

deficiency call made pursuant to section 110(a)(2)(H) of the Act.

This action has been classified as a Table 3 Action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. section 603 and 604.)

Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments

will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Redesignation of an area to attainment under Section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Motor vehicle pollution, Nitrogen oxides, Ozone, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7671q.

Dated: March 22, 1996.

Valdas V. Adamkus,

Regional Administrator.

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#### 40 CFR Part 59

[AD-FRL-5451-7]

RIN 2060-AF62

#### National Volatile Organic Compound Emission Standards for Consumer Products

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

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The proposed standards would reduce emissions of volatile organic compounds (VOC) from certain categories of consumer products. The proposed standards implement Section 183(e) of the Clean Air Act (CAA) and are based on the Administrator's determination that VOC emissions from the use of consumer products can cause or contribute to ozone levels that violate the national ambient air quality standards (NAAQS) for ozone. Ozone is a major component of smog which causes negative health and environmental impacts when present in high concentrations at ground level. These proposed standards would reduce VOC emissions by 90,000 tons per year, by requiring manufacturers, importers, and distributors to limit the VOC content of consumer products. The proposed requirements were developed in consultation with major stakeholders and are largely consistent with a proposal by representatives of the affected industry and are similar to existing standards in certain States. To date, many companies have taken steps to reformulate their products to emit less VOCs.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for consumer products.

**DATES:** *Comments.* Comments must be received on or before June 3, 1996.

*Public Hearing.* Anyone requesting a public hearing must contact the EPA no later than May 2, 1996. If a hearing is held, it will take place on May 17, 1996, beginning at 10:00 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-95-40, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

The docket is located at the above address in Room M1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday; telephone number (202) 260-7548, FAX (202) 260-4400. A reasonable fee may be charged for copying docket materials.

*Public Hearing.* If anyone contacts the EPA requesting a public hearing by the required date (see **DATES**), the hearing will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina 27711. Persons interested in presenting

testimony or attending the hearing should contact Ms. Kim Teal at (919) 541-5580.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket in Washington, DC (see **ADDRESSES** section of this preamble).

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed regulation, contact Mr. Bruce Moore at (919) 541-5460, Coatings and Consumer Products Group, Emission Standards Division (MD-13), U.S Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** Copies of the Proposed Regulatory Text can be obtained through the Technology Transfer Network (TTN). The TTN is one of the EPA electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541-5472 for up to a 14,000 bps modem. Select (1) TTN Bulletin Board, (2) Clean Air Act Amendments, and (3) Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541-5384.

Proposed Regulatory Text. The proposed regulatory text is not included in this Federal Register notice, but is available in Docket No. A-95-40, or by written or telephone request from the Air and Radiation Docket and Information Center (see **ADDRESSES**).

Technical Support Document. The Technical Support Document (TSD) for the proposed standards may be obtained from the Air and Radiation Docket and Information Center (see **ADDRESSES**).

Economic Impact Analysis (EIA). The EIA for the proposed standards may be obtained from the Air and Radiation Docket and Information Center (see **ADDRESSES**).

**Preamble Outline.** The information presented in this preamble is organized as follows:

- I. Acronyms and Definitions
  - A. Acronyms
  - B. Definitions
- II. Background
  - A. Need for Proposed Rule
  - B. Consumer Products Survey
- III. Summary of Proposed Standards
- IV. Summary of Impacts
  - A. Environmental and Health Impacts
  - B. Energy Impacts
  - C. Cost and Economic Impacts
  - D. Cost-Effectiveness
- V. Rationale for Proposed Standards
  - A. Selection of Pollutant
  - B. Selection of Best Available Controls (BAC)

- C. Selection of Special Provisions
- D. Selection of the Recordkeeping and Reporting Requirements
- E. Selection of Test Methods
- F. Alternative Regulatory Approaches
- VI. Administrative Requirements
  - A. Executive Order 12866
  - B. Enhancing the Intergovernmental Partnership Under Executive Order 12875
  - C. Unfunded Mandates
  - D. Paperwork Reduction Act
  - E. Regulatory Flexibility Act

#### I. Acronyms and Definitions

The following acronyms and definitions are provided to aid in reading the preamble.

