

address above. By this document OSHA is extending the date for submitting the text of testimony and documentary evidence for those who intend to testify at the public hearings from April 14, 1995 to May 15, 1995, in order to provide additional time for the preparation of testimony for the hearings.

Any party who has not substantially complied with this requirement may be limited to a ten-minute presentation, and may be requested to return for questioning at a later time during the hearing.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

**Authority and Signature:** This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

Signed at Washington, DC., this 20th day of March, 1995.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

[AD-FRL-5177-3]

RIN 2060-AE24

### Consumer and Commercial Products: Schedule for Regulation

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of the consumer and commercial product category list and schedule for regulation.

**SUMMARY:** This notice publishes a list of consumer and commercial products identified for possible regulation and a schedule for the promulgation of such regulations. Under section 183(e) of the Clean Air Act (CAA), the EPA is required to conduct a study of volatile organic compounds (VOC) emissions from the use of consumer and commercial products to assess their potential to contribute to violations of the national ambient air quality standard (NAAQS) for ozone, and to establish criteria for products subject to regulation under that section. Upon completion of the study, the EPA is

required to submit a Report to Congress documenting the results of the study. Under section 183(e), the EPA is required to list and schedule for regulation those categories of products that the Administrator determines account for at least 80 percent of the total VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas classified as nonattainment for ozone. The consumer and commercial product list and schedule for regulation published in today's notice meets this obligation.

Although today's notice identifies consumer and commercial products that potentially could be regulated, this list and schedule may be amended as further information becomes available or is submitted to the EPA. The public will have an opportunity to comment on the listing and possible regulation of a particular product at the time the EPA proposes to regulate that particular product. Thus, today's action does not represent final agency action. Final agency action occurs upon publication of a final regulation for each product.

**ADDRESSES:** *Docket.* Docket No. A-94-65 contains information considered by the EPA in development of the consumer and commercial products study and subsequent schedule for regulation. In addition, the public may submit to the docket information or comments regarding today's notice and the Report to Congress. The docket is available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday at the EPA's Air and Radiation Docket and Information Center (6102), room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The telephone number is (202) 260-7548 and the facsimile number is (202) 260-4400. A reasonable fee may be charged for copying docket materials.

*Report to Congress.* The Consumer and Commercial Product Report to Congress is available from Docket No. A-94-65 at the above address or from the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) which is a network of electronic bulletin boards operated by the EPA. The service is free, except for the cost of the telephone call. The modem telephone number is (919) 541-5742. The modem provides up to a 14,400 baud connection. If more information on the TTN is needed, call the HELP line at (919) 541-5384.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the Report to Congress and schedule for regulation, contact Mr. Bruce Moore, Coatings and Consumer Products Group, Emission

Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5460.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This notice describes the EPA's initial efforts to respond to requirements of Section 183(e) of the CAA and to a court order. These efforts also respond to concerns expressed by representatives of State and local air pollution control agencies and by consumer products industry representatives. The persistence of the ground-level ozone problem has caused State and local air pollution agencies to seek emission reductions beyond those which have been obtained through regulation of the conventional mobile and stationary sources of emissions. As a result, several agencies are adopting rules to regulate various household consumer products. Representatives of the consumer products industry have expressed concern that differences in State and local requirements for consumer products could disrupt the national distribution network for consumer products and has urged the EPA to issue rules for consumer products to provide consistency across the country. States who need emission reductions are also supportive of an EPA rulemaking which will assist them in their efforts toward achievement of ozone attainment.

In response to these concerns, the EPA consulted with consumer product manufacturers and other interested parties to determine which products would be the most amenable to an expedited regulation that could achieve significant VOC emission reductions without significant effects on consumer satisfaction or price of the products. Industry representatives identified a group of consumer products that meet these criteria and proposed to EPA emission requirements for them that have already been achieved in California (see Section III.C). High quality products meeting these standards are being sold in California with no significant effect on consumer prices. The EPA plans to propose the rule covering these products as part of the first group of categories listed for regulation.

The relevant statutory provision is contained in Section 183(e) of the CAA. Through this provision, Congress required the EPA to conduct a study of emissions of VOC into the ambient air from consumer and commercial products. The term "consumer and

commercial products" is defined to mean:

\* \* \* any substance, product (including paints, coatings, and solvents), or article (including any containers or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds \* \* \*

The statutory definition of consumer and commercial products includes a much broader array of products than those usually considered to be consumer products (e.g., personal care products, household cleaning products, or household pesticides). The statutory definition of consumer and commercial products encompasses all VOC-emitting products used in the home, by businesses, by institutions, and in a wide range of industrial manufacturing operations.

