

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA-HQ-OAR-2007-0454; FRL-_____]

RIN 2060-A014

**Consumer and Commercial Products: Control Techniques Guidelines
in Lieu of Regulations for Paper, Film, and Foil Coatings; Metal
Furniture Coatings; and Large Appliance Coatings**

AGENCY: Environmental Protection Agency (EPA).

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

SUMMARY: Pursuant to section 183(e)(3)(C) of the Clean Air Act,
EPA has determined that control techniques guidelines will be
substantially as effective as national regulations in reducing
emissions of volatile organic compounds in ozone national
ambient air quality standard nonattainment areas from the
following three Group III product categories: paper, film, and
foil coatings; metal furniture coatings; and large appliance
coatings. Based on this determination, EPA is issuing control
techniques guidelines in lieu of national regulations for these
product categories. These control techniques guidelines will
provide guidance to the States concerning EPA's recommendations
for reasonably available control technology-level controls for
these product categories. EPA further takes final action to
list the three Group III consumer and commercial product

categories addressed in this notice pursuant to Clean Air Act section 183(e).

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 III - Determination to Issue Control Techniques Guidelines in Lieu of Regulations, Docket No. EPA-HQ-OAR-2007-0454; Consumer and Commercial Products - Paper, Film, and Foil Coatings, Docket No. EPA-HQ-OAR-2007-0336; Consumer and Commercial Products - Metal Furniture Coatings, Docket No. EPA-HQ-OAR-2007-0334; and Consumer and Commercial Products - Large Appliance Coatings, Docket No. EPA-HQ-OAR-2007-0329. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: 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 determination and control techniques guidelines (CTG) for paper, film, and foil coatings, contact: Ms. Kim Teal, 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) 541-5580, e-mail address: teal.kim@epa.gov. For further information on technical issues concerning the determination and CTG for metal furniture coatings, contact: Ms. Martha Smith, 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) 541-2421, e-mail address: smith.martha@epa.gov.

For further information on technical issues concerning the determination and CTG for large appliance 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.

SUPPLEMENTARY INFORMATION:

Entities Potentially Affected by this Action. The entities potentially affected by this action include industrial facilities that use the respective consumer and commercial products covered in this action as follows:

Category	NAICS code ^a	Examples of affected entities
Paper, film, and foil coatings	322221, 322222, 322223, 322224, 322225, 322226, 322229, 325992, 326111, 326112, 326113, 32613, 32791, 339944	Facilities that apply coatings to packaging paper, paper bags, laminated aluminum foil, coated paperboard, photographic film, abrasives, carbon paper, and other coated paper, film and foil products
Metal furniture coatings	337124, 337214, 337127, 337215, 337127, 332951, 332116, 332612, 337215, 335121, 335122, 339111, 339114, 337127, 81142	Facilities that apply coatings to metal furniture components or products

Large appliance coatings	335221, 335222, 335224, 335228, 333312, 333319	Facilities that apply coatings to household and commercial cooking equipment, refrigerators, laundry equipment, laundry drycleaning and pressing equipment
Federal Government	Not affected.
State/local/tribal government	State, local and tribal regulatory agencies

^a North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the FOR FURTHER INFORMATION CONTACT section of this notice.

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.

Judicial Review

Under section 307(b)(1) of the CAA, judicial review of EPA's listing and 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 DATE OF 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.

Organization of this Document

The information presented in this document is organized as follows:

- I. Background Information
 - A. The Ozone Problem
 - B. Statutory and Regulatory Background
 - C. Significance of CTGs
- II. Summary of Changes to the Final CTGs
 - A. Paper, Film, and Foil Coatings
 - B. Metal Furniture Coatings and Large Appliance Coatings
- III. Responses to Significant Comments on EPA's Determination
- IV. Statutory and Executive Order (EO) 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. Background Information

A. The Ozone Problem

Ground-level ozone, a major component of smog, is formed in the atmosphere by reactions of volatile organic compounds (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 ground-level ozone is associated with a wide variety of human health effects, as well as agricultural crop loss, and damage to forests and ecosystems. Controlled human exposure studies show that acute health effects are induced by short-term (1 to 2 hour) exposures (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 (6 to 8 hour) exposures to ozone (observed at concentrations as low as 0.08 ppm and possibly lower), typically while individuals are engaged in moderate exertion. Transient effects from acute exposures include pulmonary inflammation, respiratory symptoms, effects on exercise performance, and

increased airway responsiveness. Epidemiological studies have shown associations between ambient ozone levels and increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits. Groups at increased risk of experiencing elevated exposures include active children, outdoor workers, and others who regularly engage in outdoor activities. Those most susceptible to the effects of ozone include those with preexisting respiratory disease, children, and older adults. The literature suggests the possibility 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).

