

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA-HQ-OAR-2006-0672; FRL-_____]

RIN 2006-NA2060

**Consumer and Commercial Products, Group II: Control
Techniques Guidelines in Lieu of Regulations for Flexible
Packaging Printing Materials, Lithographic Printing
Materials, Letterpress Printing Materials, Industrial
Cleaning Solvents, and Flat Wood Paneling Coatings**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination and availability of final control techniques guidelines.

SUMMARY: Pursuant to section 183(e)(3)(C) of the Clean Air Act (CAA), EPA has determined that control technique guideline (CTG) documents will be substantially as effective as national regulations in reducing emissions of volatile organic compounds (VOC) in ozone national ambient air quality standard (NAAQS) nonattainment areas from the following Group II product categories: lithographic printing materials, letterpress printing materials, flexible packaging printing materials, flat wood paneling coatings, and industrial cleaning solvents. EPA is taking final action to list these product categories pursuant to CAA section 183(e). Based on this determination, EPA is issuing final CTGs in lieu of national regulations for the control

of VOC emissions from each of these product categories. These CTGs provide guidance to the States concerning EPA's recommendations for reasonably available control technology (RACT)-level controls for the product categories.

DATES: This final action is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established the following dockets for these actions: Consumer and Commercial Products, Group II - Determination to Issue Control Techniques Guidelines in Lieu of Regulations, Docket No. EPA-HQ-OAR-2006-0672; Consumer and Commercial Products - Lithographic Printing Materials and Letterpress Printing Materials, Docket No. EPA-HQ-OAR-2006-0536; Consumer and Commercial Products - Flexible Packaging Printing Materials, Docket No. EPA-HQ-OAR-2006-0537; Consumer and Commercial Products - Industrial Cleaning Solvents, Docket No. EPA-HQ-OAR-2006-0535; and Consumer and Commercial Products - Flat Wood Paneling Coatings, Docket No. EPA-HQ-OAR-2006-0538.

All documents in the dockets are listed on the <http://www.regulations.gov> indexes. Although listed in the indexes, some information is not publicly available (e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute.) Certain other materials, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at Docket No. EPA-HQ-OAR-2006-0672, Docket No. EPA-HQ-OAR-2006-0535, Docket No. EPA-HQ-OAR-2006-0536, Docket No. EPA-HQ-OAR-2006-0537, and/or Docket No. EPA-HQ-OAR-2006-0538, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The public reading room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

NOTE: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's Federal Register notice at 71 FR 38147 (July 5, 2006) or the EPA website at www.epa.gov/epahome/dockets.htm for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: For information concerning the CAA section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5460, fax number (919) 541-3470, e-mail address: moore.bruce@epa.gov. For further information on technical issues concerning the final determination and final CTG for lithographic printing materials and letterpress printing materials, contact: Mr. Dave Salman, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Research Triangle Park, North Carolina 27711, telephone number: (919) 541-0859, e-mail address: salman.dave@epa.gov. For further information on technical issues concerning the final determination and final CTG for flexible packaging printing materials, contact: Ms. Paula Hirtz, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-2618, e-mail address: hirtz.paula@epa.gov. For further information on technical issues concerning the final determination and final CTG for flat wood paneling coatings,

contact: Mr. Lynn Dail, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541-2363, e-mail address: dail.lynn@epa.gov.

For further information on technical issues concerning the final determination and final CTG for industrial cleaning solvents, contact: Dr. Mohamed Serageldin, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541-2379, e-mail address: serageldin.mohamed@epa.gov.

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

- I. General Information
 - A. Entities Potentially Affected by This Action
 - B. Worldwide Web
 - C. Judicial Review
- II. Background Information and Final Determination
 - A. The Ozone Problem
 - B. Statutory and Regulatory Background
 - C. Significance of Control Technique Guidelines
- III. Summary of Changes to the Final CTGs
 - A. Lithographic Printing Materials and Letterpress Printing Materials
 - B. Flexible Packaging Printing Materials
 - C. Industrial Cleaning Solvents
- IV. Responses to Significant Comments on EPA's Decision to Take Final Action to List Product Categories under CAA Section 183(e)
- V. Responses to Significant Comments on EPA's

Determination

VI. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order: 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. General InformationA. Entities Potentially Affected by this Action

The categories and entities potentially affected by this action include:

Category	NAICS code ¹	Examples of affected entities
Flexible packaging printing materials	322221, 326112, 322223, 3265111, 322224, 322225, 332999	Facilities that use rotogravure or flexographic processes to print materials such as bags, pouches, labels, liners, and wraps using paper, plastic film, aluminum foil, metalized or coated paper or film, or any combination of these materials.
Lithographic printing materials	323110	Facilities engaged in lithographic printing on individual sheets or continuous rolls of substrate material.
Letterpress	323119	Facilities engaged in

printing materials		letterpress printing on individual sheets or continuous rolls of substrate material.
Industrial cleaning solvents	various ²	Facilities using industrial cleaning solvents in cleaning activities associated with manufacturing, repair, and service operations across a wide variety of industry sectors.
Flat wood paneling coatings	321211, 321212, 321219, 321999	Flat wood paneling coating facilities that apply protective, decorative, or functional material to any interior, exterior, or hardboard panel product.