The stated objectives of the study are (1) to determine the potential of VOC emissions into the ambient air from consumer and commercial products to contribute to ozone levels which violate the NAAQS for ozone; and (2) to establish criteria for regulating consumer and commercial products.

Upon completion of the study, the EPA is required to submit a Report to Congress that documents the results of the study. The study and Report to Congress required under Section 183(e) are described in section II of this notice.

In establishing criteria for regulating products, the Administrator is directed to consider the following: the uses, benefits, and commercial demand of products; the health or safety functions served by such products; whether products emit highly reactive VOC into the ambient air; the cost-effectiveness of controls; and the availability of alternatives which are of comparable costs, considering health, safety, and environmental impacts. The development and application of criteria, and the resultant ranking of products based on these and other considerations, are described in sections III.B and III.C of this notice.

Upon completion of the study and submission of the Report to Congress, the EPA is required to list those categories of products that are determined, based on the study, to account for at least 80 percent of the total VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone. The EPA is required to divide the list into four groups establishing priority for regulation. Every 2 years following publication of the list, the EPA is required to regulate one group until all four groups are regulated. The consumer

and commercial product list and schedule for regulation is presented in section III.C of this notice.

As noted earlier, the EPA is presenting this list and schedule at this time as required by the CAA and court order. However, the EPA may amend the schedule and the products listed in particular groups as further information becomes available. For example, as one of the considerations specifically noted by Congress in section 183(e)(2)(B)(iv), cost-effectiveness of control is an important factor, and one for which the EPA had relatively limited information. In moving forward to develop specific regulations, the EPA will evaluate new information on cost-effectiveness as well as the other criteria and may, in the process, reassess the product listing and schedule.

## II. Study and Report to Congress

### A. Intent and Structure

The primary intent of the study and Report to Congress is to meet the objectives of section 183(e) of the CAA which requires EPA to inform members of Congress, and other interested parties, of relevant issues surrounding VOC emissions from the use, consumption, storage, disposal, destruction, or decomposition of consumer and commercial products. The study examines the potential of VOC emissions from consumer and commercial products to contribute to ozone nonattainment; documents the development of a reliable and comprehensive emissions inventory; identifies and evaluates opportunities for achieving emission reductions; examines the fate of consumer and commercial product-related VOC in wastewater and in landfills; evaluates the use of various systems of regulation, including economic incentives; and provides supporting rationale for the establishment of criteria for prioritizing products for regulation.

The study is composed of six volumes, including:

- (1) Report to Congress (EPA-453/R-94-066-a)
- (2) Comprehensive Emissions Inventory (EPA-453/R-94-066-b)
- (3) Fate of Consumer Product VOC in Landfills (EPA-453/R-94-066-c)
- (4) Fate of Consumer Product VOC in Wastewater (EPA-453/R-94-066-d)
- (5) Economic Incentives to Reduce VOC Emissions from Consumer and Commercial Products (EPA-453/R-94-066-e)
- (6) Aerosol Products and Packaging Systems (EPA-453/R-94-066-f)

### B. Findings of the Consumer and Commercial Products Study

The Report to Congress highlights the following key findings of the study:

1. The scope of consumer and commercial products subject to section 183(e) is very broad and includes not only household consumer products but many products used commercially and in industrial manufacturing operations. This vast universe of products ranges from underarm antiperspirants and deodorants to coatings used in the manufacture of automobiles.

2. Consumer and commercial products, while individually small sources of VOC emissions, contribute significantly to the ozone nonattainment problem. In 1990, consumer and commercial products emitted approximately 6 million tons of VOC nationwide, or about 28 percent of all man-made VOC.

3. Opportunities exist for VOC emission reductions from consumer and commercial products through product reformulation, substitution, repackaging, and other control measures. With regard to consumer products, California and other States have issued regulations which limit the VOC content of approximately two dozen categories of products. These regulations were developed over several years with extensive interaction with the consumer products industry. The EPA has estimated that the VOC content limitations imposed by the State regulations, if applied nationwide, may result in an overall VOC reduction of approximately 25 percent from the 1990 baseline for those categories.

4. In developing control measures for consumer products, emission reductions must be balanced with product efficacy, consumer acceptance, and economic impacts.

5. A number of systems can be employed to implement the various control measures available under Section 183(e). These include product registration, labeling, self-monitoring, reporting, prohibitions, limitations, and economic incentives.