##### A. Acronyms

ACMC=Automotive Chemical Manufacturers Council  
 ASC=Adhesive and Sealant Council  
 ASTM=American Society for Testing and Materials  
 BAC=best available control(s)  
 CAA=Clean Air Act  
 CARB=California Air Resources Board  
 CSMA=Chemical Specialties Manufacturers Association  
 CTFA=Cosmetic, Toiletry, and Fragrance Association  
 CTG=Control Techniques Guidelines  
 FIFRA=Federal Insecticide, Fungicide, and Rodenticide Act  
 HVOC=high volatility organic compound  
 NAA=National Aerosol Association  
 NAAQS=national ambient air quality standard  
 OMB=Office of Management and Budget  
 OMS=Office of Mobile Sources  
 RFA=Regulatory Flexibility Act  
 RIA=regulatory impact analysis  
 SDA=Soap and Detergent Association  
 SIP=State implementation plan(s)  
 STAPPA/ALAPCO=State and Territorial Air Pollution Administrators/ Association of Local Air Pollution Control Offices  
 TCA=1,1,1-trichloroethane  
 VOC=volatile organic compound(s)

##### B. Definitions

*Consumer or commercial products* are defined in Section 183(e)(1) of the CAA as:

Any substance, product (including paints, coatings, and solvents), or article (including any container 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 term does not include fuels or fuel additives regulated under Section 211, or motor vehicles, non-road vehicles, and non-road engines as defined under Section 216.

*Consumer products* are products used by individuals in a household setting (e.g., around the home, workshop, garden, garage).

*Commercial products* are products used in a variety of commercial, institutional, or industrial settings and include products similar in nature to consumer products that may be used in various commercial, institutional, or industrial applications.

#### II. Background

##### A. Need for Proposed Rule

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. The most thoroughly studied health effects of exposure to ozone at elevated levels during periods of moderate to strenuous exercise are the impairment of normal functioning of the lungs, symptomatic effects, and reduction in the ability to engage in activities that require various levels of physical exertion. Typical symptoms associated with acute (one to three hour) exposure to ozone at levels of 0.12 parts per million (ppm) or higher under heavy exercise or 0.16 ppm or higher under moderate exercise include cough, chest pain, nausea, shortness of breath, and throat irritation.

Ground-level ozone, which is a major component of "smog," is formed in the atmosphere by reactions of VOC and oxides of nitrogen (NO<sub>x</sub>) in the presence of sunlight. In order to reduce ground-level ozone levels, emissions of VOC and NO<sub>x</sub> must be reduced.

Section 183(e) of the CAA addresses VOC emissions from the use of consumer and commercial products. It requires the EPA to study VOC emissions from the use of consumer and commercial products, to report to Congress the results of the study, and to list for regulation products accounting for at least 80 percent of VOC emissions resulting from the use of such products in ozone nonattainment areas.

Accordingly, in the March 23, 1995 Federal Register, (60 FR 15264) the EPA announced the availability of the "Consumer and Commercial Products Report to Congress" (EPA-453/R-94-066-A), and published the consumer and commercial products list and schedule for regulation.

Volatile organic compound emissions from the use of consumer products are not currently regulated at the Federal level. However, four States (California, Massachusetts, New York, and Texas) are currently enforcing VOC standards for various consumer products. Four additional States (Oregon, New Jersey, Rhode Island, and Connecticut) have proposed VOC standards for consumer products, and other States are currently developing standards. All of these State rules address at least some of the

products covered by the EPA's proposed rule. Representatives of the consumer products industry (e.g., CSMA, CTFA, SDA, NAA, ACOM, and ASC) have expressed concern that differences in State and local requirements for consumer products could disrupt the national distribution network for consumer products. They have, therefore, urged the EPA to issue rules for consumer products to encourage consistency across the country. Many States with ozone pollution problems are also supportive of an EPA rulemaking that will assist them in their efforts toward achievement of ozone attainment. At least 13 States have included anticipated reductions from the Federal consumer products rule as part of their plans to reduce VOC emissions by 15 percent by November 1996.