¹ North American Industry Classification System

² Industrial cleaning solvents are used in various manufacturing, repair, and service operations that span many industry sectors. A detailed list of affected industries and their respective NAICS codes are presented in the docket for the final CTG for industrial cleaning solvents.

B. World Wide Web (WWW)

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of EPA's final determination is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]. Under section 307(d)(7)(B) of the CAA, only an objection to the final determination that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

II. **Background Information and Final Determination**

A. The Ozone Problem

Ground-level ozone, a major component of smog, is formed in the atmosphere by reactions of VOC and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to sufficient concentrations of ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. Acute respiratory symptoms can be induced by short-term exposures (observed in some studies at concentrations as low as 0.12 parts per million (ppm)). Other studies have shown effects on exercise performance

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. Other health effects seen in studies of ambient exposures include increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and pulmonary inflammation. Groups at increased risk of experiencing elevated exposures include active children, outdoor workers, and others who regularly engage in outdoor activities. Those with preexisting respiratory disease may be more susceptible to ozone exposure. Currently available information also suggests that long-term exposures to sufficiently elevated ozone levels may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

B. Statutory and Regulatory Background

Under CAA section 183(e), EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the NAAQS for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directs EPA to list for regulation those categories of products that account for at least 80 percent

of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (i.e., ozone nonattainment areas), and to divide the list of categories to be regulated into four groups. EPA published the initial list in the Federal Register on March 23, 1995 (60 FR 15264). In that notice, EPA stated that it may amend the list of products for regulation, and the groups of product categories, in order to achieve an effective regulatory program in accordance with the Agency's discretion under CAA section 183(e). EPA has revised the list several times. See 70 FR 69759, November, 17, 2005; 64 FR 13422, March 18, 1999. Most recently, in May 2006, EPA revised the list to add one product category, portable fuel containers, and to remove one product category, petroleum dry cleaning solvents. See 71 FR 28320, May 16, 2006. As a result of these revisions, Group II of the list now comprises the five product categories that are the subject of this action.¹

Any regulations issued under section CAA 183(e) must be based on "best available controls" (BAC). CAA section 183(e) (1) (A) defines BAC as "the degree of emissions reduction that the Administrator determines, on the basis of

¹ Pursuant to the Court's order in Sierra Club v. EPA, 1:01-CV-01597-PLF (D.C. Cir., March 31, 2006), EPA must take final action on the product categories in Group II by September 30, 2006.

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.” CAA section 183(e) also provides EPA with authority to use any system or systems of regulation that EPA determines is the most appropriate for the product category. Under these provisions, EPA has previously issued “national” regulations for architectural and industrial maintenance coatings, autobody refinishing coatings and consumer products.²

CAA section 183(e) (3) (C) further provides that EPA may issue a CTG in lieu of a national regulation for a product category where the EPA determines that the CTG will be “substantially as effective as regulations” in reducing emissions of VOC in ozone nonattainment areas. The statute does not specify how EPA is to make this determination, but does provide a fundamental distinction between national regulations and CTGs. Specifically, for national regulations, CAA section 183(e) defines regulated entities as:

² See 63 FR 48792 (September 11, 1998).

(i) . . . manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or (ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

Thus, under CAA section 183(e), a regulation for consumer or commercial products is limited to the measures applicable to manufacturers, processors, distributors, or importers of the solvents, materials, or products supplied to the consumer or industry. CAA section 183(e) does not authorize EPA to issue regulations that would directly regulate end-users of these products. By contrast, CTG are guidance documents that recommend RACT measures that States can adopt and apply to the end users of products. This dichotomy (i.e., that EPA cannot directly regulate end-users under CAA section 183(e), but can address end-users through a CTG) created by Congress is relevant to EPA's evaluation of the relative merits of a national regulation versus a CTG.