B. Statutory and Regulatory Background

Under section 183(e) of the CAA, 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 National Ambient Air Quality Standards (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 III of the list comprises five product categories: portable fuel containers; aerosol spray paints; paper, film, and foil coatings; metal furniture coatings; and large appliance coatings. 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 III by September 30, 2007. The portable fuel containers and aerosol spray paints categories are addressed in separate rulemaking actions.² The remaining three categories in Group III are the subject of this action. On July 10, 2007, EPA published its

proposed determination that a CTG is substantially as effective as a regulation for each of these three categories and announced availability of draft CTGs for paper, film, and foil coatings; metal furniture coating; and large appliance coatings. See 72 FR 37582.

Any regulations issued under CAA section 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 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 autobody refinishing coatings, consumer products, architectural coatings, and portable fuel containers.³

²EPA promulgated a national regulation that addresses VOC emissions from portable fuel containers on February 26, 2007 (72 FR 8428). National VOC emission standards for aerosol coatings currently are under development.

³ See 63 FR 48806, 48819, and 48848 (September 11, 1998); and 72 FR 8428 (February 26, 2007).

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 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:

(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 measures applicable to manufacturers, processors, distributors, or importers of consumer and commercial products supplied to the consumer or industry. CAA section 183(e) does not authorize EPA to issue national regulations that would directly regulate end-users of these products. By contrast, CTGs are guidance documents that recommend reasonably available control technology (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 CTGs

CAA section 172(c)(1) provides that state implementation plans (SIPs) for nonattainment areas must include "reasonably available control measures (RACM)," including RACT, for sources of emissions. CAA section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. States subject only to the RACT requirements in CAA section 172(c)(1) may take action in response to this guidance, as necessary to achieve attainment of the national primary ambient air quality standards.

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 notices, EPA has addressed how States can meet the RACT requirements of the Act. 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 of a specific source. 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 approval process, whether the submitted rules 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 90 percent 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.⁴ Finally, if States consider requiring more stringent VOC content limits than those recommended in the 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.⁵ However, EPA guidance addresses averaging times longer than 24 hours under certain conditions.⁶ The EPA's "Economic Incentive Policy"⁷ provides guidance on use of long-term averages with regard to RACT and generally provides for averaging times of no greater than 30 days. Thus, if the appropriate conditions are present, States may wish to 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

⁴"Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans," 70 FR 54046 (September 13, 2005).

⁵See, e.g., 52 FR at 45108, col. 2, "Compliance Periods" (November 24, 1987). "VOC rules should describe explicitly the compliance timeframe associated with each emission limit (e.g., instantaneous or daily). However, where the rules are silent on compliance time, EPA will interpret it as instantaneous."

⁶Memorandum 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."

reporting requirements.

By this action, we are issuing final CTGs that cover three product categories in Group III of the CAA section 183(e) list. These CTGs are guidance to the States and provide recommendations only. A State can determine what constitutes RACT for these three product categories, and EPA will review the State's rules reflecting RACT in the context of the SIP process and determine whether those rules meet the RACT requirements of the Act 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 CTGs at issue here, EPA provides that States should submit their SIP revisions within 1 year of the date that the CTGs are finalized.

II. Summary of Changes to the Final CTGs

A. Paper, Film, and Foil Coatings

The final CTG has been revised to provide separate applicability recommendations for coating operations and cleaning operations. For coating operations, we have changed the applicability recommendation to apply to individual coating lines. Specifically, we recommend that the control measures recommended in the final CTG apply to any coating line with the

⁷"Improving Air Quality with Economic Incentive Programs, January 2001," available at <http://www.epa.gov/region07/programs/artd/air/policy/search.htm>.

potential to emit 25 tons or more per year (tpy) of VOC, before consideration of control. This applicability level for coating operations is the same applicability level that we recommended for coatings, inks and adhesives in the final CTG for flexible package printing and for heatset dryers in the final CTG for offset lithographic printing and letterpress printing.

We made this change in response to a comment that the cost of using add-on controls to control coating emissions from an individual coating line with potential to emit of 3 tpy would be unreasonable compared to the emission reduction that would be achieved and that it would be even more costly to control multiple coating lines with total potential to emit of 3 tpy. The commenter provided information on the cost of controlling an individual coating line with the potential to emit 3 tpy. The commenter also provided information on the cost of controlling an individual coating line with the potential to emit 25 tpy. We agree with the commenter that, for purposes of recommending an applicability threshold for add-on controls, it is more appropriate to examine the cost of add-on control for a single coating line than the cost of add-on control for all of the coating lines at a facility because the number of coating lines at a facility varies. Based on the information provided by the commenter and similar cost analyses we performed during the development of the CTG for flexible package printing and the CTG

for offset lithographic printing and letterpress printing, we conclude that add-on control for a coating line with the potential to emit 25 or more tpy will generally be cost effective and that add-on control for a coating line with the potential to emit below 25 tpy will generally be too costly for the emission reduction that would be achieved.