In response to these concerns, the EPA listed for regulation the 24 categories of household consumer products addressed by the proposed rule. The BAC standards proposed today establish VOC content limits for these 24 consumer products. States, however, may promulgate their own VOC standards for consumer products if they are at least as stringent as Federal rules. In some cases, depending upon their strategy for achieving attainment with the NAAQS for ozone, certain States may need to promulgate additional, or more stringent standards.

#### B. Consumer Products Survey

In order to ensure that the required 80 percent of VOC emissions from the use of consumer and commercial products are accounted for in the list and schedule for regulation, the EPA developed a comprehensive emissions inventory. A significant part of this inventory consists of data collected in a survey of consumer products. The survey was distributed to over 3,700 manufacturers and marketers of consumer products. All of the product categories addressed in this proposed rule were covered in the survey. The survey requested detailed information about consumer products on a formulation-specific basis including product category and form, total VOC and speciated VOC content, and net weight sold in 1990. The EPA compiled the survey responses into a data base that has provided, in part, the basis for development of these proposed consumer products standards. In particular, the data base was used to determine demonstrated VOC contents for each category, and to estimate the potential emission reduction and cost-effectiveness attributable to the proposed standards.

#### III. Summary of Proposed Standards

The promulgated rule for the consumer and commercial products scheduled for regulation under this proposal will be codified under 40 CFR Part 59. The proposed standards limit the VOC emissions from 24 categories of consumer products. These standards are largely consistent with a proposal by the consumer products industry and are similar to existing standards in certain States. The proposed standards apply to manufacturers, importers, or distributors of subject consumer products manufactured for sale or distribution in the United States. Compliance with the proposed standards must be demonstrated by the manufacturer, importer, or distributor listed on the product label. If more than one company is identified on the label, the proposed standards apply to the party for whom the product was manufactured or by whom the product was distributed. With the exception of charcoal lighter fluid (see below), the proposed product categories and their respective VOC content limits are presented in Tables 1 and 2. The VOC content limits presented in Tables 1 and 2 must be achieved by September 1, 1996. To identify subject consumer products, the proposed rule requires that each manufacturer or importer of a subject consumer product display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. Charcoal lighter fluid manufactured after September 1, 1996 may not emit greater than nine grams (0.02 pound) of VOC per start, as determined using procedures specified in Section 59.208 of the proposed rule.

Manufacturers or importers of subject charcoal lighter fluid must label their products with information specifying the quantity of charcoal lighter material per pound of charcoal that was used in the testing protocol for that product.

Proposed exemptions from the above-mentioned VOC content limits (or emission standards for charcoal lighters) include the following:

- (1) Any consumer product manufactured in the United States for shipment and use outside of the United States.
- (2) Fragrances incorporated into a consumer product up to a combined level of two weight-percent.
- (3) Any VOC that has a vapor pressure of less than 0.1 millimeter of mercury at 20°C (68°F). If the vapor pressure is unknown, exempt compounds are those that have more than 12 carbon atoms or that have a melting point higher than

20°C (68°F) and do not sublime (i.e., do not change directly from a solid into a gas without melting).

(4) Insecticides containing at least 98 percent paradichlorobenzene or at least 98 percent naphthalene.

(5) Adhesives sold in containers of 0.03 liter (one ounce) or less.

(6) Bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that does not weigh more than 14 grams (0.03 pound), where bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.

(7) Air fresheners whose VOC constituents are 100 percent fragrance materials.

The proposed standards also include an innovative product provision that allows a manufacturer to demonstrate that, due to some characteristic of the product formulation, design, delivery system, or other factor, the use of the product will result in equal or less VOC emissions than a complying consumer product subject to the same VOC content limit as presented in Tables 1 and 2.

The proposed rule also allows a manufacturer or importer to apply for a temporary variance if, for reasons beyond their reasonable control, they cannot comply with the VOC content limit requirements. Criteria that must be met before the Administrator will grant a variance are specified in the proposed rule.

A manufacturer of a consumer product (except for charcoal lighter fluid) subject to the proposed provisions would be required to demonstrate compliance with the VOC content limits presented in Tables 1 and 2 by calculating the VOC content of each product from records of the weight percent of constituents used to make each batch of the product. A manufacturer of charcoal lighter fluid must demonstrate compliance using procedures specified in Section 59.208 of the proposed rule, or by another validated alternate method approved by the Administrator.