6. Under section 183(e)(3)(C), the EPA may issue control techniques guidelines (CTG) in lieu of regulations where the Administrator determines that the CTG will be substantially as effective in reducing VOC emissions in nonattainment areas. In many cases, CTG can be effective regulatory approaches to reduce emissions of VOC in nonattainment areas—with the advantage of not imposing control costs on attainment areas. For example, in the case of small volume consumer products that are widely used (e.g.,

personal care products), a CTG might not be effective at reducing VOC emissions because of difficulties in enforcement. However, for other cases (and for a potentially large share of nonattainment area VOC emission sources), enforcement and compliance may be effectively focused at the source of the VOC emissions, be it the point of manufacture, the point of end-use, or both. For example, VOC emissions from commercial products used in industrial settings could be controlled effectively with a CTG that targeted emissions at the point of end-use, as the population of end-users is likely to be readily identifiable.

7. Economic incentive programs appear to be viable alternatives to traditional strategies to reduce VOC emissions from consumer and commercial products. Certainty of emission reductions, minimization of control and/or implementation costs, technological innovation, and flexibility afforded by the program are all objectives which should be considered in selecting a strategy. The best regulatory approach for consumer and commercial products depends upon the particular universe of products being regulated and the priority of objectives.

8. Ideally, ozone control strategies should be based not only on mass VOC and NO<sub>x</sub> emissions but also on the relative photochemical reactivity of individual species, the VOC-to-NO<sub>x</sub> ratios prevalent in specific airsheds, and other factors which could work together to minimize the formation of ozone with minimum adverse impacts. However, reactivity data on VOC, especially those compounds used to formulate consumer and commercial products, are extremely limited. Better data, which can be obtained only at great expense, are needed if the EPA is to consider relative photochemical reactivity in development of regulations. In the meantime, a practical approach is to make regulatory determinations on the basis of mass VOC emissions.

The EPA considered reactivity to a limited extent, however, in prioritizing consumer and commercial product categories for regulation. In an effort to meet the requirements of section 183(e), and being aware of the limitations and uncertainties surrounding the reactivity issue, the EPA employed available information on reactivity to (1) consider those products which emit "highly-reactive" compounds; and (2) adjust mass VOC emission estimates to account for relative reactivity of product ingredients. The EPA's methodology for this limited application of reactivity is discussed in detail in the Report to Congress.

9. A widely held misconception is that most aerosol products employ chlorofluorocarbons (CFC) as propellants and contribute to stratospheric ozone depletion. In 1978, the EPA banned the use of CFC in virtually all aerosol products, the exceptions being medical products, military specification products, and aviation products. Hydrocarbons (propane, butane, and isobutane), which are VOC, are currently the predominant propellant compounds. Aerosol products function as systems composed of the product, the propellant, the valve, and the container. Hydrocarbon propellants not only expel the product from the container but serve as diluents in the product formulation.

### III. Consumer and Commercial Product Schedule for Regulation

#### A. Criteria for Regulating Products Under Section 183(e)

Although the EPA has discretion to determine which products are considered to account for 80 percent of VOC emissions, as a preliminary step, the EPA relied on numerical rankings to ensure that the highest priority products would be regulated. Section 183(e)(2)(B) of the CAA instructs the EPA to develop criteria for prioritizing consumer and commercial products for regulation. In establishing these criteria, the EPA is required to consider the following factors:

- (1) Uses, benefits, and commercial demand,
- (2) Health and safety functions,
- (3) Products which emit highly reactive VOC,
- (4) Cost-effectiveness of control, and
- (5) Availability of alternatives.

The following eight criteria for ranking consumer and commercial products were developed:

- (1) Utility,
- (2) Commercial demand,
- (3) Health and safety functions,
- (4) Emissions of highly reactive VOC,
- (5) Availability of alternatives,
- (6) Cost-effectiveness of controls,
- (7) Magnitude of annual VOC emissions, and
- (8) Regulatory efficiency and program considerations.

Criterion 1 (Utility) considers uses and benefits, and commercial demand is addressed by Criterion 2. The remaining four factors are addressed individually by Criteria 3 through 6. Criteria 7 and 8 (magnitude of emissions and regulatory efficiency) reflect additional considerations not specifically prescribed in the CAA. The EPA has exercised its discretion to include these criteria, as the EPA believes they are

important in prioritizing product categories for regulation. The EPA's interpretation of each of the five factors and the rationale and intent of each of the eight criteria are discussed in detail in the Report to Congress.