C. Significance of Control Technique Guidelines

CAA section 172(c)(1) provides that State implementation plans (SIP) for nonattainment areas must include "reasonably available control measures", including RACT, for sources of emissions. Section 182(b)(2) provides that States must revise their ozone SIP to include RACT for VOC sources covered by any CTG document issued after November 15, 1990, and prior to the date of attainment. Those ozone nonattainment areas that are subject to CAA section 172(c)(1) and submit an attainment demonstration seeking more than 5 years from the date of designation to attain must also meet the requirements of CAA section 182(b)(2) and revise their ozone SIP in response to any CTG issued after November 15, 1990, and prior to the date of attainment. Other ozone nonattainment areas subject to CAA section 172(c)(1) may take action in response to this guidance, as necessary to attain the NAAQS. For the specific requirements, see 40 CFR 51.912.

EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility" (44 FR 53761, September 17, 1979). In subsequent Federal Register notices, EPA has addressed how States can meet the RACT requirements of the CAA. Significantly, RACT for a particular industry is determined

on a case-by-case basis, considering issues of technological and economic feasibility.

EPA provides States with guidance concerning what types of controls could constitute RACT for a given source category through issuance of a CTG. The recommendations in the CTG are based on available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt State regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either event, States must submit their RACT rules to EPA for review and approval as part of the SIP process. EPA will evaluate the rules and determine, through notice and comment rulemaking in the SIP process, whether they meet the RACT requirements of the CAA and EPA's regulations. To the extent a State adopts any of the recommendations in a CTG into its State RACT rules, interested parties can raise questions and objections about the substance of the guidance and the appropriateness of the application of the guidance to a particular situation during the development of the State rules and EPA's SIP approval process.

We encourage States in developing their RACT rules to consider carefully the facts and circumstances of the particular sources in their States because, as noted above, RACT is determined on a case-by-case basis, considering

issues of technological and economic feasibility. For example, a State may decide not to require increased control efficiency at facilities that are already well controlled, if the additional emission reductions would not be cost-effective. States may also want to consider reactivity-based approaches, as appropriate, in developing their RACT regulations.³ Finally, if States consider requiring more stringent VOC content limits than those recommended in the final CTGs, States may also wish to consider averaging, as appropriate. In general, the RACT requirement is applied on a short-term basis up to 24 hours.⁴ However, EPA guidance permits averaging times longer than 24 hours under certain conditions.⁵ EPA's "Economic Incentive Policy"⁶ provides guidance on use of long-term averages with regard to RACT and generally provides for averaging times of no greater

³ "Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans," 70 FR 54046 (September 13, 2005).

⁴ See, e.g., 52 FR 45108 (November 24, 1987), col. 2, "Compliance Periods." "VOC rules should describe explicitly the compliance timeframe associated with each emission limit (e.g., instantaneous or daily). However, where rules are silent on compliance time, EPA will interpret it as instantaneous."

⁵ Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, January 20, 1984, "Averaging Times for Compliance with VOC Emission Limits-SIP Revision Policy."

⁶ "Improving Air Quality with Economic Incentive Programs, January 2001," available at <http://www.epa.gov/region07/programs/artd/air/policy/search.htm>.

than 30 days. Thus, if the appropriate conditions are present, States may consider the use of averaging in conjunction with more stringent limits. Because of the nature of averaging, however, we would expect that any State RACT Rules that allow for averaging also include appropriate recordkeeping and reporting requirements.

By this action, we are issuing four final CTGs that cover the five product categories in Group II of the CAA section 183(e) list. We have consolidated lithographic printing materials and letterpress printing materials into one CTG document. These CTGs are guidance to the States and provide recommendations only. A State can develop its own strategy for what constitutes RACT for each of the Group II product categories, and EPA will review that strategy in the context of the SIP process and determine whether it meets the RACT requirements of the CAA and its implementing regulations.

Finally, CAA section 182(b)(2) provides that a CTG issued after 1990 specify the date by which a State must submit a SIP revision in response to the CTG. In the final CTGs at issue here, EPA provides that States should submit their SIP revisions within 1 year of the date that the CTGs are finalized.

III. Summary of Changes to the Final CTGs

Based on information received during the public comment period, we made several substantive changes to the lithographic printing materials and letterpress printing materials CTG and the flexible packaging printing materials CTG. In addition, based on public comment, we incorporated an option into the industrial cleaning solvents CTG on which we had requested comments at proposal. Although we made some minor clarifying changes to the flat wood paneling coatings CTG, no changes were made regarding EPA's recommendations concerning the nature or applicability of control measures for that product category. Significant changes are described below.

A. Lithographic Printing Materials and Letterpress Printing Materials

Several significant changes were made to the draft CTG for offset lithographic printing and letterpress printing as a result of comments received during the comment period. Each of the changes is discussed briefly below.