Manufacturers, importers, and distributors must keep records of formulations for each consumer product subject to Section 59.203(a) of the proposed rule for purposes of demonstrating compliance. Manufacturers would also be required to maintain accurate records for three years for each batch of production of the weight-percent and chemical composition of the individual product constituents. Manufacturers of subject charcoal lighter fluids must keep

records for three years of the results of tests performed according to Section 59.208 of the proposed rule.

The proposed standards require that manufacturers and importers of any subject consumer product submit a one-time initial notification report containing the following information: (1) Company name; (2) Location of facility(ies) manufacturing, importing, or distributing subject consumer products; (3) A list of product categories and subcategories, as found in Tables 1 and 2, that are manufactured or imported at each facility; (4) Location where VOC content records are kept for each subject consumer product; (5) Description of date coding systems; and (6) Name, title, and signature of certifying company official. An updated description of any date code that may have been revised subsequent to the initial notification report must be submitted within 30 days of its first use.

#### IV. Summary of Impacts

##### A. Environmental and Health Impacts

These standards will reduce nationwide emissions of VOC from these consumer products by 82,000 megagrams per year (Mg/yr) [90,000 tons per year (tpy)] by 1997 over emissions in 1990. This equates to a 20-percent reduction, compared to the emissions that would have resulted in the absence of these standards.

No adverse secondary air, water, or solid waste impacts are anticipated from compliance with these standards. In general, the proposed standards will lead to product reformulation to reduce the amount of VOC released into the air. While some additional water is likely to be added to formulations, this increase is not expected to result in additional water discharges to the environment.

The standards affect products manufactured after September 1, 1996, but do not impact existing product inventories. Excluding existing product inventories will eliminate any incremental solid waste increase due to discarded product. The new products are not expected to require any more packaging than existing products; thus, the volume of discarded packaging should not increase.

Impacts to health will be positive since the proposed standards will reduce national emissions of VOC by 82,000 Mg/yr (90,000 tpy). These reductions will result in a decrease in ground level ozone, particularly in ozone nonattainment areas.

##### B. Energy Impacts

There will be no increase in the national annual energy usage as a result

of this rule. The proposed standards do not require the use of control devices to reduce the amount of VOC emitted to the air; the EPA is also not aware of any incremental energy increase expected from the production of the new formulations.

##### C. Cost Impacts

Under a worst-case scenario, implementation of these standards would result in national annualized costs of \$26.0 million per year (presented in 1991 dollars). Actual costs are likely to be lower. This estimate includes the annualized one-time costs of product reformulation. Recordkeeping and reporting costs have been estimated to be approximately \$950,000. Therefore, the total annualized costs are approximately \$27.0 million. There are no monitoring requirements for this rule. No significant capital expenditures are expected. The EPA has determined, and the consumer products industry has concurred, that a significant proportion of subject products have been reformulated in response to State regulation. Data are not available to quantify the proportion of the one-time reformulation costs that have already been incurred.

By establishing a set of product-specific standards for VOC content, the proposed regulations have cost implications for producers of the affected products. In 1996, manufacturers of consumer products that do not meet the VOC levels in the proposed Table of Standards, will be required to reformulate products or remove products from the market. Each option imposes costs, some of which will be passed on to other members of society (consumers) in the form of higher prices and some of which will be borne directly by manufacturers.

The cost of reformulation includes the resources that must be devoted to creating a compliant product, e.g., research and development expenditures plus any net changes in the variable cost of producing the new product. Variable costs may be affected by changes in the material composition of the new product. The cost for each noncompliant product depends on the level of effort required to develop a new product and how these expenditures are incurred over time. Reformulation cost data were provided by industry to the EPA for prototype reformulations in the consumer product categories.

An economic impact analysis was performed for the proposed regulatory requirements. Potential cost, price, and output effects for the consumer products industry were examined. The analysis

performed was based on data from the 1990 Consumer Products Survey. The estimated national cost of reformulating the "noncompliant" consumer products, if all products exceeding the VOC standards reformulated, would be approximately \$26.0 million per year. This includes changes in variable (material) costs as well as the initial reformulation cost annualized over time. To the extent that lower-reformulations have already taken place since 1990, this cost estimate will overstate the true costs of this proposed regulation. Also, extremely small-volume products are likely to be withdrawn from the market rather than incur the fixed costs of reformulation.