We continue to recommend that the final CTG work practice recommendations for cleaning apply to paper, film and foil coating facilities with actual emissions of 6.8 kg/day (15 lb/day) or more, before consideration of controls, from all covered paper, film and foil coating operations and related 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.

We expect the change to our applicability recommendation, as reflected in the final CTGs, to have little, if any, effect on VOC emission reductions from this category. Because the majority of emissions from paper, film, and foil coating come from coating lines emitting more than 25 tpy VOC before consideration of control, we anticipate that the change to our applicability recommendation in the final CTG will have a negligible impact on the VOC emission reduction estimates presented at proposal. Therefore, our determination that the

CTG will be substantially as effective as a national regulation for this category is not affected by this change.

We have also clarified in the final CTG that (1) daily within-line averaging, and (2) using low VOC coatings in conjunction with capture and control devices are viable options for achieving the recommended limits for coating operations in the final CTG. These types of compliance options were available in the 1977 CTG and are present in most existing RACT regulations.

B. Metal Furniture Coatings and Large Appliance Coatings

EPA has changed the low VOC content coatings recommendation in both the final metal furniture coatings CTG and the final large appliance coatings CTG. The draft CTGs for these product categories recommended an emissions limit of 0.275 kg VOC/l (2.3 lbs/gal) of coating, excluding water and exempt compounds, as applied. This recommendation was based on the California South Coast Air Quality Management District (South Coast) regulations limiting VOC emissions from general purpose baked coatings used in metal products coating operations. Based on the public comments, we determined that the recommendation in the draft CTG may inadvertently exclude certain coatings that are needed in the metal furniture and large appliance industries. Therefore, in the final CTGs, we have added to our recommendations other provisions of the South Coast regulation, which is the

regulation that formed the basis of our recommendations in the draft CTGs. The additional provisions of the South Coast regulation that we are now recommending include separate VOC limits for certain specialty coatings and exemptions for certain specialty coating operations. We believe that these other provisions of the South Coast regulation are necessary to accommodate the range of coatings that are needed in the metal furniture and large appliance industries.

Specifically, consistent with the South Coast regulation, the final CTGs for metal furniture coatings and large appliance coatings include separate recommended limits for baked coatings and air-dried coatings in the following categories: general, one component; general, multi-component; extreme high gloss; extreme performance; heat resistant; metallic; pretreatment; and solar absorbent. Also, consistent with the South Coast regulation, EPA recommends that the following types of specialty coatings and coating operations be exempt from VOC content limits: stencil coatings; safety-indicating coatings; solid-film lubricants; electric-insulating and thermal-conducting coatings; touch-up and repair coatings; and coating application utilizing hand-held aerosol cans. Further details of these recommendations can be found in the CTGs.

Because the majority of liquid coatings used in metal furniture and large appliance coating operations fall into the

"general, one component" coatings category, for which the recommended limits are unchanged from the limit recommended in the draft CTGs, we do not anticipate that the changes made in the final CTG will significantly alter the VOC emission reduction estimates presented at proposal. Therefore, the changes described above do not affect our determination that CTGs will be substantially as effective as national regulations for metal furniture coatings and large appliance coating.

We have also clarified in the final CTGs that (1) daily within-coating unit averaging, and (2) using low VOC coatings in conjunction with capture and control devices are viable options for achieving the recommended limits for coating operations in the final CTGs. These types of compliance options were available in the 1977 CTGs and are present in most existing RACT regulations.

III. Responses to Significant Comments on EPA's Determination

With the exception of one commenter, all other commenters 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 three product categories associated with this action agreed with the proposed determination.

In support of the proposed determination and use of CTGs, commenters remarked that the CTG approach would afford industry

flexibility to achieve VOC emission reductions while not compromising their ability to meet customer needs. We also received specific comments agreeing with EPA's position that State regulation of facilities that apply the coatings covered by the CTGs will result in a greater volume of emission reductions than would limiting the VOC content of the products through a national regulation. Finally, we received comments noting that the use of CTGs allows States greater flexibility to tailor regulatory requirements to their specific circumstances. The commenter stated that site-specific factors necessitate the need for flexible controls. Because there can be great variation in the operations of facilities and the environmental conditions in which they operate, State regulators should be granted some latitude to fashion control strategies to address the variables that are inherent to the formation of ground-level ozone in their States. The commenter concluded that the CTG approach affords this flexibility by allowing the use of a variety of mechanisms to achieve emission reductions, including the use of low-VOC coatings, add-on control devices, work practice standards, restrictive permitting, averaging of materials, and vapor pressure and reactivity measures.