(1) Cleaning

The scope of the recommendations for cleaning has been clarified to include blanket wash, roller wash, plate cleaner, metering roller cleaner, impression cylinder cleaner, rubber rejuvenator and other cleaners used for cleaning a press, press parts or to remove dried ink from areas around a press; and to exclude cleaners used to clean

electronic components of a press, cleaning in pre-press (e.g., platemaking) or post-press (e.g., binding) operations, use of janitorial supplies (e.g., detergents or floor cleaners) to clean areas around a press, and cleaning done in parts washers or cold cleaners. We also agree with commenters that in order to carry out all of these cleaning tasks, some cleaning materials with VOC composite greater than 10 millimeters (mm) mercury (Hg) at 20° C may be required. Many of the cleaning tasks that cannot be carried out with low VOC composite vapor pressure cleaning materials can be carried out with reduced VOC content cleaning materials. We have, therefore, added a recommendation for cleaning materials which contain 70 weight percent or less VOC. A small number of cleaning tasks cannot be carried out with low VOC composite vapor pressure cleaning materials or reduced VOC content cleaning materials. We have, therefore, added a recommendation to exclude 110 gallons per year of cleaning materials which meet neither the low VOC composite vapor pressure recommendation nor the lower VOC content recommendation.

(2) Fountain Solution

The recommendations for fountain solution have been clarified as applying to the on-press (as-applied) fountain solution, not to the fountain solution concentrate. We also agree with commenters that for certain small presses, the

recommended VOC (alcohol or alcohol substitute) content levels would yield a small emission reduction relative to the cost of achieving that reduction (e.g., changing and maintaining rollers). We have, therefore, modified our recommendations for fountain solution to exclude sheet-fed presses with sheet size 11x17 inches or smaller and to exclude any press with total fountain solution reservoir of less than 1 gallon.

(3) Heatset dryers

The draft CTG recommended controlling emissions from heatset dryers at facilities with potential to emit from all dryers combined, prior to control, of at least 25 tons per year (tpy) of VOC from heatset inks and carryover of VOC from other materials. We agree with commenters that this applicability threshold is more appropriately expressed on a per press basis. We also believe that it is simpler and sufficient to make this applicability determination based solely on the emissions from the heatset inks. In the final CTG, we therefore recommend controlling emissions from each heatset dryer with potential to emit, prior to controls, of at least 25 tpy of VOC (petroleum ink oils) from heatset inks. We recommend providing printers with the option of using an enforceable limitation on potential emissions to keep an individual press below this 25 tpy potential to emit threshold. Add-on controls for heatset presses with

potential to emit below 25 tpy may be too costly for the emission reduction that would be achieved. We also recommend excluding heatset presses used for book printing and excluding heatset presses with maximum web width of 22 inches or less. Add-on controls for such heatset presses may be too costly for the emission reduction that would be achieved.

The draft CTG recommended 90 percent control device efficiency for control devices first installed before March 14, 1995, and 95 percent control device efficiency for control devices first installed on or after March 14, 1995. We agree with commenters that control devices first installed on or after March 14, 1995 may, for a variety of reasons, not be achieving 95 percent control device efficiency, and that a retroactive 95 percent control device efficiency recommendation for the control devices is not appropriate. In the final CTG, we therefore recommend that 95 percent control device efficiency for brand new control devices installed after the effective date of a new or revised State or local regulation adopted after publication of the CTG.

(4) Applicability

The draft CTG recommended general applicability levels of 6.8 kilograms per day (kg/day) (15 pounds per day (lb/day)) of VOC before consideration of controls for offset

lithographic printing and 6.8 kg/day (15 lb/day) of VOC before consideration of controls for letterpress printing. These recommended general applicability levels were relevant to the draft CTG recommendations for controlling emissions from cleaning and fountain solution.

The draft CTG recommended higher applicability levels for controlling emissions from heatset dryers. The final CTG recommendations for controlling emissions from heatset dryers, including recommended applicability criteria, are presented in the discussion of heatset dryers above.

The final CTG recommends these same general applicability levels for cleaning and fountain solution with the addition of several exclusions. The reasons for the recommended exclusions are presented in the discussions of cleaning and fountain solution above.