#### B. Preliminary Ranking of Product Categories

Criteria 1 through 7 were developed such that each product category could be evaluated numerically by assigning a score of 1 to 5 for each of the criteria, with a higher score indicating a higher priority for regulation.

The preliminary ranking was based on numerical scoring of criteria 1 through 7 for each product category. This process involved objective and subjective considerations. Criteria 2, 4, 6, and 7 are objective in nature and could be scored quantitatively based on annual sales, VOC emissions, and cost of control. Exercise of Criteria 1, 3, and 5 may include some subjective considerations. Scoring of these criteria could be affected by one's background, knowledge of the category, or other factors. In order to ensure consistency and fairness, an independent panel was convened to assist the EPA in application of these criteria.

The National Air Pollution Control Techniques Advisory Committee (NAPCTAC), established in 1968 by the Surgeon General, is an advisory group which has provided, and continues to provide, the EPA with independent views on EPA actions related to the air program. The NAPCTAC consists of the Director, Office of Air Quality Planning and Standards, or his designee, as chairperson and 11 members appointed by the EPA's Deputy Administrator. Members are selected from industry, State and local agencies, public interest groups, and academia.

Because of the balance afforded by the diversity of such a group, the NAPCTAC was considered a convenient choice for the panel. Accordingly, the panel was convened in July 1994 in Durham, North Carolina, for the purpose of assigning preliminary scores for Criteria 1 through 7 to each of the product categories. Results of the preliminary scoring exercise are available in the docket.

#### C. Application of Criterion Eight: Regulatory Efficiency and Program Considerations

Once the initial ranking of products based on exercise of Criteria 1 through 7 was completed, the EPA exercised Criterion 8, regulatory efficiency and program considerations, to identify which products should be considered to account for 80 percent of VOC

emissions and prioritized in the schedule for regulation.

As required by section 183(e), the EPA grouped the listed categories of consumer and commercial products into four groups, one of which will be

regulated every 2 years. Although the statute does not require that the 80 percent be divided into four equal groups, the EPA placed product categories into the four groups listed in Table 1 as equally as possible for

purposes of workload management. The EPA also attempted to reduce emissions as early as possible, given these workload considerations. Nearly two-thirds of the emissions from consumer and commercial products are addressed by the first two groups of categories.

TABLE 1.—CONSUMER AND COMMERCIAL PRODUCTS SCHEDULE FOR REGULATIONS

	Schedule for regulation	Emissions Mg/yr
Group I:		
Consumer products (24 categories) <sup>a</sup> .....	1997	301,347
Shipbuilding and repair coatings .....	1997	23,302
Aerospace coatings .....	1997	165,892
Architectural coatings .....	1997	362,454
Autobody refinishing coatings .....	1997	85,509
Aerosol spray paints .....	1997	58,521
Wood furniture coatings .....	1997	88,109
		1,085,134
Group II:		
Lithographic printing materials .....	1999	545,454
Industrial cleaning solvents .....	1999	232,890
Flexible package printing materials .....	1999	136,364
Flat wood paneling coatings .....	1999	19,618
		934,326
Group III:		
Miscellaneous metal products coatings .....	2001	198,545
Large appliance coatings .....	2001	22,994
Fiberglass boat manufacturing materials .....	2001	11,000
Miscellaneous industrial adhesives .....	2001	185,175
		417,714
Group IV:		
Paper, film, and foil coatings .....	2003	92,064
Letterpress printing materials .....	2003	25,636
Plastic parts coatings .....	2003	20,000
Metal furniture coatings .....	2003	97,220
Auto and light truck assembly coatings .....	2003	68,182
Petroleum drycleaning solvents .....	2003	49,091
		352,193
Emissions addressed by schedule .....		2,789,367
Percentage of total (3,481,804 Mg/yr) .....		80.1

<sup>a</sup>Product categories included in "Consumer products (24 categories)" grouping:

- Aerosol cooking sprays
- Air fresheners
- Auto windshield washer fluids
- Bathroom and tile cleaners
- Carburetor and choke cleaners
- Charcoal lighter materials
- Dusting aids
- Engine degreasers
- Fabric protectants
- Floor waxes and polishes
- Furniture maintenance products
- General purpose cleaners
- Glass cleaners
- Hair sprays
- Hair mousses
- Hair styling gels
- Household adhesives
- Nonagricultural insecticides
- Laundry prewash treatments
- Laundry starch products
- Nail polish removers
- Oven cleaners
- Shaving creams
- Underarm antiperspirants and deodorants

Group I includes product categories some of which have regulatory activities (rules or guidelines) already underway. The remaining categories are divided among Groups II, III, and IV according to numerical rank. "Consumer products (24 categories)" represent an aggregation of two dozen individual household, personal care, and automotive products which are currently regulated in one or more States. They are products used in home, office, institutional, or similar settings. In order to achieve VOC reductions required under their State Implementation Plan (SIP), many States have declared intentions to develop rules to reduce VOC emissions from these particular categories as part of their attainment plans. The EPA has scheduled these categories for regulation as part of Group I.