The collective effect of some products being removed from the market and other products bearing higher costs of production will likely lead to changes in market prices and quantities. The estimated market effects are generally quite slight. Price effects in each market range from no effect to an approximately three percent increase. Market-level price effects are typically less than 0.1 percent. Quantity effects are similarly small, ranging from virtually no effect to a 1.7 percent reduction. Quantity effects, too, are typically less than 0.1 percent.

Given that producers would choose their least costly compliance option (i.e., product withdraw or reformulation), the estimated social cost of the regulation (including reformulation costs or lost profits from product withdraws) is approximately \$21.3 million per year (estimated in 1991 dollars), with an estimated range from \$17.1 million to \$23.0 million by varying some key assumptions. The range of total social cost estimates for the regulation all fall below one percent of baseline revenue for the affected industry sectors.

##### D. Cost-Effectiveness

The EPA often compares the relative cost of different measures for controlling a pollutant by calculating the "cost-effectiveness" of the measures. Using the EPA's traditional calculation methodology, the cost-effectiveness of a regulation that applies nationwide is based on a comparison of national costs and nationwide emission reductions. This comparison is expressed as the cost per megagram (Mg) (or ton) of emissions reduced. Using social cost and emission reduction figures presented earlier in this section of the preamble, the nationwide cost-effectiveness of the proposed regulation is \$260 per Mg (\$237 per ton).

Alternative ways to calculate a measure of the "cost-effectiveness" of

the regulation have been suggested by others. One alternative would be to calculate cost-effectiveness on the basis of the nationwide cost of the regulation (\$21.3 million for the proposed regulation) and the VOC reduction achieved in ozone nonattainment areas. The stated rationale for this approach is that cost-effectiveness measures should be designed in a way that best represents the objective of the regulatory action. In this case, for example, a major objective, though not the only objective, of these regulations is the control of ozone formation in nonattainment areas. By establishing nationwide standards, the cost of achieving emission reductions in ozone nonattainment areas during the ozone seasons requires nationwide expenditures during all seasons of the year, including expenditures year-round in areas currently in attainment with the current standard. These nationwide emission reductions—including emission reductions outside of nonattainment areas and out of the ozone season—may or may not contribute to efforts to limit ozone in nonattainment areas, depending on whether they participate in ozone transport from one area to another. One example of the application of this method is presented in a December 21, 1993, draft Regulatory Impact Analysis developed by the EPA OMS in which control of emissions from refueling of light duty vehicles (i.e., onboard refueling vapor recovery, or ORVR) could viably be applied either nationwide or in nonattainment areas alone. In this example, regional regulation represented an important alternative to national regulation. The OMS calculated cost-effectiveness using (1) nationwide costs and nationwide emission reductions, as well as (2) nationwide costs and the emission reductions achieved in nonattainment areas.

In the case of this consumer products rule, the proportion of emission reductions occurring in ozone nonattainment areas can be roughly calculated by assuming emission reductions are proportional to population; approximately 110 million of the 260 million U.S. population currently live in nonattainment areas. Thus, the fraction of the nationwide year-round emission reductions that occur in nonattainment areas is about 42 percent. Accordingly, on a nonattainment area basis, the cost-effectiveness of the rule would be \$618/Mg (\$563/ton). A similar calculation could be done to account for the seasonality of ozone formation.

While such an approach offers a measure of the cost of emission

reductions in nonattainment areas, the EPA sees significant drawbacks to this approach. First, cost-effectiveness figures would no longer provide a consistent basis for comparison of the relative cost of different control measures or regulations considered at different points in time. Because the number and location of nonattainment areas changes frequently, the initial calculation of the cost-effectiveness of a rule would depend upon when it was issued. The EPA believes it is important that cost-effectiveness be calculated in a consistent manner that allows for valid comparisons. Also, introducing new methodology would tend to make new control measures appear superficially to be less cost-effective than measures utilized in the past, simply because of a change in well-established terminology.