The final CTG recommendations for cleaning apply to offset lithographic printing facilities emitting 15 lb/day or more before consideration of controls from all covered offset lithographic printing and cleaning activities at the facility with an exclusion provided for use of 110 gallons per year of offset lithographic cleaning materials which meet neither the low VOC composite vapor pressure recommendation nor the lower VOC content recommendation. The final CTG recommendations for cleaning also apply to letterpress printing facilities emitting 15 lb/day or more

before consideration of controls from all covered letterpress printing and cleaning activities with an exclusion provided for use of 110 gallons per year of letterpress cleaning materials which meet neither the low VOC composite vapor pressure recommendation nor the lower VOC content recommendation. Further, the final CTG recommendations for fountain solution apply to offset lithographic printing facilities emitting 15 lb/day or more before consideration of controls from all covered offset lithographic printing and cleaning activities at the facility with an exclusion provided for sheet-fed presses with sheet size 11x17 inches or smaller and an exclusion provided for any press with total fountain solution reservoir of less than 1 gallon. State and local agencies have discretion to consider these applicability levels, equivalent applicability levels expressed on a monthly basis (e.g., 450 pounds per month (lb/month)), equivalent applicability levels expressed on a 12-month rolling basis (e.g., 3 tons per 12-month rolling period), or other applicability levels for their regulations.

B. Flexible Packaging Printing Materials

Four significant changes were made to the draft flexible packaging printing CTG as a result of comments received during the comment period. These include: (1) removing the recommended VOC composite vapor pressure limit

for cleaning solvents; (2) changing the recommended applicability threshold for controlling VOC emissions from inks, coatings and adhesives from 25 tpy per facility to 25 tpy per press; (3) providing additional overall control efficiency recommendations ranging from 65 to 80 percent and changing the installation date of the add-on air pollution control device (APCD) from the March 1995 date to the effective date of state rule; and (4) changing the recommended low VOC compliance option limits from 0.5 kg VOC/kg solids applied and 0.10 kg VOC/kg material applied to 0.8 kg VOC/kg solids applied and 0.16 kg VOC/kg material applied. Each of the changes is discussed briefly below.

(1) VOC composite vapor pressure of cleaning solvents

We removed the recommended VOC composite vapor pressure limit for cleaning solvents. This change was made based on additional information provided by the commenters related to the vapor pressure of cleaning solvents typically used in the industry that have vapor pressures above the suggested 25 mm Hg (20°C) limit and for which material substitution is not feasible. Within the industry, there are controlled cleaning operations where cleaning is automated, enclosed, and vented to an APCD, and vapor pressure limits are not necessary. Use of recycled solvents for cleaning is also typical in the industry; solvent mixture components and the corresponding vapor pressure vary frequently. EPA supports

industry's use of recycled solvents for cleaning and supports minimal usage of effective solvents and accordingly, for this additional reason, we have removed the vapor pressure limit. The recommendations for cleaning operations in the final CTG include the work practice recommendations from the draft CTG.

(2) Applicability threshold for controlling emissions from inks, coatings, and adhesives

We changed the recommended 25 tpy per facility VOC applicability threshold for controlling ink, coating and adhesive emissions to 25 tpy per press. As suggested by several commenters, EPA has reevaluated this threshold. Rather than basing the annual threshold on all printing operations at the facility, the recommended applicability threshold has been revised to apply to each press. We believe an applicability threshold for control of these emissions on a press-by-press basis is the most appropriate way to assess the reasonableness of controlling emissions from inks, coatings and adhesives.

We have not changed the recommended general applicability level of 6.8 kg/day (15 lb/day) of VOC before consideration of controls for flexible packaging printing. This recommended general applicability level is relevant only to the recommendations for controlling emissions from cleaning.

The final CTG work practice recommendations for cleaning apply to flexible packaging printing facilities emitting 15 lb/day or more actual emissions before consideration of controls from all covered flexible packaging printing and cleaning activities at the facility. Since work practices are carried out on a facility-wide basis, we believe it is most appropriate for the applicability of work practices to be determined on a facility-wide basis. State and local agencies have discretion to consider this recommended applicability level, an equivalent applicability level expressed on a monthly basis (e.g., 450 lb/month), an equivalent applicability level expressed on a 12-month rolling basis (e.g., 3 tons per 12-month rolling period), or other applicability levels for the cleaning requirements in their regulations.

(3) Control efficiency recommendations

We provided additional overall control efficiency recommendations ranging from 65 to 80 percent and changed the installation date of the APCD from the March 1995 date to the effective date of an applicable State rule. The recommendations in the draft CTG included control levels based on the installation date of the press. These control levels included overall control levels that reflected increased capture efficiencies and increased control device efficiencies. The commenters' concern that new presses may

be installed at a facility but may be vented to existing control devices is valid, and EPA agrees that additional consideration be made regarding the installation date of the APCD. EPA has added recommendations for control levels related to the add-on APCD installation date that are based on new control devices installed after the effective date of the State RACT rule.

