstrating that compounds designed for curing and sealing, as opposed to those designed for curing only, have different technical specifications that make it difficult to achieve the 350 g/l level. Concrete curing and sealing compounds function as longer term sealers that provide protection, aesthetic benefits, and durability in addition to curing. Commenters pointed out that there are separate American Society for Testing and Materials (ASTM) methods available for each of these categories and that ASTM Committee experts and at least two government agencies consider them distinct categories with different performance requirements.

Through follow-up phone calls with several concrete curing and sealing coating manufacturers, the EPA confirmed that concrete curing and sealing products are typically sold at levels much higher than 350 g/l. While waterborne products below 350 g/l are available, some industry representatives cited drawbacks such as poor low-temperature performance and stability. Since these products must often be used in low-temperature environments, the EPA agrees that the VOC content limit should reflect this usage. Therefore, the final rule includes a new category for concrete curing and sealing compounds. Based on an analysis of VOC content

and sales data for these products, the EPA has established the VOC content limit at 700 g/l.

Concrete surface retarders. Concrete surface retarders do not fall within any of the proposed categories except the general category for interior flat coatings with a VOC content limit of 250 g/l. These products are generally used in a manufacturing setting at a precast facility, but a small volume of products are field-applied. Commenters argued that these products cannot meet the 250 g/l level and, furthermore, that they are not coatings and should not be subject to the rule. However, they requested a VOC content limit of 780 g/l if the EPA regulated these products.

The EPA has concluded that concrete surface retarders meet the rule's definition of a "coating." Concrete surface retarders that are recommended by the manufacturer for use in the field at job sites are, therefore, subject to the rule. When retarders are recommended by the manufacturer solely for use in a manufacturing setting, such as at a precast facility, which is the typical situation, they are not subject to the rule. The EPA determined that concrete surface retarders that are used in the field at the actual job location are specialized, low-volume coatings used in limited circumstances, and there is no lower VOC content substitute for the function of these products. Therefore,

the EPA has included a separate category for these products in the final rule, with a VOC content limit of 780 g/l as requested by the commenters.

Zone marking coatings. Under the proposed rule, zone marking coatings were subject to the 150 g/l VOC content limit for traffic marking coatings. Zone marking coatings are those used to mark surfaces such as parking lots, driveways, sidewalks, and airport runways; they are generally applied by small commercial applicators. In contrast, traffic marking coatings are applied to streets and highways and are usually applied by large contractors or State Departments of Transportation. The commenters noted two issues associated with meeting the 150 g/l content limit for zone marking coatings. First, the 150 g/l content limit could only be met with waterborne coatings, which require different application equipment than solventborne coatings. Small applicators would be disproportionately impacted by the cost of acquiring the new equipment that is compatible with waterborne zone marking coatings. Secondly, the commenters asserted that waterborne zone marking coatings do not dry or cure properly during high humidity or low temperatures, conditions under which they must sometimes be applied.

After consideration of these comments, the EPA has added a separate category for zone marking coatings and has

established the VOC content limit at 450 g/l. This level allows the use of solventborne coatings. However, the new category applies only to zone marking coatings sold in containers of 5 gallons or less. Available information reveals that State Departments of Transportation buy traffic marking coatings in larger than 5 gallon containers. Thus, this size restriction should limit the use of zone marking coatings to applications smaller than those of general traffic marking coatings intended for use on public roads and highways. Zone marking coatings sold in larger containers fall within the traffic marking coatings category and are subject to the 150 g/l limit. The establishment of this category allows the use of solventborne coatings by small applicators and under adverse drying and curing conditions.

Conversion varnishes. Conversion varnishes are specialty products used by contractors for wood floor finishing. Under the proposed rule, these coatings would have been subject to the 450 g/l VOC content limit for varnishes. Commenters argued that conversion varnishes cannot be reformulated to meet the 450 g/l level, and that they have unique chemical formulation and performance specifications, compared to other varnishes, (i.e., appearance and proven durability). Furthermore, the commenters noted that only three companies manufacture

conversion varnishes and that they market them only to licensed wood flooring contractors, thereby implying that these are specialty coatings deserving different standards.

In response to these comments, the final rule includes a new category for conversion varnishes with a VOC content limit of 725 g/l. Due to the chemical make-up of these products, manufacturers reportedly have been unable to reformulate to meet the 450 g/l level for varnishes. The EPA believes that the category comprises a well-defined coating technology that is limited, due to its chemical formulation, to the applications for which it is intended. Several wood flooring contractors' comments support the performance arguments made by the manufacturers. The EPA determined that the VOC content limit of 725 g/l is the lowest level achievable based on analysis of currently available products.

The EPA has added a definition for this category to the rule. The category definition was developed from information provided by two of the manufacturers.

Faux finishing/glazing. Under the proposed rule, faux finishing/glazing coatings were subject to the VOC content limit of 380 g/l for nonflat interior coatings. Faux finishing/glazing coatings include waterborne acrylic finishes and other waterborne products with miscible VOC that are designed to retard drying time. One commenter

stated that these products provide open time required for wet-in-wet techniques, such as faux wood grain, faux marble, and simulated aging, which require the finish to remain wet for an extended period of time.

The commenter stated that, based on formulation including water, the calculated VOC content of these coatings can range up to 340 g/l. However, because the products are waterborne, the VOC "less water" calculation results in a range up to 700 g/l. The commenter stated that the VOC content limit for a similar category (Japan/faux finishing coatings) has been proposed by California's South Coast Air Quality Management District (SCAQMD) at 700 g/l. The commenter stated that, to date, there has not been an identifiable way to reformulate these products to achieve a lower VOC while maintaining the characteristics required for acceptable use.

Upon review and evaluation of available information, the EPA has determined that creating a separate category for faux finishing/glazing with a VOC content limit of 700 g/l is warranted. According to the commenter, there are no competing compliant products on the market. Despite 2 years of reported reformulation efforts, this coating cannot meet the proposed VOC content limit of 380 g/l for nonflat interior coatings. The EPA notes that this specialty coating category is low volume and that the foregone VOC

emission reductions that may result from setting a higher limit for this category should be limited.

Stain controllers. Under the proposed rule, stain controllers were subject to the VOC content limit of 400 g/l for sealers. "Stain controllers" (also called "wood conditioners" or "prestains") are products that are applied to soft woods before applying a stain to prevent uneven penetration or blotching of the stain by filling those pores where excess penetration would occur. One commenter asserted that these products cannot achieve the 400 g/l level for sealers. According to the commenter, after 3 years of reformulation efforts, they have concluded that it is technologically infeasible to reformulate stain controllers to the proposed 400 g/l VOC content limit. The current VOC content of the commenter's products is 714 g/l. According to the commenter, the 400 g/l level for sealers would force a very high solids content, which would make these products unfit for use as prestains. The commenter asserted that, in order to be effective, stain controllers must have a very low solids content because excessive solids will overload the texture of the substrate so that the wood will not properly accept the stain. Water cannot be added to these products because they are used almost exclusively to treat interior fine wood and contact with water would produce an undesirable grain-raising effect in the wood.



Stain controllers are low-volume, specialized products that are important to the consumer and have a minimal effect on air quality. The commenter asserted that about 97 percent of total sales for these products are already exempt under the small container exemptions in regulated areas.

After review and evaluation of these comments and follow-up information provided by the commenter, the EPA has determined that a new category for stain controllers with a VOC content limit of 720 g/l is warranted. This is a specialized, limited use product that is important to consumers, and the EPA believes that the additional emissions from this low-volume coating would be negligible. According to the commenter, reformulation attempts during the last 3 years have been unsuccessful, and the commenter considers it technologically infeasible to reformulate stain controllers to achieve the proposed VOC content limit of 400 g/l for sealers (the category the commenter's coating would be subject to under the proposed rule). According to the commenter, there are competing waterbased products meeting the proposed limit on the market, but there are performance problems with these coatings. The EPA believes that this is an example of a low-volume, specialty niche coating for which it may not be cost-effective for the manufacturer to continue reformulation attempts. Therefore, the final rule contains a separate category for stain controllers.

F. Category Overlap

Many commenters expressed concern about the VOC content limit that applies to coatings that fall into more than one category. The proposed rule stated that if a manufacturer made the representation that a coating was suitable for use in more than one category, then the coating must comply with the VOC limit for the category with the most restrictive limit. Commenters objected that a coating may be "suitable" for many uses, even though not intended by the manufacturer for those uses. Coatings could potentially be used in ways for which they were never intended and, thus, be subject to unduly restrictive VOC content limits.