Second, this alternative approach attributes all costs of the rule to emission reductions achieved in nonattainment areas and no cost to emission reductions achieved in attainment areas. By not including emission reductions in attainment areas, the methodology assumes that emission reductions in areas which attain the NAAQS for ozone have no value. In fact, attainment areas often contribute to pollution problems in nonattainment areas through the transport of emissions downwind. Also, emission reductions in attainment areas help to maintain clean air as the economy grows and new pollution sources come into existence. Furthermore, measures to reduce emissions of VOC often reduce emissions of toxic air pollutants.

Another alternative that has been suggested would be to calculate not only the emission reductions but also the cost if the requirements applied only in ozone nonattainment areas, perhaps through issuance of a CTG. The EPA has not estimated the cost of using a CTG to regulate only those products sold for use in ozone nonattainment areas. However, the industry has advised the EPA that the cost of having different product lines for attainment versus nonattainment areas would be prohibitive due to the duplicative effort of labeling, storage and distribution management. Therefore, it is expected that a cost-effectiveness estimate calculated based on this approach would be significantly higher than one calculated on the basis of both nationwide costs and emission reductions. Consequently, it is possible that in the case of a CTG approach, the industry might choose to reformulate products for nationwide distribution rather than develop two formulations of the same product. The use of CTG is

discussed further in Section V(F)(2) of this notice.

The EPA is planning to review internally the generic question of the alternative approach to measuring costs against emission reductions. The results of this review are not available for incorporation into this rulemaking. Therefore, the EPA requests comments on the traditional and alternative methods discussed above to characterize the cost-effectiveness of this and other Section 183(e) regulations.

## V. Rationale for Proposed Standards

### A. Selection of Pollutant

The purpose of Section 183(e) of the CAA is to reduce the emissions of VOC from the use, consumption, storage, disposal, destruction, or decomposition of consumer and commercial products. Therefore, the standards proposed today regulate VOC. The proposed rule requires that the manufacturer, importer, or distributor of subject consumer products document the VOC content of each formulation. The EPA definition of VOC (found at 40 CFR Part 51, subpart F, and amended at 60 FR 31633) is very broad and includes virtually any organic compound that is not specifically exempted from the definition. (Compounds are exempt from this definition when they have been found to have negligible photochemical reactivity.)

Consumer products often contain ingredients which are of extremely low volatility. These low-volatility compounds are used in such ingredients as surfactants used in shampoos and laundry detergents, heavy oils used in lubricants, and waxes used in lip balms and underarm antiperspirants. If volatility is not considered, many consumer products contain 100 percent VOC by definition. Since, in some cases, all the products in a category may be of equal VOC content (100 percent), the EPA efforts to evaluate products with regard to availability of alternative products were severely limited. To address this problem, the EPA examined the possibility of targeting only those consumer product ingredients with relatively higher volatility in order to be able to distinguish among products. This in no way should be construed to mean that the EPA is not concerned about emissions of all VOC, regardless of volatility, and in no way alters the EPA existing overall VOC policy.

For the reasons stated above, the EPA adopted a volatility threshold for determining which ingredients are to be included in the VOC content calculations under the proposed rule. This approach addresses a subset of

VOC found in the consumer products subject to this proposed rule and is not to be considered a precedent for future rules. A consumer product ingredient is to be counted as part of the VOC content of a product subject to the proposed rule if it is a VOC by the EPA definition and meets one of the following criteria:

- (1) The ingredient compound has a vapor pressure greater than 0.1 millimeter of mercury (mmHg) at 20°C; or
- (2) The vapor pressure for the ingredient compound is unknown, and the compound's empirical formula contains 12 or less carbon atoms; or
- (3) The vapor pressure for the ingredient compound is unknown, and the compound exists as a solid at room temperature (20°C) but readily sublimates (becomes a vapor at room temperature).

As discussed in Section II.C of this preamble, several States have adopted consumer product rules. Each of these State rules are based on these same volatility criteria.