(4) Low VOC compliance option

We changed the recommended low VOC compliance option limits of 0.5 kg VOC/kg solids applied to 0.8 kg VOC/kg solids applied and 0.10 kg VOC/kg material applied to 0.16 kg VOC/kg material applied. EPA reanalyzed these limits based on comments and revised the recommended limits to more readily reflect the overall control efficiency recommendations in the final CTG.

C. Industrial Cleaning Solvents

In the draft industrial cleaning solvents CTG, we had solicited comments on possible use of a composite vapor pressure limit (for example, 8 mmHg at 20° C) either as:

- (1) a replacement for 50 g/l VOC content limit entirely; or
- (2) an alternative limit that may be used in lieu of the 50 g/l VOC content limit for specific operations as determined by the State or local agency. We included in the final CTG the vapor pressure limit of 8 mm Hg at 20° C for cleaning solvents as an additional control option for the States to

consider. This change was made based on comments received indicating that a number of States have used low vapor pressure cleaning solvents as a means of controlling cleaning emissions when aqueous solvents could not be used. Also, this vapor pressure limit would allow the use of higher VOC content solvents for specific cleaning applications.

IV. Responses to Significant Comments on EPA's Decision to Take Final Action to List Product Categories under CAA Section 183(e)

A few commenters on the proposal questioned whether certain product categories are properly on the CAA section 183(e) list of products for regulation. As EPA has stated in the past, the list of products for regulation is not itself a final Agency action and it is, therefore, appropriate to comment upon the inclusion of the product category on the list at the time EPA takes action to address the product, whether through issuance of a national regulation or through issuance of a CTG. However, the issues raised by the commenters concerned whether EPA had erred by including the product on the list of product categories for regulation because of incorrect estimates of the total amount of VOC emissions from the product category at the time of the initial listing exercise or subsequently.

As explained in more detail in the Response to Comments document for this action, EPA believes that these products are appropriate for regulation under CAA section 183(e). The Agency based the listing on reasonable estimates of the total VOC emissions as of the base year. The total VOC emissions were only one factor that EPA considered in the initial listing decision. Even if the Agency overestimated the total VOC emissions from this category, that would not alter the Agency's decision that this category is suitable for regulation, and would only affect whether EPA has identified sufficient categories to list those that emitted at least 80 percent of the VOC emissions as required by the statute. EPA believes that the overarching purpose of CAA section 183(e) is to achieve reasonable VOC emission reductions from consumer and commercial products because of their aggregate impact on ozone nonattainment. Thus, the statute contemplates that EPA will regulate many categories of products, including some that might be relatively small components of the emissions inventory.

V. Responses to Significant Comments on EPA's Determination

With the exception of one commenter, every other commenter that addressed EPA's proposed CAA section 183(e) (3) (C) determination that CTGs will be substantially as effective as national regulations in reducing emissions

of VOC in ozone nonattainment areas from the five Group II consumer and commercial product categories agreed with the determination. Two commenters stated that the CTG approach provides flexibility to local air quality districts and enables them to more readily address local air quality issues. One commenter supported EPA's decision to issue CTGs rather than promulgating national rules, and agreed that the CTG approach will result in additional VOC emission reductions over the rule approach. Another commenter further stated that the proposed CTGs utilize cost effective approaches to VOC control that will help States achieve the ambient ozone standards. EPA appreciates the commenters' support of its CAA section 183(e)(3)(C) determination.

One commenter disagreed with the proposed CTG approach, stating, "a national rule designed to limit potential VOC emissions from industrial solvents is preferred, given that such a rule would not impose direct regulatory burdens on end users such as dealerships."

The commenter explained that automobile dealerships use solvents for: (1) parts cleaners, in conjunction with mechanical service and repair; (2) surface preparation, in conjunction with autobody repair; (3) spray gun cleaning, in conjunction with autobody refinishing; and (4) various spray applications using refillable or non-refillable containers, in conjunction with mechanical service and repair and

autobody operations.

In further support for its position that EPA should pursue a rulemaking for industrial solvents, the commenter stated that "EPA presently is considering automobile refinish air toxics controls that may impact the use of surface preparation and gun cleaning solvents," used by automobile and truck dealerships. The commenter suggested that before moving forward with a CTG that covers, among other things, controls VOC emissions from autobody cleaning solvents, EPA should review potential controls under consideration in the air toxics proceeding. The commenter further stated that if EPA regulates automobile refinish cleaning solvents, a national rule should be used to regulate the VOC content of the cleaning solvents themselves, thereby avoiding any unnecessary and burdensome regulation of end users.

In summary, the commenter urged EPA to issue a national rule that: (1) only regulates parts cleaner solvent formulations with greater than 5 percent VOC, by weight; and (2) sets a composite vapor pressure limit of 8 mm Hg for such solvent formulations.