The EPA agrees with the commenters and has reworded the provisions as suggested by the commenters. In the final rule, if the manufacturer or importer makes any representation that indicates that the coating "meets the definition" of more than one coating category, then the most restrictive limit applies. The EPA has removed the phrase "may be suitable for use" from the rule so that the manufacturer or importer is not responsible to meet the limits of other categories if consumers choose to use them for purposes not recommended by the manufacturer or importer. However, if a manufacturer or importer indicates that a coating may be suitable for uses like coatings in other categories, the EPA will consider this a

representation that requires the coating to meet the most restrictive applicable limit. Thus, determination of the applicable category and VOC content limit is based on a comparison between the technical criteria in the rule's definitions and the coating manufacturer's or importer's representations.

The proposed rule also included exceptions for seven types of coatings to the requirement that the most restrictive limit always applies. The EPA recognizes that these seven coatings potentially meet the definition of more than one category of coating, but cannot meet the more restrictive limit. For these exceptions, the rule explicitly specifies that the less restrictive limit applies. Commenters suggested additional instances of overlap that might also warrant special exceptions. After considering the information presented by these commenters, the EPA has included further exceptions, in addition to the proposed exceptions, to the most restrictive limit provision. The EPA has added the following exceptions:

(1) anti-graffiti coatings, high temperature coatings, impacted immersion coatings, thermoplastic rubber coatings and mastics, repair and maintenance thermoplastic coatings, pretreatment wash primers, and flow coatings are not required to meet the VOC content limit for industrial maintenance coatings; (2) industrial maintenance coatings

are not required to meet the VOC content limit for primers and undercoaters, sealers, or mastic texture coatings; (3) varnishes and conversion varnishes used as floor coatings are not required to meet the VOC content limit for floor coatings; (4) sanding sealers are not required to meet the VOC content limit for quick-dry sealers; (5) waterproofing sealers and treatment coatings are not required to meet the VOC content limit for quick-dry sealers; (6) quick-dry primers, sealers, and undercoaters are not required to meet the VOC content limit for primers and undercoaters; (7) nonferrous ornamental metal lacquers and surface protectants are not required to meet the VOC content limit for lacquers; and (8) antenna coatings are not required to meet the VOC content limit for industrial maintenance coatings or primers. These exceptions are discussed more fully in section 2.2.3.14 of the Architectural Coatings BID (see ADDRESSES section of this preamble).

G. Low Volume/Tonnage Exemption

In the preamble to the proposed rule, the EPA presented the concept of an exemption for coatings produced in low volumes and requested comment on this potential provision. The EPA described this exemption as a compliance option under which, "any manufacturer or importer may request an exemption from the VOC levels in table 1 of this subpart for

specialized coating products that are manufactured or imported in quantities less than a specified number of gallons per year." Twenty-one commenters provided comments on an exemption for coatings produced in low volumes.

In general, commenters in favor of the exemption pointed out that it would mitigate the impact of the rule on small manufacturers for which costs of reformulation would be more significant, and would prevent the elimination of specialty products for niche markets that could not easily be reformulated. Commenters opposed to the concept of a low-volume exemption generally argued that it would create a loophole allowing continued manufacture of noncompliant coatings and that in the aggregate such emissions would be significant.

The EPA considered these comments and concluded that some type of exemption is needed to help ensure the continued availability of niche products, to mitigate potential impacts on small manufacturers, and to enhance the economic feasibility of the rule. The exemption in the final rule is based on VOC tonnage rather than on production volume, the concept presented at proposal. This approach continues to accommodate the needs of small manufacturers, niche markets, and specialty products, as did the proposed low-volume exemptions, but it more effectively limits the

VOC emissions resulting from the exemption in response to comments received on the proposal.

Under the tonnage exemption, each manufacturer can exempt a volume of coatings that contains no more than a specified total mass of VOC for all coatings included in the exemption (see table 2 in section II.B, Summary of Standards). The EPA has designed the tonnage limits to exempt no more than 1.5 to 2 percent of the total expected emission reductions from all architectural coatings. In addition, the EPA has structured the tonnage exemption to decrease over time, thereby decreasing the aggregate VOC emissions in a staggered fashion to provide additional compliance flexibility. The EPA believes that it is appropriate to provide the exemption in this manner for the dual purpose of preserving niche products and of providing greater initial assistance to manufacturers as they reformulate their

products. The EPA believes that limiting the exemption in this fashion will address the concerns of commenters who viewed the low-volume exemption as a potential loophole that would allow significant aggregate excess VOC emissions. The EPA expects that the 9 Mg/yr (10 tpy) exemption that goes into effect in the third year will help to preserve niche products and to provide adequate flexibility for unforeseen future needs while effectively limiting emissions due to the exemption. In addition, the EPA expects that the initial tonnage exemption of 23 Mg (25 tons) for the time period from [insert date 1 year after date of publication in the FEDERAL REGISTER] through December 31,2000, will allow manufacturers to exempt one to three 27,000 liter (7,100 gallon) product lines, depending on the VOC content, thereby meeting the functional intent of the originally proposed low-volume exemption.

The rule provides that the manufacturer or importer will calculate emissions from exempt coatings by multiplying the total sales volume in liters by the "in the can" VOC content of the coating in grams of VOC per liter of coating, including any water or exempt compounds. The "in the can" VOC content must include consideration of the maximum thinning recommended by the manufacturer. The manufacturer or importer may exempt any combination of different coatings as long as the total VOC tonnage from these coatings does

not exceed the limit for the tonnage exemption. In addition, the manufacturer or importer may choose to combine the exceedance fee provision and the VOC tonnage exemption for one or more coatings.

For example, under this exemption, in the time period from [Insert date 1 year after date of publication in the FEDERAL REGISTER] through December 31, 2000, a manufacturer could exempt 38,300 liters (10,000 gallons) of a 600 g/l [5 pounds per gallon (lb/gal)] coating.

$$\left( \frac{600 \text{ g VOC}}{1} \times 38,300 \text{ l} \right) \div \frac{1 \times 10^6 \text{ g}}{\text{mg}} = 23 \text{ mg VOC}$$

Alternatively, a manufacturer could exempt 18,939 liters (5,000 gallons) of an 800 g/l (6.67 lb/gal) coating plus 13,731 liters (3,625 gallons) of a 550 g/l (4.58 lb/gal) coating.

$$\left[ \left( \frac{800 \text{ g VOC}}{1} \times 18,939 \text{ l} \right) + \left( \frac{550 \text{ g VOC}}{1} \times 13,731 \text{ l} \right) \right] \div \frac{1 \times 10^6 \text{ g}}{\text{mg}} = 23 \text{ mg VOC}$$

This exemption differs from the low-volume exemption in the proposal preamble in three ways. First, the exemption is on a "per manufacturer" basis rather than a "per product" basis. This change was necessary due to the difficulty in defining a "product" and the potential for abuse in



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designating products for exemption. Second, the exemption level is based on megagrams of VOC rather than liters of

coating. Using VOC tonnage as the basis for the exemption places an upper bound on the emission reductions that are lost through this exemption while still accommodating the needs for which it was intended. Third, the total quantity of the exemption reduces over time. The EPA intends for the ratcheting down of the tonnage exemption over time to encourage regulated entities using the exemption to continue to reduce the VOC content of their coatings.

The EPA has concluded that the exemption, as structured in the final rule, provides benefits in terms of flexibility, mitigation of impacts for small manufacturers, and continuation of specialized niche products that justify the EPA in foregoing the small percentage of overall potential VOC reduction lost through the exemption. Furthermore, the EPA has concluded that the creation of the tonnage exemption is consistent with the EPA's explicit discretion and authority to create the appropriate system or systems of regulation in accordance with section 183(e)(4) of the Act.

#### H. Compliance Variance Provisions

In the proposed rule, the EPA included a variance provision allowing manufacturers and importers of architectural coatings to obtain additional time to comply. To obtain a variance, applicants would have had to demonstrate that, for reasons beyond their reasonable

control, they could not comply with the requirements of the rule. The EPA envisioned the proposed variance provision as a benefit primarily for small businesses that might need extra time to develop new technologies.

Several commenters addressed the variance provisions. Those who supported the provisions noted that a variance would provide the needed extra time to come into compliance. Those opposed to the variance generally argued that it was not sufficiently protective of the environment. In addition, even the commenters in favor of the variance provision stated that the requirements for applying for a variance were too burdensome, and that small businesses would be particularly impacted by the burden associated with the application process. Many of these commenters stated that exceedance fee provisions are a more effective way to accommodate the need for compliance flexibility yet still encourage reductions of VOC emissions.

Based upon the comments received, the EPA has not included the variance provision in the final rule. It is evident to the EPA that a variance process may not provide the intended compliance flexibility, especially for small manufacturers. Even though the EPA intended the proposed variance requirements to be the minimum necessary to justify and approve a coating variance, the EPA recognizes that the requirements may have been burdensome, particularly for

small manufacturers with limited or no regulatory compliance staff. It is also possible that the variance provision could create an uneven playing field because small businesses would not have the resources needed to pursue this option, thereby putting small businesses at a disadvantage compared to large businesses.