With one exception, all the other categories in Group I received relatively high numerical scores in the preliminary ranking. The one exception is shipbuilding and repair coatings, which are included in Group I despite a lower numerical score because a CTG for this category is currently under development pursuant to section 183(a) of the CAA. Under section 183(e)(3)(C), the Administrator may issue CTG in lieu of regulations if it is determined that a CTG will be substantially as effective in reducing VOC emissions. As a CTG is developed, the EPA will assess the projected emission reductions to make this determination. The EPA believes that the issuance of a CTG for shipbuilding and repair coatings to satisfy the requirements of both sections 183(a) and 183(e) would promote regulatory efficiency. Two other categories in Group I for which CTG are being developed are aerospace coatings and wood furniture coatings. As with the shipbuilding and repair coatings CTG, determinations will be made as to whether these CTG satisfy the requirements of section 183(e)(3)(c).

While the regulatory schedule presented in today's notice includes product categories that account for 80 percent of VOC emissions in nonattainment areas, as directed in the CAA, the EPA recognizes that the list of product categories included may need to be amended as regulatory development proceeds or as new information becomes available.

As individual products and categories are further assessed and comments are submitted during the rulemaking process, the EPA's evaluation of the criteria as applied to each category may change. For example, Criterion 6, cost-effectiveness of controls, reflects the emphasis Congress placed on identifying "(t)hose consumer and

commercial products which are subject to the most cost-effective controls." (Section 183(e)(2)(B)(iv)). However, the EPA had relatively limited data on the cost-effectiveness of control for most products. As the EPA moves forward in implementing the emission limitations required by section 183(e), it will reevaluate and reassess the ranking and schedule for regulation based on additional information developed on cost-effectiveness.

As a result, categories may be removed from the list, and remaining unlisted categories may be considered for listing. Table 2 shows significant categories within the scope of section 183(e) which are not being listed at this time for regulation. Any changes made to the consumer and commercial products regulatory schedule will be published in the **Federal Register**.

TABLE 2.—SIGNIFICANT CATEGORIES OUTSIDE 80 PERCENT

	Baseline emissions (Mg/yr)
Agricultural pesticides .....	25,050
Rotogravure publication printing materials .....	18,182
Nonautomotive paint thinners .....	9,055
Cutback asphalt paving materials .....	116,727
Synthetic fiber spinning solvents .....	42,000
Metal cleaning (degreasing) solvents .....	32,727
Fabric printing, coating, and dyeing materials .....	42,000
Metal can coatings .....	40,909
Tire manufacturing cements .....	24,000
Magnetic tape coatings .....	5,000
Metal coil coatings .....	19,636
Roofing materials .....	16,840
Magnet wire coatings .....	7,407
Mold release agents .....	68,545
Remaining consumer products ...	154,714

#### IV. Administrative Requirements

##### A. Docket

The docket is an organized file of information considered by the EPA in the development of an action. Although this action is not a rulemaking, a docket has been established for the consumer and commercial product study and subsequent product category list and schedule for regulation. The docket number is A-94-65. The purpose of this docket is to allow interested parties a means to access relevant documents not otherwise available. In addition, the public may submit to the docket information or comments regarding today's notice and the Report to Congress. The docket may be inspected at the EPA's Air and Radiation Docket

and Information Center, listed in the **ADDRESSES** section of this notice.

##### B. Regulatory Requirements

###### 1. General

Because today's notice is not a rulemaking, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, nor an economic impact analysis pursuant to section 317, nor a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980). Also, this notice is not subject to the Paperwork Reduction Act of 1990, 44 U.S.C. 3501 *et seq.*

###### 2. Executive Order and Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether regulatory actions are 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 lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect 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 obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order because it is likely to lead to rules which may meet one or more of the criteria. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Dated: March 15, 1995.

**Carol M. Browner,**  
Administrator.

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