We disagree with the commenter. The commenter's primary argument supporting a national rule regulating the VOC content of cleaning solvents is that a national rule "would not impose direct regulatory burdens on end users

such as dealerships.” The commenter is correct that a regulation issued pursuant to section 183(e) would not regulate end-users because such entities do not qualify as “regulated entities” within the meaning of section 183(e) (1) (C). The burden on the end-user is, however, not the test for evaluating the reasonableness of EPA’s proposed section 183(e) (3) (C) determination that CTGs will be substantially as effective as regulations in reducing VOC emissions in ozone nonattainment areas from the five Group II product categories. Were that the case, EPA could never pursue the CTG approach, which is expressly contemplated by section 183(e) (3) (C), because CTGs apply to end-users.

As explained in the proposed rule, the statute does not specify how EPA is to make the determination under section 183(e) (3) (C) that a CTG will be substantially as effective as a national rule in reducing VOC emissions in ozone nonattainment areas. EPA, therefore, has discretion in identifying factors relevant to making this determination. EPA identified in the proposed rule several factors that it considered in making its proposed section 183(e) (3) (C) determination. The commenter neither references these factors, nor challenges EPA’s application of the factors to the Group II product categories. Although the commenter suggests requirements for a national rule, it does not address the arguments presented in the proposal, explaining

why regulation of solvent manufacturers is not effective in reducing VOC emissions. The commenter's blanket assertion that it would prefer an approach that does not result in a "direct regulatory burden on end-users" does not constitute a basis for changing EPA's determination regarding the five Group II product categories.

Furthermore, the commenter's concern that the CTG results in a "direct regulatory burden" mischaracterizes the nature of a CTG. A CTG is a guidance document that provides recommendations to State and local pollution control agencies to consider in determining RACT for a particular product category. As explained in the proposal and in the draft CTGs, State and local pollution control agencies are not required to follow EPA's RACT recommendations contained in the CTG. Instead, they are free to implement other technically-sound approaches that are consistent with the CAA and its implementing regulations. Thus, it is not the CTG itself that has the direct regulatory burden, but rather it is the regulations that States may develop in response to the CTG that might impose any such burden. To the extent a State adopts any of the recommendations in the CTG, interested parties can always raise questions and objections about the substance of the CTG during the development of the State rules or during EPA's SIP approval process, both of which provide for public notice and comment. The

commenter's assertion that the CTG imposes direct regulatory burdens is thus misplaced.

Finally, that EPA, in the future, intends to develop an air toxics rule for automobile refinishing provides no basis for changing our determination that CTGs for the Group II product categories will be substantially as effective at reducing VOC emissions in ozone nonattainment areas as national regulations. EPA assumes that the commenter is referring to the area source automobile refinishing category that is currently listed pursuant to section 112(c)(3), but it is not entirely clear from the comment the precise "air toxics" rule to which the commenter is referring. EPA has not yet proposed a rule under CAA section 112 for automobile refinishing. A future rule addressing hazardous air pollutants does not provide a basis for reversing the proposed section 183(e)(3)(C) determination. Moreover, to the extent an interested facility is concerned about a potentially duplicative regulatory requirement, it can raise that issue during the State RACT rulemaking process, as States have discretion to make their own determination as to what constitutes RACT in their particular nonattainment area based on the facts and circumstances of the category. EPA will review that determination in the SIP approval process.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (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.

OMB has determined that this action is not a "significant regulatory action" under the terms of Executive

Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not contain any information collection requirements and therefore is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no regulatory requirements. In this notice, EPA is taking final action to list the five Group II consumer and commercial product categories for purposes of CAA section 183(e). This listing action alone does not impose any regulatory requirements. In this notice, EPA is also taking final action on its determination that a CTG will be substantially as effective as a national regulation in achieving VOC emission reductions in ozone nonattainment areas from the five Group II product categories. In the determination, EPA has concluded that it is not appropriate to issue Federal regulations under CAA section 183(e) to regulate VOC emissions from the five Group II product categories. Instead, EPA has concluded that it is appropriate to issue guidance in the form of CTGs that provide recommendations to States concerning potential methods to achieve needed VOC emission reductions in ozone nonattainment areas from the Group II product categories. This determination does not impose any regulatory requirements.

In addition to today's final action, EPA is issuing CTGs for the five Group II product categories. The CTGs are guidance and thus the requirements of the RFA do not apply.