Moreover, with the tonnage exemption and exceedance fee provisions included in the final rule, the EPA has concluded that a compliance date variance is not necessary. The EPA believes that these alternative provisions provide even greater flexibility than the variance provision and are less burdensome to regulated entities. Both of these compliance options are automatically available to all regulated entities and, therefore, do not involve complex application and approval processes. These compliance options require only the limited recordkeeping and reporting necessary for the EPA to ensure compliance.

The EPA anticipates that regulated entities will use the tonnage exemption for low-volume products that require 2 to 3 years to reformulate, or for extremely low-volume products that cannot be reformulated in the foreseeable future. The exceedance fee option, described more fully below, is also designed to give manufacturers additional time to develop lower VOC technologies, which are already used for similar coatings by other manufacturers, where

necessary. This compliance option allows regulated entities to continue to sell coatings that exceed the VOC content limits, provided that they pay an exceedance fee.

Need for long-term, universal variance procedure.

Several commenters, including a national trade association, recommended a provision in the rule for a long-term variance procedure for new products. The commenters expressed concern that new and innovative products may not fit into the coating categories that define particular coating technologies, and will therefore, by default, be subject to the VOC content limits for the general flat or nonflat categories. Since the VOC content limits for these default categories are among the most stringent, the commenters suggested provisions that would allow manufacturers up to 5 years to develop and commercialize innovative coating technologies under an extended variance. The commenters argued that a long-term variance would protect manufacturers who operate mainly in unique or niche markets and whose access to newer technologies may be limited.

The EPA has determined that such a variance procedure is not warranted, given the other provisions in the final architectural coatings rule. The EPA has included compliance provisions in the final rule that it believes will allow for the development of new technology. The tonnage exemption and exceedance fee option in the final

rule create such additional compliance flexibility. In the event that coatings manufacturers in the future develop specialized categories of coatings for uses not now foreseeable, they could notify the EPA if they believe a new coating category is needed. The EPA could then assess the appropriateness of such a category.

#### I. Exceedance Fee Option

The EPA received a total of 27 comments on the exceedance fee provision presented in the proposal preamble. About half of the commenters supported this option and half opposed it. Under this provision, manufacturers and importers have the option of paying a fee, based on the extent to which a coating's VOC content exceeds the applicable VOC content limit instead of meeting the limit listed in table 1 of this subpart. The fee is calculated by: (1) determining the difference between the coating's actual VOC content and the allowed VOC content (in grams of VOC per liter of coating), (2) multiplying this difference by the fee rate of \$0.0028 per gram of excess VOC per liter of coating, and (3) multiplying the resulting product by the volume of the coating manufactured or imported during the reporting period. The resulting dollar amount is owed by the manufacturer or importer as a fee. After careful evaluation of all of the comments and discussions with the Small Business Administration, the Administrator has decided

to include this compliance option in the final rule for several reasons. First, the exceedance fee provision will provide transition time over and above the tonnage exemption provision for those manufacturers that may need additional time to obtain or develop lower VOC technologies. The exceedance fee provision is significantly less burdensome than the proposed compliance variance provision, which the EPA has not retained in the final rule (see discussion in section V.H of this preamble). Second, the exceedance fee provides long-term flexibility and a less costly compliance option for manufacturers who sell very low volume, specialty coatings where the cost of reformulation may be prohibitive compared to the potential profit on low volume products. Thus, these important specialty products will continue to be available to consumers. Third, contrary to some comments received, the EPA believes that the higher costs resulting from the exceedance fees can encourage the development of innovative technology, such as high-performance products with lower VOC content, thus reducing VOC content to the limits in table 1 for many coatings.

With regard to some commenters' concerns about enforcement of the exceedance fee, the recordkeeping and reporting requirements in the rule will ensure compliance with this option. The final rule requires manufacturers and importers to maintain records and submit annual reports to

the EPA if they wish to exercise their option to use the exceedance fee. Any violations of the recordkeeping and reporting or any other requirements of the rule could result in enforcement actions and the possibility of penalties.

There were various questions and opinions from several commenters regarding the level of the fee. The EPA considered several factors in setting the fee level. Specifically, the EPA has set the fee level so that it would not be advantageous for most manufacturers and importers merely to opt for the fee in lieu of reformulating large volume products, which generate a disproportionately large share of emissions. At the same time, the EPA has sought to set the fee at a level that will provide flexibility for producers of small volume or specialty products to keep products on the market. Clearly, these are competing considerations, but they are not mutually exclusive. In fact, the EIA conducted by the EPA suggests that manufacturers of a large number of coatings may opt for the fee (as a lower-cost compliance option to reformulation or product withdrawal). However, the total sales volumes of these products are uniformly small and, thus, their contribution to total market output (and emission reductions) is relatively small. The fee level also provides incentive for fee-paying firms to reduce VOC content on the margin, as this will reduce the amount of fee



they must pay. The EPA has concluded that imposition of the fee is an appropriate mechanism to encourage development of lower-VOC content products while at the same time preserving specialty niche products and mitigating the impact on small regulated entities. The level of the fee reflects the EPA's attempt to balance the intent to encourage reformulation without mandating that products be priced out of the market. The EPA believes that this is consistent with its authority to use economic incentives as part of the system of regulation as contemplated by section 183(e)(4) of the Act.

J. Labeling, Recordkeeping, and Reporting

A number of commenters requested more flexible labeling requirements to reduce the compliance burden. After consideration of these comments, the EPA has determined that several labeling requirements can be adjusted to provide more flexibility without adversely affecting their usefulness. First, the EPA has provided greater flexibility by allowing the date of manufacture or date code to appear either on the bottom of cans or on the labels or lids. Second, the EPA has clarified the VOC content labeling requirement. These provisions allow manufacturers two options; they may label the coating with either: (1) the VOC content of the coating, including recommended thinning and considering fluctuations in VOC content that may occur in the manufacturing process, or (2) the applicable VOC

content limit for the type coating as listed in table 1 of the rule. The second option is allowed only if the VOC content of the coating does not exceed the applicable VOC content limit (i.e., it is not available for coatings complying by exercise of the exceedance fee or tonnage exemption provisions). Third, the final rule includes a more flexible labeling requirement for industrial maintenance coatings. Manufacturers may choose from the following phrases for labeling industrial maintenance coatings:

- (1) For industrial use only;
- (2) For professional use only;
- (3) Not for residential use;
- (4) Not intended for residential use; or
- (5) This product is intended for use under the following condition(s): (list of each condition from the definition of industrial maintenance coating that applies.)

The proposal preamble requested comment on the inclusion of labeling requirements for coating coverage information and an educational statement about the role of VOC emissions from coatings in ozone formation. Based on comments received concerning coverage information, the EPA determined that coating coverage is so variable, depending on the coating and the substrate being coated, that the

information would be of minimal benefit. Upon consideration of comments regarding the educational statement, the EPA concluded that an outreach program would just as effectively educate consumers on the role of VOC emissions in the formation of ozone and on the reasons why ground-level ozone is undesirable. Thus, the final rule does not require the proposed coverage information and educational statements.

K. Determination of Volatile Organic Compound Content

Four commenters expressed concern that Method 24 (40 CFR part 60, appendix A) would not provide reliable results in certain circumstances, such as for waterborne coatings, and requested that the EPA allow the use of alternative tests in lieu of Method 24. The requests included methods to test for acetone content, acid content, water content, and for testing coatings that cure via chemical reactions that are quenched by the dilution solvent used in Method 24. Two commenters also requested that the EPA accept compliance demonstrations based on theoretical formula calculations or formula batch card loading information and documentation.

The EPA believes that Method 24 provides consistent, reliable results when determining the VOC content of architectural coatings. Specifically regarding concerns about Method 24's reliability for determining the VOC content of waterborne coatings, the EPA believes that

Method 24 is the best currently available compliance method for low-VOC solvent content (high water content or waterborne) coatings. For waterborne coatings, VOC content is determined indirectly using methods that determine nonvolatile matter content and water content. The VOC content is assumed to be what is unaccounted for by these two fractions. The EPA acknowledges that the inherent imprecision of indirectly determining the VOC content of such coatings by this method necessitates an adjustment of the analytical results. Such adjustments must be based on confidence limits calculated from the precision statement established for Method 24. The precision adjustment procedure is incorporated in Method 24. Therefore, the final rule specifies that Method 24 is to be used for determining the VOC content of coatings subject to the rule. However, in response to comments received and consistent with other coating regulations established by the EPA in the past, the final rule does provide that other means may be used to determine VOC content. Nevertheless, the rule also provides that the Administrator may request at any time that the coating manufacturer or importer conduct a Method 24 test for the purpose of demonstrating compliance with the rule. If there are any inconsistencies between Method 24 test results and other means of determining VOC content, the Method 24 results will govern. The rule also provides an

option for the Administrator to approve, on a case-by-case basis, alternative methods of determining the VOC content of coatings if they are demonstrated to the Administrator's satisfaction to provide results satisfactory for determining compliance. Such alternative methods could include procedures for testing for acetone, acid content, and water content, procedures for coatings that are chemically-cured, and procedures for using formulations and batch processing data for adjusting or determining VOC content.