The only adverse comment on the determination that we received asserted that CTGs will not be effective because they are voluntary measures. We disagree with the commenter. CAA

section 183(e)(3)(C) specifically authorizes EPA to issue CTGs, which are guidance, in lieu of national regulations if EPA determines that the CTGs will be as substantially as effective as regulations in reducing emissions of VOC in ozone nonattainment areas. In our proposal, we presented the rationale for our determination that a CTG is substantially as effective as a rule for each of the three categories here. The commenter raised no concerns or issues with that rationale. Furthermore, the commenter is incorrect in comparing CTGs to voluntary measures. As discussed in section I.B. of this notice, the CTGs contain recommendations. Certain States must revise their SIP to include RACT for paper film and foil coatings, metal furniture coatings, and large appliance coatings, as a result of EPA's issuance of the CTGs for these three categories. The CTGs provide States with guidance from EPA concerning the types of controls that could constitute RACT for these three product categories. Because the recommendations in the CTG are based on available data and information, they may not apply to a particular situation based upon the circumstances. States have the flexibility to either adopt EPA's recommendations in the CTGs as RACT or develop alternative approaches that are better suited for the sources within their States. In either event, States must submit their RACT rules to EPA for review and approval as part of the notice and comment

SIP process. Finally, Congress was well aware of the nature and structure of CTGs when it included CAA section 183(e)(3)(C) in the statute, affording EPA the opportunity to issue CTGs in lieu of national regulations. EPA acted consistently with the CAA in issuing the determination, and the commenter has not challenged the rationale that EPA provided in support of that determination.

IV. Statutory and Executive Order (EO) Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action," since it is deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). This action does not contain any information collection requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes

the time needed to review instructions; 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; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and 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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. EPA is taking final action to list the three Group III consumer and commercial product categories addressed in this notice for purposes of CAA section 183(e) of the Act. The listing action alone does not impose any regulatory requirements. EPA has also determined that, for each of the three product categories at issue, a CTG will be substantially as effective as a national regulation in achieving VOC emission reductions in ozone nonattainment areas. This final determination means that EPA has concluded that it is not appropriate to issue Federal regulations under CAA section 183(e) to regulate VOC emissions from these three 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 from these product categories. In addition to the final determination, EPA is also announcing availability of the final CTGs for these three product categories. These CTGs are guidance documents. EPA does not directly regulate any small entities through the issuance of a CTG. Instead, EPA issues CTG to provide States with guidance on developing appropriate regulations to obtain VOC emission reductions from the affected sources within certain nonattainment areas. EPA's issuance of a CTG does trigger an obligation on the part of certain States to issue State regulations, but States are not obligated to issue regulations identical to the Agency's CTG. States may follow the guidance in the CTG or deviate from it, and the ultimate determination of whether a State regulation meets the RACT requirements of the CAA would be determined through notice and comment rulemaking in the Agency's action on each State's State Implementation Plan. Thus, States retain discretion in determining to what degree to follow the CTGs.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal

agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and

timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because they impose no enforceable duty on any State, local, or tribal governments or the private sector. (Note: The term "enforceable duty" does not include duties and conditions in voluntary Federal contracts for goods and services.) Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this rule contains 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.

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 EO to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in 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 this rule. However, in the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA solicited comments from State and local officials. EPA received no adverse comments from State or local governments on these issues.

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.”

This final rule does not have Tribal implications, as specified in Executive Order 13175. They do not have a substantial direct effect on one or more Indian Tribes, in that the listing action and the final determination impose no regulatory burdens on tribes. Furthermore, the listing action and the final determination 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 (TAR) establish the relationship of the Federal government and Tribes in implementing the Clean Air Act. Thus, Executive Order 13175 does not apply to this rule.

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 EO 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, the Agency 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 Agency.

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. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. These actions impose no regulatory requirements and are therefore not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency does not use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the listing action and the final determination will not have disproportionately high and adverse

human health or environmental effects on minority or low-income populations because it increases the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including any minority or low-income populations. 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 and its determination that CTGs are substantially as effective as regulations 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 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 40 CFR Part 59

Air pollution control, Consumer and commercial products, Confidential business information, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated

Stephen L. Johnson
Administrator.

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

Part 59--[AMENDED]

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

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

Subpart A - General

2. Section 59.1 is revised to read as follows:

§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 techniques 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;
- (h) Industrial cleaning solvents;
- (i) Paper, film, and foil coatings;

- (j) Metal furniture coatings; and
- (k) Large appliance coatings.