In any event, EPA does not directly regulate any small entities through the issuance of a CTG. EPA issues CTGs to provide States guidance in developing their own regulations for obtaining VOC emission reductions from affected sources within certain nonattainment areas. EPA's issuance of a CTG does trigger an obligation on the part of the States to issue State regulations, but States are not obligated to issue regulations that adopt the recommendations in the Agency's CTG. States may follow the recommendations provided in the CTG or they can adopt other technically-sound approaches that are consistent with the CAA and EPA's implementing regulations. The ultimate determination of whether a State regulation meets the RACT requirements of the CAA is determined through notice and comment rulemaking in the Agency's action on each State's SIP. Thus, States retain discretion in determining to what degree to follow the RACT recommendations contained in the CTGs.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a

cost-benefit analysis, for proposed and final rules with a “Federal mandate” that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

A “Federal mandate” is defined under section 421(6), 2 U.S.C. 658(6), to include a “Federal intergovernmental mandate” and a “Federal private sector mandate.” A “Federal intergovernmental mandate,” in turn, is defined to include a regulation that “would impose an enforceable duty upon State, local, or tribal governments,” section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is “a condition of Federal assistance,” section 421(5)(A)(i)(I). A “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector,” with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

EPA has determined that the listing action and the final determination that a CTG will be substantially as effective as a regulation for the Group II product categories do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. Thus, this final action is not subject to the requirements of sections 202 and 205 of the UMRA. In

addition, we have determined that the listing action and the final determination contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this action is not subject to the requirements of section 203 of UMRA.

As noted above, the CTGs for the Group II product categories are guidance and thus the requirements of the UMRA do not apply. The CTGs do not impose any legally binding requirements on any entity and consequently do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.”

The listing action, the final determination that CTGs are substantially as effective as regulations for these product categories, and the final CTGs do not have federalism implications. They do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. Thus, Executive Order 13132 does not apply to the final determination and final CTGs.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

The listing action, the final determination that CTGs will be substantially as effective as regulations to achieve VOC emission reductions from these product categories, and

the final CTGs do not have tribal implications as defined by Executive Order 13175. They do not have a substantial direct effect on one or more Indian tribes, in that the listing action, the final determination, and the final CTGs impose no regulatory burdens on tribes. Furthermore, the listing action, the final determination, and the final CTGs do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian tribes. The CAA and the Tribal Authority Rule establish the relationship of the Federal government and tribes in implementing the CAA. Because listing action, the final determination, and the final CTGs do not have tribal implications, Executive Order 13175 does not apply.

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

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5-501 of the Executive Order directs the Agency to 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 Agency.

The listing action, the final determination, and the final CTGs are not subject to Executive Order 13045 because they are not economically significant regulatory actions as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulations. The listing action, the final determination, and the final CTGs are not subject to Executive Order 13045 because they do not include regulatory requirements based on health or safety risks.

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

This final action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy; Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. VOC are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The listing action, the final determination that CTGs will be substantially as effective as regulations to achieve VOC emission reductions, and the final CTGs do not involve technical standards and therefore the NTTAA does not apply.

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

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," provides for Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations, including tribes.

EPA believes that the listing action, the final determination, and the final CTGs should not raise any environmental justice issues. The purpose of section 183(e) is to obtain VOC emission reductions to assist in the attainment of the ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the ozone NAAQS. The level is designed to be protective of the public with an adequate margin of safety. EPA's listing of the products, determination that CTGs are substantially as effective as regulations, and final CTGs, are actions intended to help States achieve the NAAQS in the most appropriate fashion.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this notice and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the notice in the Federal Register. A major rule cannot take effect until 60

*Consumer and Commercial Products: Control Techniques
Guidelines in Lieu of Regulations for Lithographic Printing
Materials, Letterpress Printing Materials, Flexible
Packaging Printing Materials, Flat Wood Paneling Coatings,
and Industrial Cleaning Solvents*
Page 46 of 47

days after it is published in the Federal Register. The final action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Confidential business information, Labeling, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated:

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 59 of the Code of Federal Regulations is amended as follows:

PART 59-[AMENDED]

1. The authority citation for 40 CFR part 59 continues to read as follows:

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

2. Subpart A is added to read as follows:

Subpart A - General

§59.1 Final determinations under section 183(e)(3)(C) of the Clean Air Act

This section identifies the consumer and commercial product categories for which EPA has determined that control technique guidelines (CTGs) will be substantially as effective as regulations in reducing volatile organic compound (VOC) emissions in ozone nonattainment areas:

- (a) Wood furniture coatings;
- (b) Aerospace coatings;
- (c) Shipbuilding and repair coatings;
- (d) Lithographic printing materials;
- (e) Letterpress printing materials;
- (f) Flexible packaging printing materials;
- (g) Flat wood paneling coatings; and
- (h) Industrial cleaning solvents.