L. Compliance Date

At proposal, the EPA requested comment on the appropriate compliance deadline for the rule. Commenters expressed a range of opinions regarding the appropriate compliance date. Commenters who supported a compliance period of up to 12 months stated that this amount of time was necessary to adjust formulations, reprint labels, adjust inventories, use up existing label stock, and conduct research and development. Some commenters stated that the compliance period should be greater than 1 year to allow adequate time for developing, performance testing, and marketing new products. Some State Agencies requested no further delay in the compliance date, since States are depending upon the architectural coatings rule for VOC reduction credit under their SIP. The latter commenters stated that extending the compliance date would have an

adverse impact on the environment, would lead to additional State regulations, and is unnecessary given the current state of technology.

The EPA supports making the architectural coatings rule effective and applicable as quickly as possible, but in a time frame within which regulated entities may reasonably comply. The EPA believes that the 12-month compliance period in the final rule allows the industry appropriate time to achieve compliance with the rule. The EPA believes that coating technologies currently exist to meet all of the rule's VOC content limits. In limited cases where manufacturers or importers need additional time to comply, the tonnage exemption and the exceedance fee option already provide additional compliance flexibility and offset any need for additional compliance time.

At proposal, the EPA requested comment on whether the final rule should include a compliance extension for small manufacturers. Three-quarters of the commenters providing comments on this provision were against special treatment for small manufacturers. After careful evaluation of the comments, the EPA has decided not to include a compliance extension specifically restricted to small manufacturers. Instead, the EPA has extended the compliance period for all manufacturers and importers to 12 months. The EPA has concluded that the information provided by commenters

demonstrates that the 12-month compliance period allows adequate time for all regulated entities to comply. The EPA believes that other mechanisms such as the tonnage exemption and the exceedance fee will also help alleviate concerns regarding the compliance period for small entities.

M. Cost/Economic Impacts

At proposal, the EPA solicited comment regarding the size and nature of reformulation costs to gauge the reasonableness of the estimate used in the EPA's EIA. The estimate the EPA used at proposal (\$250,000 per product reformulation) was based on an estimate presented to the Regulatory Negotiation Committee in 1993 (Docket# II-E-52). The EPA received several public comments in response to this request and categorized the estimates provided based on the following dimensions: technical staff training, prioritization of products needing reformulation, survey of available materials, reformulation to desired properties, performance tests, field tests, marketing costs, production costs (labels), sales training, and executive expenses. Eleven of the comments received provided comparable information for gauging reformulation costs per product. Other comments provided less complete information that the EPA has taken into account, but did not include the specific information necessary to assess the reasonableness of the EPA's estimate. The EPA combined the estimates from these

eleven comments with the original cost estimate and found that reformulation cost per product ranged in value from \$576 to \$272,000 (1991 dollars), with a mean value of approximately \$87,000. This gives an indication that the EPA's estimate at proposal significantly overstated the average cost to reformulate a product. Because the mean value from these comments represents a wide variety of conditions for reformulation (in comparison to the one scenario described to the Regulatory Negotiation Committee), the EPA revised the EIA using \$87,000 as the average cost to reformulate a product. Appendix B of the EIA and the architectural coatings BID provides a full discussion of the review of these cost estimates.

Several commenters indicated that they thought that the estimate of total social cost was too low because the EPA underestimated or omitted several cost factors. Some of the factors cited by commenters that costs are underestimated are listed below:

- (1) the estimate did not consider every reformulation such as the recalibration and reformulation of every color in a tint base system when the base is reformulated,

- (2) the survey used to estimate costs excluded 400 small paint manufacturing companies,



(3) only the costs of laboratory personnel are included in the estimate,

(4) the estimate did not consider the cost of foregone new product development when expending scarce technical effort to reformulate existing products, and

(5) aggregation of 50 product categories into 13 market segments reduces the impact presented.

Commenters also cited several cost categories that potentially were omitted from the total cost estimate, including:

(6) costs for preparing product literature, including material safety data sheets, sales aids, color brochures, and technical data bulletins;

(7) costs for manufacturer education;

(8) costs to consumers from increased surface preparation, application, and drying time;

(9) costs associated with warranty claims and complaints about poor performance of compliant coatings;

(10) litigation costs due to increased safety hazards from using acetone formulations;

(11) increased costs to retailers, contractors, and other consumers;

(12) additional job losses in the paint industry and the socioeconomic impact on low income workers; and

(13) impacts of product bans on the nation.

Two of these commenters (a manufacturer and its legal counsel) stated that if the EPA included all cost factors in the total cost estimate, then the impacts of the rule would

exceed \$100 million and would necessitate additional analyses under Executive Order 12866 and the Unfunded Mandates Reform Act. Some commenters also believed that the method of calculating the national cost was flawed in that costs are calculated on an annualized basis. A commenter also stated that expressing the cost in 1991 dollars did not represent real costs today and that assuming an interest rate of 7 percent was not a valid assumption for small businesses.

The EPA has carefully considered the comments regarding the economic impact of the rule, especially in light of the EPA's overestimate of the costs of reformulation in the proposal. The EPA believes the total social cost estimate provided at proposal was significantly above the actual cost of the regulation because of several conservative assumptions that were adopted in the analysis, and the evidence that the per-product reformulation cost was nearly three times greater than the average estimate obtained by public comments.

The method of calculating national cost for the final rule adheres to the EPA policy and Office of Management and Budget (OMB) guidance (OMB Circular A-94). It is a well-established tenet of benefit-cost analysis and cost-effectiveness analysis that benefits and costs need to be placed on a time-consistent basis for direct comparison.

Therefore, the costs of the action must be computed on an annualized basis through discounting to be time consistent with the annual stream of emission reductions achieved. For the architectural coatings rule, the costs of reformulation and its VOC reduction benefits occur in different time periods. The reformulation of current noncompliant products is a "one-time event," but the emission reductions of the new formula and the knowledge gained from developing the reformulation continue over the life of the product, which is an infinite period of time unless the product is permanently removed from the market. In other words, once a formulation is developed to comply with the regulation, manufacturers will have some knowledge to carry forward to all future modifications of the product (i.e., if they adjust the formula to improve certain attributes or characteristics of the product). However, the EPA recognizes that a case can be made for treating each product formula as having a finite service life, requiring periodic reformulation. Under this alternative assumption, the regulation is viewed as accelerating each product's next round of reformulation, an event that would have occurred anyway. For example, if a product is usually reformulated every 8 years, the rule's implementation may cause a manufacturer to investigate the reformulation 4 years earlier, thus accelerating the reformulation schedule for

all future years. In response to this issue, the EIA for the final rule presents a calculation of annualized costs for both a finite and an infinite product life. Because the finite product life results in a higher annualized value, the EPA uses this estimate for the economic analysis of the final rule to produce a conservative estimate of impacts associated with the rule.

Also, because the survey of architectural coating producers was conducted in 1992 with information on products through the end of 1991, the EPA has set 1991 as the baseline year for the analysis. All market data are in 1991 dollars, and so for the purpose of modeling, the costs are expressed in 1991 dollars. However, in response to comments, values for the final rule are expressed in both 1991 (the base year of analysis) and 1996 dollars. The EPA's conclusions regarding the impacts of the final rule are the same, whether expressed in 1991 or 1996 dollars.

In addition, OMB (OMB Circular A-94) stipulates that the discount rate used for economic analyses of Federal regulations is 7 percent. This is based on an assessment of a wide range of private and public investment returns. The 7-percent rate is a real discount rate (adjusting out inflation). In contrast, the market interest rates paid by firms are in nominal terms (i.e., they include a component for inflation). If inflation is 3 percent, then a real rate

of 7 percent is equivalent to a nominal rate of 10 percent. All dollar values in the economic analysis are expressed in real terms, thus the discount rate used is a real discount rate.

Using the stated method for calculating the per-product costs of reformulation, the EPA conducted an in-depth analysis of national cost and economic impact to support both the proposed and final rules. More specifically, the estimate of net social cost is based on the average cost to reformulate products that exceed the limits set by the standard. These costs are applied to specific products identified by the survey. For these products, costs are applied to two-thirds of the population of non-compliant products because one-third of these products are similar enough in characteristics to other "over-the-limit" products that a separate reformulation effort is not likely to be necessary. Although the survey was unable to capture all products produced by small businesses as one commenter states, the EPA assumed (for an upper bound estimate) that all product volume in the non-survey population was produced by small businesses. Thus, costs are extrapolated to the nation using conservative assumptions of the total number of products requiring reformulation nationally. The analysis then considers influences in a competitive market on product price and output, along with the consideration of lower-cost

compliance options such as the exceedance fee provision or product withdrawal from the market. The analysis not only measures the cost to producers that must comply with the regulation, but also to all consumers impacted by the changes in the market resulting from the regulation. The analysis also identifies gains in revenues to producers that are not constrained by the rule (thus, not incurring costs), but who gain an advantage of higher market prices for their products. Thus, the EPA believes that the analysis reasonably captures all capital and social costs for surveyed as well as non-surveyed products.

The original product reformulation cost estimate included several components beyond the cost of the laboratory personnel, which are itemized in the EIA. Although some of the items listed by commenters as improperly omitted may not have been included in the per-product reformulation cost estimate at proposal, several of the estimates from public comments that were used for the final rule included these components, and therefore, they are included in the estimate used for the final rule. The EPA also considered the influence (positive and negative) of other factors that are not possible to quantify, and presented these biases in a table of the EIA at proposal and for the final rule. Most of the biases are variable and case specific. For example, product quality changes were

found to have both positive and negative effects on cost depending on the product. The EPA found no link between product quality and VOC content since quality, high-performing products are available in a wide range of VOC content levels in many product categories. Given this finding, the EPA does not consider warranty claims and complaints for poor performance to be typical or quantifiable for a reformulated product. The EPA also found examples of increased and decreased time utilized for surface preparation, application, and drying of compliant coatings. The use of acetone formulations is also not considered a necessity to comply with the rule since there are other raw material substitutes available to manufacturers. Thus, incurring increased safety hazards by choosing an acetone formulation is a decision that should be made by a manufacturer based on benefit/cost considerations, rather than as a result of the rule. Other categories of influence on the cost estimate are also discussed qualitatively in the EIA.

The cost of foregone new product development is an aspect of opportunity cost that is implicitly included in the EPA's estimate of economic impacts. The amortized cost of reformulation reflects both the payment of principal and the cost of capital. The cost of capital directly reflects the value of opportunities foregone by investing funds in a

particular activity, in this case, reformulation. Thus, if investing in reformulation diverts funds from investing in other product enhancements, the foregone value of those investments is captured in the discount rate used in the analysis.

The aggregation of 50 categories into 13 market segments is the result of cross-referencing the emissions inventory data from the industry survey with the coding system set by the Census of Manufacturers, a large source of economic data. The methodology to link survey categories with the Census data is described in an appendix to the EIA. The EPA's objective was to specify as many market categories as the data would allow. Using this method, the largest possible number of meaningful market categories was 13. The aggregation process presents an appropriate way to analyze the cost and economic impacts and does not in any way diminish the estimates of the absolute impact of the regulation. However, the aggregation process may make it difficult to detect relatively large impacts within one subgroup of a market category, if these impacts are offset by relatively small impacts in other subgroups of that market. In other words, a product may be more likely to be withdrawn from the market than is indicated in the 13 market segments of the analysis since multiple product niches would be lumped within the same market segment. On the other



hand, this aggregation may increase the estimated effect on manufacturers by over-stating the degree to which products within the market segment can substitute for products affected by the regulation.

While the EPA did not directly measure impacts on the retailing sector, contractors, and other consumers, the indirect impacts to these entities and other users of coatings products are captured in the market analysis by the estimated change in "consumer surplus," along with all other downstream effects beyond the manufacturer. Consumer surplus measures the distribution of the burden of the regulation to all consumers. Since the impact on consumers calculated for proposal was less than one-third of the manufacturers' burden, and contractors and retailers are a small subset of this effect, the EPA saw no indication of a need for an in-depth analysis of secondary (indirect) impacts.

It should be recognized that retail outlets have the ability to substitute between compliant and noncompliant coatings offered for sale. While the EPA projects the number of withdrawn products to be small, if a manufacturer does choose to discontinue a product, retailers will presumably replace this product with other compliant products in that category. Thus, although foregone profits are "lost" for the manufacturer withdrawing a product, the

retailer offsets any lost profits from selling the withdrawn product with profits obtained by selling substitutes within that category. As indicated above, the number and volume of product withdrawals is projected to be quite small (less than 1-percent nationally), thus suggesting retailing effects, if they exist at all, are also likely to be quite small.

The job loss and other substantial economic impacts that are referred to by a commenter are the result of assuming that every reformulation required by the standards is not feasible, thus the products would be removed from the market causing manufacturers, contractors, retailers, and other consumers to be economically impacted. Because there are a very limited number of products that are expected to be withdrawn from the market, most products will be reformulated or produced with current formulations (with manufacturers using the tonnage exemption provision or paying a fee for emissions in excess of the standards).

Likewise, this regulatory action cannot be considered a "product ban" because the EPA believes that it is technologically feasible to reformulate all product categories to meet the standards. The expected level of product withdrawal is calculated based upon the aggregate impact on numerous varieties of products across 13 different market segments, so it is unlikely to eliminate (or ban) an

entire product category. In addition, the rule contains limits for 61 categories of products, many of which were created to preserve specialty, niche market sectors within the industry. Also, the tonnage exemption and exceedance fee provisions in the rule are expected to provide further compliance flexibility which will allow manufacturers to maintain product lines with VOC contents that exceed the applicable VOC content limits in appropriate circumstances.

In conclusion, based on the data and information provided to the EPA prior to proposal and through public comments, the revised national annualized cost estimate of the final rule of \$25.6 million in 1991 dollars (or \$29 million in 1996 dollars) is representative of all costs to producers and consumers. This cost and its effect on the industry do not meet the minimum criteria set forth by Executive Order 12866 or the Unfunded Mandates Reform Act to require additional analyses, as some commenters have suggested.

#### N. Small Business Issues

The EPA received several comments that small businesses would be disproportionately impacted by the regulation because: (1) they manufacture products with higher VOC content in comparison to the large companies; (2) due to the lack of resources, it would take longer for small firms to reformulate all affected products; and (3) the rule would

discourage niche market products that support many regional and local manufacturers. Some commenters also claimed that the proposed regulation provided a competitive advantage to large national and international companies because a uniform national rule simplifies marketing, production, and compliance activities of these firms.

During development of the rule, the EPA was aware of the above concerns of small manufacturers and designed the architectural coatings rule to minimize any potential adverse impacts on small manufacturers. In fact, special consideration was given to economic feasibility of VOC levels for coating categories where small manufacturers have a disproportionate presence. The small entity analysis confirmed that small producers that were included in the survey of manufacturers do tend to produce higher VOC content products (75 percent higher than the average of all surveyed manufacturers), partly because of a specialization of products and partly because of choice of technology. They produced 20 percent of the number of products in the survey, but only account for 4 percent of total volume of coatings produced, and 4 percent of total revenue of surveyed manufacturers. Thus, the revenues and production levels are generally lower than the average of all manufacturers. Because the costs to reformulate are fixed for all levels of production, the costs to reformulate the

products that exceed the VOC content limits have the potential to comprise a greater share of baseline costs and revenues for small producers, which gives some indication that a disproportionate impact on small businesses could occur if reformulation were the only compliance option available. The EPA considered this finding and has taken several steps in the final rule to mitigate this impact, provide flexibility and additional compliance time, and preserve niche markets, including:

- the creation of new product categories where warranted,
- an increased compliance time (12 months),
- a tonnage exemption provision, and
- an exceedance fee provision.

All of these provisions were considered in part to address niche markets and small business burdens; however, the provisions will be available to all producers regardless of size. The EPA's analysis of the impacts of the final rule shows that small businesses are likely to utilize these provisions and that the impact on a typical small firm is reduced without significant deterioration of the rule's effectiveness (i.e., the foregone emission reductions are limited). See section VI.E of this preamble for a summary of findings from the analysis.

The EPA disagrees that the proposed architectural coatings rule favors larger businesses to the detriment of smaller businesses. As the EIA indicates, estimated market effects from the architectural coatings rule are relatively slight. Approximately one-tenth of 1 percent of industry product volume is projected to withdraw from the market, and price effects in each market are expected to range from no effect to an increase of less than 2 cents per liter, which is still less than a 1-percent increase of the baseline price. The expected level of product withdrawal discussed above is based upon the aggregate of numerous varieties of products across 13 different market segments, so it is unlikely to eliminate an entire product category. Compared to other industries, the coatings industry is highly competitive due to the numerous manufacturers in the industry. Therefore, a relatively small product withdrawal effect on a very competitive industry suggests that significant degradation of market competition is unlikely.

The EPA also does not agree that a uniform national regulation would have negative implications for competition with respect to antitrust laws and would reduce market efficiency. In fact, the existence of nonuniform standards across States tends to favor one sector of the industry (local manufacturers) at the expense of another (non-local manufacturers), thereby limiting competition in those

markets. Some public commenters supported a national rule because they believe nonuniform standards harmed small manufacturers. As one commenter testified at the public hearing, small companies lack the resources to deal with a large number of different State regulations and labeling requirements and a regulatory climate that changes frequently. Another commenter pointed out that these conditions hinder small companies' ability to plan for new products, production, expansion, and marketing. All of these activities require the investment of time and money that can easily be expended if a county, district, or State implements a new VOC rule. The EPA considers a national VOC rule an important element in promoting consistency among architectural coating standards. The EPA also recognizes that a national rule for architectural coatings sets minimum national requirements, and that some States may need to adopt requirements for architectural coatings more stringent than those in this rule.

The EPA also received comments on the definition of a small entity that the EPA adopted for the regulatory flexibility analysis. One commenter supported the definition, while several others argued that the definition was too restrictive and suggested it be revised to include more firms (i.e., firms with architectural coatings sales between \$20 and \$30 million, or firms with less than \$50

million, or firms with less than \$100 million in sales). Because the coating manufacturing industry is not labor-intensive, a revenue value cut-off rather than a number-of-employees cut-off appeared to be a better measure to reflect the ability of a manufacturer to devote time as well as research and development resources to meet regulatory requirements. Based on input from stakeholders during the regulatory negotiation process (II-E-62), the EPA has defined small manufacturers as those having less than \$10 million in annual architectural coating sales and less than \$50 million in total annual sales from all products. Using this definition, between 70 and 85 percent of the architectural coatings industry would be classified as small. This definition does not change the requirements of the Regulatory Flexibility Act (RFA); it is used for analysis purposes only. If the definition were changed to include more firms at sales levels greater than \$10 million, the impacts on this sector of the industry may appear lower on average because the impacts on a company with sales around \$30 million may offset impacts on a \$5 million company. In such a case, the EPA may have been less likely to consider special provisions such as the exceedance fee or tonnage exemption. The EPA believes the current definition is representative of the industry and has not revised it for the final rule.



O. Cost-effectiveness

In the preamble to the proposed rule (61 FR 32735, June 25, 1996), the EPA solicited comments on alternative approaches to the cost-effectiveness calculation for the proposed rule. As distinct from EPA's consideration of cost in the BAC analysis, the discussion in this section did not form a basis for EPA's selection of BAC for the categories of products regulated by the rule.

Cost-effectiveness is a measure used to compare alternative strategies for reducing pollutant emissions, or to provide a comparison of a new strategy with historical strategies. The EPA's established method of calculating the cost-effectiveness of a rule with nationwide applicability is to divide the total cost of the rule by total emission reductions. At proposal, the EPA requested comment on two alternative ways of calculating cost-effectiveness for the architectural coatings rule: (1) cost-effectiveness considering total emission reductions in ozone nonattainment areas only, and (2) cost-effectiveness considering emission reductions in ozone nonattainment areas during the ozone season only.

Before discussing the comments received on this cost-effectiveness methodology issue, it is important to note that the provisions and rationale for today's rule are not dependent upon the disposition of this issue. The EPA

nonetheless took comment on the issue because this rule was among the first to be proposed under section 183(e) of the Act and presented an opportunity to receive public input early in the program.

In regard to cost-effectiveness methodologies, the EPA received comments from three commenters, all of whom favored the EPA's traditional measure of cost-effectiveness. One commenter stated that it is important to characterize cost-effectiveness in a consistent manner so that various control strategies can be compared on equal footing and that calculating cost-effectiveness based solely on nonattainment areas unfairly biases the calculation by ignoring the benefit of reducing the transport of ozone and its precursors. Another commenter advised the EPA to maintain the traditional measure since it is commonly used and will continue to provide meaningful comparisons. The latter commenter opposed more narrow measures of cost-effectiveness, such as exclusively measuring the effect on ozone concentrations or VOC reductions in ozone nonattainment areas only. The third commenter considered cost-effectiveness based on VOC reductions solely in ozone nonattainment areas to be impractical, because the manufacturer has little control over where coatings will be used. Such control would necessitate additional

recordkeeping to track intended and actual locations of product use.

After considering these comments, the EPA does not plan to adopt these alternative approaches to calculating cost-effectiveness for rules with nationwide control requirements, for reasons that are presented below.

One issue raised by the comments is whether the EPA's traditional measure creates a bias against strategies that apply in a limited geographic area (e.g., in nonattainment areas) relative to nationwide strategies, or against seasonal strategies relative to year-round strategies. This issue would arise if the EPA used cost-effectiveness figures to compare the desirability of these dissimilar types of strategies. In fact, the EPA did not use cost-effectiveness estimates in this way in developing the architectural coatings rule. In the case of the architectural coatings rule, the EPA considered applying restrictions to architectural coatings only in nonattainment areas (either by rule or through a CTG). The EPA believes that such geographically targeted restrictions for these nationally distributed architectural coatings would pose substantial implementation difficulties for government and would impose substantial compliance burdens on a large number of regulated entities. The EPA also believes that such geographically targeted restrictions for these nationally

distributed products would be less effective at reducing emissions than a national rule (see section V.A of this preamble for further discussion). Because the EPA determined that a strategy applicable only to nonattainment areas would be less desirable than a national rule for architectural coatings, the EPA did not see a need to invest resources to pursue that strategy and calculate its cost-effectiveness.

The EPA considered whether use of one of the alternative cost-effectiveness methodologies would enable the EPA to make valid cost-effectiveness comparisons between nationwide and targeted geographic strategies, or year-round and seasonal strategies, for reducing ozone pollution. The EPA has not chosen these alternatives because it has the following concerns about the two alternative approaches:

First, VOC emission reductions have benefits other than reducing ozone levels in nonattainment areas. As a result, the EPA believes the cost-effectiveness calculation for a nationwide, year-round rule should not exclude VOC emission reductions in attainment areas or outside the ozone season. The EPA recognizes that a primary objective of section 183(e) of the Act is to reduce VOC emissions in ozone nonattainment areas. However, as previously explained, in the development of the architectural coatings rule, the EPA believes that the best policy alternative is

to implement a nationwide rule. Therefore, emission reductions from this rule will not only be realized in ozone nonattainment areas, but also in all other parts of the country in which architectural coatings are distributed and consumed.

In general, the benefits of VOC reductions in ozone attainment areas include reductions in emissions of VOC air toxics, reductions in the contribution from VOC emissions to the formation of fine particulate matter, and reductions in damage to agricultural crops, forests, and ecosystems from ozone exposure. Emission reductions in attainment areas help to maintain clean air as the economy grows and new pollution sources come into existence. Also, ozone health benefits can result from reductions in attainment areas, although the most certain health effects from ozone exposure below the NAAQS appear to be both transient and reversible. The closure letter from the Clean Air Science Advisory Committee (CASAC) for the recent review of the ozone NAAQS states that there is no apparent threshold for biological responses to ozone exposure [See U.S. EPA; Review of NAAQS for Ozone, Assessment of Scientific and Technical Information, Office of Air Quality Planning and Standards Staff Paper; document number: EPA-452\R-96-007].

Second, under either alternative approach, emission reductions in ozone attainment areas would not be included

in the calculation. This appears to imply that emissions reductions in attainment areas do not contribute to cleaner air in nonattainment areas. VOC sources in regions adjacent to nonattainment areas may contribute to ozone levels in nonattainment areas. As a result, a cost-effectiveness comparison based on the alternative approaches sometimes could create a bias against a nationwide rule relative to a strategy that applies in nonattainment areas only.

In light of the transport issue, it has been suggested that the EPA apply a weighting factor to account for differences in the extent to which emissions inside and outside nonattainment areas contribute to ozone formation in nonattainment areas. The EPA is concerned that in order to calculate cost-effectiveness using this concept, the EPA would have to conduct extensive and costly air quality modeling to estimate ozone reductions resulting from each candidate control strategy and that this would require extensive data on the location of emissions. Such detailed analysis is appropriate for some policy decisions, but not for all. As a result, the EPA is skeptical that this weighting approach would represent a generally useful analytical tool for decision making.

The EPA, of course, agrees that differences in the location and timing of emission reductions are a significant

consideration in choosing among alternative strategies. The extent of ozone reductions and other benefits resulting from VOC emission reductions varies, partly based on location and season. In considering nationwide vs. geographically targeted controls, and year-round vs. seasonal controls, the EPA considers available information on the effectiveness of those strategies in reducing ozone--as well as other health and environmental considerations, economic considerations, and other relevant factors--in making a holistic assessment of which strategy is most desirable from an overall public policy standpoint.

There are instances where the EPA does provide an estimate of cost-effectiveness of a control strategy during the ozone season, i.e., generally, when a control strategy is feasible to apply on a seasonal basis, or when limits are set on a seasonal basis. Although these figures are useful for comparing different seasonal strategies, the EPA does not plan to use cost-effectiveness figures for inappropriate (i.e., apple to orange) comparisons between seasonal and year-round strategies for the 183(e) program for the reasons presented above. In regard to today's rule, the EPA notes that the nature of architectural coatings emissions does not allow for control strategies that reduce emissions only during the ozone season to be an objective for consideration. One reason is that the shelf life and

consumption rate of architectural coatings varies greatly and one cannot predict that a certain percentage of a product made with a specified formulation will be consumed and, thus, result in VOC emitted during the ozone season. Because the Agency has concluded that an ozone season-based approach is not a viable control strategy for architectural coatings, the EPA did not believe it was appropriate to develop a seasonal-based approach to measuring cost-effectiveness for the architectural coatings rule.

P. Future Study and Future Limits

The EPA has determined to regulate architectural coatings based upon the study and Report to Congress required by Section 183(e) of the Act. For the reasons discussed in the separate final listing decision published today in the Federal Register, the 183(e) study established that the EPA should regulate architectural coatings to reduce VOC emissions, as directed by the Act. The final rule's VOC content limits, in combination with the exceedance fee and tonnage exemption provisions, reflect the EPA's determination of BAC for architectural coatings, based on the EPA's analysis of currently available information on coating technologies. However, the EPA recognizes that manufacturers are continuously developing new and innovative products in response to competitive markets as well as to regulatory pressures. The EPA has developed the final



requirements for architectural coatings largely from data for coatings manufactured in the early 1990s, and the EPA believes, therefore, that VOC reductions beyond those reflected in table 1 of the rule may be technologically and economically feasible in the future. In the preamble for the proposed rule, the EPA discussed the idea of a joint study with the industry to investigate the cost and performance characteristics of coatings with VOC contents lower than the promulgated limits and to assess the environmental and economic impacts of requiring lower VOC contents. The EPA requested comments concerning such an EPA/industry study and any performance, cost, or reactivity considerations that should be included in such a study. The EPA also requested information on coating categories where recent progress in low-VOC resin systems has resulted in the introduction of new low-VOC coatings into the market since 1990. In addition, the EPA requested cost information and comments on the ability of coatings with VOC content limits lower than the proposed levels to meet the performance needs within the coating category.

A total of 27 commenters responded to the EPA's request for comments, representing a wide variety of positions. The comments generally addressed three issues: (1) the usefulness of the proposed joint study, (2) how the EPA should conduct the study, and (3) the merit of promulgating

additional or more stringent standards for architectural coatings.

Based on these comments, the EPA has concluded that an additional study for this category may be warranted to determine the feasibility of additional reductions in VOC limits. However, contrary to some commenters' assertions, the EPA would not necessarily impose future requirements as a result of any study. A study could indicate that further regulation of architectural coatings is unwarranted.

The EPA appreciates the willingness expressed by many commenters to participate in a joint study. The effectiveness of any study is highly dependent on a spirit of openness and cooperation between all affected parties. In order to determine the potential for useful results from a second study, the EPA will solicit input from industry representatives and other interested parties on the timing, scope, and content of the study. Decisions concerning the additional study will be made on the basis of this input.

Some commenters questioned the EPA's authority to engage in any future regulatory initiatives involving architectural coatings. These commenters did not identify any statutory language in section 183(e) of the Act that supports this position. The EPA believes that section 183(e) explicitly authorizes the EPA to use "any system or systems of regulation" that are appropriate to

achieve the goals of the statute, and the EPA's explicit directive is to require BAC. Nothing in section 183(e) explicitly or implicitly prohibits the EPA from updating or amending the regulations in the future, if appropriate. The EPA has striven to promulgate the appropriate regulations given the current state of technology. Future innovation in technology may justify reexamination of the regulations, and the EPA wishes to encourage such innovation in order to achieve the objectives of section 183(e).

Q. Administrative Provisions

Since proposal, the EPA has added several new sections to the regulation to aid in implementing the rule. These administrative provisions do not add any new compliance requirements to the rule, and pose no additional impacts on regulated entities. The EPA has added the new requirements to provide consistent procedures for implementation. The provisions that were added are as follows: (1) Addresses of the EPA Regional Offices, (2) State Authority, (3) Circumvention, (4) Incorporations by Reference, and (5) Availability of Information and Confidentiality.

The section on addresses specifies the mailing addresses of the EPA Regional Offices for the submittal of required reports. The States and territories served by the various Regional Offices are listed in this section as well. The appropriate Regional Office for purposes of reporting

would be that Regional Office which serves the State or territory in which the regulated entity's corporate headquarters are physically located.

The section on State authority clarifies that this rule in no way prevents States from adopting more stringent regulations. The section on circumvention prohibits regulated entities from doing anything to conceal what would otherwise be noncompliance, by such means as falsifying records of product formulation or VOC content. The section on incorporations by reference includes as part of the rule the ASTM methods and technical standards of the American Architectural Manufacturer's Association that are cited by reference. Finally, the section on availability of information and confidentiality clarifies the type of information that is available to the public, and provides for the confidential handling of any proprietary information that may be submitted to the EPA in response to the rule.

## VI. Administrative Requirements

### A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in

the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [see 42 U.S.C. 7607(d)(7)(A)].

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1750.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, United States Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260-2740. The information requirements are not effective until OMB approves them.

The information collections required under this rule are needed as part of the overall compliance and enforcement program. The information will be used by the EPA to identify the regulated entities subject to the rule and to ensure their compliance with the rule. The recordkeeping, reporting, and labeling requirements are mandatory and are being established under sections 114 and 183(e) of the Act. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the

EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B-Confidentiality of Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976, as amended by: 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979).

The total annual reporting and recordkeeping burden for this information collection averaged over the first 3 years is estimated to be 65,851 hours per year. The total annualized recordkeeping and reporting costs for this rule are estimated to be \$2,452,683. This is the estimated burden for the estimated 500 respondents (i.e., architectural coating manufacturers).

The average estimated burden, per respondent, is 132 hours per year. The total reporting and recordkeeping burden for an individual respondent will vary depending on the compliance option chosen. Respondents meeting the VOC content limits will have the lowest reporting and recordkeeping burden. Manufacturers and importers that choose the option of calculating an "adjusted-VOC content" (for recycled coatings), paying an exceedance fee, or exercising the tonnage exemption will have a higher reporting and recordkeeping burden. The final rule requires an initial one-time notification from each respondent. Respondents whose coating products have a VOC content that is less than or equal to the VOC content limits have no

periodic reporting requirements. Respondents using the recycled coatings provision must keep records and submit annual reports. Respondents taking advantage of the tonnage exemption must file annual reports and must maintain records for the coatings being claimed under the exemption. Respondents paying an exceedance fee must submit reports on an annual basis. These manufacturers must also keep records for each coating product on which fees are paid.

Burden in this context means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to: (1) review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, United States Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested within [insert date 30 days after date of publication in the FEDERAL REGISTER]. Include the ICR number in any correspondence.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity,



competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the EPA has determined that this final rule is a "significant regulatory action" under criterion (4) above, based on the novel use of economic incentives (an exceedance fee) for this industry. Therefore, the EPA submitted this action to OMB for review. Any changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled Enhancing the Intergovernmental Partnership. This Executive Order requires agencies to assess the effects of regulations that are not required by statute and that create mandates upon

State, local, or tribal governments. In compliance with Executive Order 12875, the EPA has involved State and local governments in the development of this rule. State and local air pollution control agencies participated in the regulatory negotiation and have also submitted comments after proposal for consideration in developing the final rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The RFA of 1980 (5 U.S.C. 601, et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis, including consideration of regulatory options for reducing any significant impacts, unless the EPA determines that a rule will not have a significant economic impact on a substantial number of small entities.

The EPA prepared analyses to support both the proposed and final rules to meet the requirements of the RFA as modified by the SBREFA. The EPA undertook these analyses because of the large presence of small entities in the architectural coatings industry and because the EIA

indicated that there could be a significant economic impact on a substantial number of small entities if mitigating regulatory options were not adopted for the rule. After evaluating public comment on the proposed mitigating options, the EPA made a number of changes to the proposed rule to further mitigate the rule's small business impacts. As a result, the EPA believes that it is highly unlikely that the rule will have a significant economic impact on a substantial number of small entities. However, in light of the EPA's inability to quantify the effect of all of the mitigating provisions included in the rule, the EPA has elected to conduct a regulatory flexibility analysis and to prepare a SBREFA compliance guide to eliminate any potential dispute about whether the EPA has fulfilled SBREFA requirements. The EPA expects to complete the compliance guide by the end of 1998.

The analysis supporting the proposed rule was published in the report titled, "Economic Impact and Regulatory Flexibility Analysis of Air Pollution Regulations: Architectural and Industrial Maintenance Coatings," (June 1996). For the purpose of the analysis, the EPA considered small manufacturers to be firms with less than \$10 million of total gross annual revenues from the sale of architectural coatings and less than \$50 million in total gross annual revenues from all products. The EPA proposed

this definition of small entity for the reasons stated in the September 3, 1996 Federal Register (61 FR 46411) and has determined that this definition is appropriate. The Small Business Administration has concurred on this definition of small entity.

Using this definition, one-third of the 116 firms for which the EPA has survey data are classified as small. There are approximately 500 total manufacturers. Since the EPA does not have data to indicate the total number of small firms producing architectural coatings, the EPA assumes as a conservative estimate that the unsurveyed manufacturer population (i.e., the remaining 384 manufacturers) are all small, and consequently, all product volume not captured by the 116 manufacturers surveyed is manufactured by small firms. Using this assumption, the EPA conducted an analysis that assumed 84 percent of the estimated 500 architectural coating producers, i.e., 420 firms, are small entities.

Based on an analysis of the survey data at proposal, the EPA recognized the fact that small businesses tend to produce products in specialized or niche markets and also to produce products that tend to have higher than industry-average VOC contents within less specialized markets. In addition, small manufacturers' revenue and production levels are generally lower than the average for all manufacturers. One benefit of their smaller production levels is that small

manufacturers have a greater ability to adjust quickly to changes in markets. However, because the costs to reformulate are fixed for all levels of production, and small manufacturers have lower than average production levels, the costs for small manufacturers to reformulate represents a greater share of baseline costs and revenues. Without any rule provisions designed to mitigate impacts on small manufacturers' niche markets and smaller production levels, there is some indication that a disproportionate impact on small businesses could occur.

At proposal, the EPA included categories and limits to preserve niche product markets. In addition, to evaluate whether further steps were still needed to accommodate niche market coatings, the EPA requested that commenters identify any additional specialty coatings which would not comply with VOC content requirements. The EPA also requested comment on whether to include an "exceedance fee" which would allow companies the option of paying a fee, based on the amount that VOC content limits are exceeded, instead of achieving the limit. In addition, the EPA requested comment on the concept of a low volume cut-off, under which a coating may be exempt from regulation. The analysis prepared to support the final rule builds upon the analysis performed for the proposal and takes into consideration compliance options the EPA has added to the final rule.

Due to confidentiality considerations associated with the survey data provided by the industry trade association, the EPA could not derive compliance cost as a percentage of revenues for each small manufacturer included in the survey population. This is because the aggregated information provided to the EPA did not have sales and VOC content information linked to any particular small manufacturer. The data compiled all responses for small manufacturers without any indication of firm name. Therefore, individual product VOC content information is available, and total revenues of all firms responding to the survey as a small business is available, but no method exists for the EPA to connect each response to an individual firm for a calculation of actual firm-level cost-to-revenues ratios. Absent exact information for each firm, the EPA performed the analysis based upon an average small business, using reasonable assumptions based upon the available data. In lieu of firm-level measures, the analysis presents an average cost/revenue ratio for a typical small firm based on the survey data.

The analysis has several other limitations. Although the EPA included specialty niche market categories in the rule, based on the data available to the EPA, there was no way to account for the extent to which these additional categories mitigated impacts. For example, the EPA's

proposal included the following categories: "impacted immersion coatings", "flow coatings", and "nonferrous ornamental metal lacquer and surface coatings" which likely would have been reported in the survey under the broader "industrial maintenance" category. The analysis would likely overestimate impacts on some of the markets represented in the survey due to the inability to account for the subset niche markets within these surveyed categories for which the EPA created additional categories. Additionally, the EPA's analysis assumes that manufacturers bear the full cost of each reformulation. Since the VOC content limits in the rule reflect available resin technologies, the EPA expects that the cost to comply for those manufacturers needing to reformulate their higher VOC content coatings will be partially reduced through the assistance of resin manufacturers/suppliers. Upon request, most resin suppliers are willing to share information and sample low VOC content formulations with interested paint manufacturers, both large and small. For this reason, the analysis may overestimate the impact of reformulation costs. A further consideration is that the EPA's analysis is based on 1990 data, and there has been much technological progress in the past 8 years in addition to new State regulations with requirements similar to the EPA's rule (e.g., Massachusetts, Kentucky, and Oregon).

In response to public comments, the EPA added 7 coating categories and increased the VOC content limits for 4 coating categories, as well as the exceedance fee provision and a provision which would enable each manufacturer to claim as exempt a specified amount of VOC (known as the tonnage exemption). The EPA also added an extended period of compliance after promulgation to allow additional time for reformulations. The EPA expects these provisions to mitigate rule impacts on small businesses' low production volumes and to allow for the preservation of several niche markets. However, based on the limited data available to the EPA, only the mitigating impact of exceedance fees can be quantified.

The EPA first conducted the analysis without incorporating the quantifiable mitigating impacts of compliance options available in the final rule. The analysis shows that when reformulation is the only option for compliance, the cost/revenue ratio is 2.5 percent on average. When the alternative compliance options of the exceedance fee or product withdrawal are considered, the ratio decreases to 2 percent. This ratio would likely decrease further if the cost effects of the additional niche product categories, use of the tonnage exemption, and reduction in cost to reformulate due to resin supplier assistance could be specifically quantified.



The analysis in the EIA suggests that a large percentage of small firms will opt for one of the alternative compliance strategies in lieu of reformulation. For some of the products listed in the survey as produced by a small manufacturer, the EPA anticipates that it would be less costly for a firm to utilize the exemption provision, pay the exceedance fee, or withdraw a product (and forego profits on the product) rather than to reformulate. Although the lack of data at the firm level does not allow for an approximation of the use of the exemption, the analysis suggests that 35.5 percent of the small business products in the survey that exceed the standards will be maintained at current VOC content levels through the payment of the exceedance fee, 4 percent will be removed from the market, and 60.5 percent of the products will undergo reformulation. The availability of the alternative compliance strategies reduces the cost to small manufacturers by 23 percent (or more if the effect of the tonnage exemption and the portion of reformulation cost borne by resin manufacturers/suppliers could be quantified).

Based on the findings of the analysis and consideration of additional provisions which are designed to mitigate impacts, the EPA believes that it is highly unlikely that the rule will have a significant economic impact on a substantial number of small entities. The EPA believes that

these measures adopted in the final rule will significantly mitigate the economic impacts on small businesses that might otherwise have occurred.

F. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Based upon the analysis presented in the EIA, the EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, in any one year. Therefore, the requirements of sections 202

and 205 of the Unfunded Mandates Reform Act do not apply to this action. The EPA has likewise determined that the final rule does not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. §801, et seq., as added by the SBREFA 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 this rule and other required information to the United States Senate, the United States 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 rule is not a "major rule" as defined by 5 U.S.C. §804(2). This rule will be effective [insert date of publication in the FEDERAL REGISTER].

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104-113, § 12(d) (15 U.S.C. 272 note), directs the 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

In the case of this rule, the proposed rule required the use of Method 24 to determine VOC content of coatings. This method is a compilation of existing voluntary consensus methods to determine the volatile matter content, water content, and density of coatings. In response to the proposed rule, the EPA received no comments pertaining to the use of additional voluntary consensus standards rather than the proposed Method 24, either during or after the comment period. In preparing the final rule, however, the EPA has investigated to determine the availability of any other existing voluntary consensus standards for use in lieu of Method 24.

The EPA has searched for additional voluntary consensus standards that might be applicable. The search included use of the National Standards System Network, an automated service provided by the American National Standards Institute for identifying available national and international standards. The EPA has not identified any voluntary consensus standards that are not presently included in Method 24 and that would result in equivalent results. The EPA did identify another voluntary consensus method (ASTM Method D 3960) that provides instructions for calculating VOC content in many different units. Because this other method does not specify which units to use, it may result in inconsistent applications of the procedure and could make the standard more difficult to enforce. Consequently, the EPA determined that this other voluntary consensus method would be impractical to adopt. In addition, the EPA believes that it is appropriate to use Method 24 both because it has proven reliable and practical to achieve the goals of reducing VOC and because the EPA wishes to foster uniformity in testing nationwide. Accordingly, the EPA has determined that Method 24 constitutes the appropriate method for determining product compliance under this final rule.

I. Executive Order 13045

Executive Order 13045 applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the

EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Information available to the Administrator does not indicate that this action will have any effect on Indian tribal governments.

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control,  
Architectural coatings, Consumer and commercial products,  
Incorporation by reference, Ozone, Volatile organic  
compound.

Dated: August 14, 1998.

Carol M. Browner,  
Administrator.