Throughout this preamble and regulation, the term VOC is used. However, the only VOC that must be used in determining compliance are those VOC not specifically excluded by the criteria listed above. All reported emission reductions are also based on this subset of VOC. The EPA recently exempted acetone from the definition of VOC (60 FR 31633); therefore, the proposed standards do not apply to acetone. The EPA recognizes that some States have not exempted acetone from their definitions of VOC, and may need to adjust accordingly.

#### *B. Selection of Best Available Controls (BAC)*

Standards under Section 183(e) of the CAA must reflect BAC. The CAA defines BAC as follows:

(A) Best Available Controls—The term 'best available controls' means the degree of emissions reduction the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, and disposal.

The EPA has determined that BAC for 23 of the consumer product categories proposed for regulation consists of specific VOC content limits, expressed as the weight-percent VOC, for each consumer product category. For charcoal lighter fluid, BAC is expressed as the amount of VOC emitted during use as determined by the method presented in Section 59.208 of the rule.

Section 183(e) of the CAA allows the EPA to consider a wide range of strategies and technologies in determining BAC. The determination must be based on technological and economic feasibility, as well as on health, environmental, and energy impacts. The EPA has determined that, in most cases, all or most of a product's VOC content is emitted during product use. (The EPA has determined that the use of certain consumer products results in VOC being washed down drains where they are decomposed and do not result in air emissions. This issue is documented in the "Consumer and Commercial Products Report to Congress"; EPA-453/R-94-066-A.) Regulations that attempt to control consumption or user habits are considered to be impractical and undesirable. Therefore, the EPA concluded that limits on the amount of VOC incorporated into the products would be the most feasible and least disruptive control measure. Additionally, in working to comply with State VOC rules over the past several years, the consumer products industry has established product reformulation as the most technologically and economically feasible strategy for reducing VOC emissions. The proposed standard reflects BAC and was developed based primarily on the EPA consumer products survey, analysis of existing State rules for consumer products, and information gathered during the EPA study of the consumer and commercial products industry.

The EPA recognizes a need to proceed with development of these standards as quickly and expeditiously as possible. State and local agencies and representatives of the consumer products industry have expressed concern about the current lack of Federal VOC standards for consumer products. The persistence of the ground-level ozone problem has caused State and local air pollution agencies to seek emission reductions beyond those 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. The industry has therefore urged the EPA to issue national rules for consumer products to provide consistency across the country. States

needing emission reductions are also supportive of an EPA rulemaking that will assist them in their efforts toward achievement of ozone attainment.

In June 1994 the consumer products industry, represented by the CSMA and the CTFA, submitted recommended VOC content limits to the EPA for 24 consumer product categories. These limits were based on extensive negotiations between industry and various State regulators. The EPA determined that the regulatory development process for consumer products could be expedited by using the CSMA/CTFA recommendations as a starting point. Therefore, the EPA analyzed the CSMA/CTFA-recommended VOC content limits to assess whether they reflect BAC as defined by the CAA. The analysis revealed that the recommended VOC content limits would require that approximately 34 percent of products in these 24 categories be reformulated and that emissions of VOC from the use of products in these categories would be reduced by 20 percent. The recommended limits would also allow for a variety of products in each category, and would therefore not adversely affect the range of choices available to consumers. The limit proposed for each product category is currently demonstrated (i.e., available to consumers) in several different formulations, and is consistent with limits currently enforced by States that have consumer products rules (see Table 3).

For some product categories, the EPA's database suggested that lower VOC content limits might be feasible (see Table 4). However, the EPA has chosen to propose standards similar to those proposed or currently enforced by States because the existence of these standards, and the fact that industries are already complying with these standards, provides stronger evidence that these levels are achievable for a wide range of product applications at current levels of product efficacy.

The EPA recently added acetone to the list of compounds exempt from the definition of VOC. The proposed VOC limit for nail polish removers is 85 percent. This level was not lowered following the acetone exemption, because polish removers designed for use with artificial nails are based on solvents other than acetone to avoid damage to the nails. The EPA determined that subcategorization of polish removers for natural nails and artificial nails would result in no emission reductions and would increase recordkeeping and reporting burden unnecessarily.

The regulation of consumer products will have unique technical and economic impacts due to its direct effects on consumers and the degree to which perception affects consumer product demand. Regulation of the use of household and personal products will immediately and directly impact the public. The EPA has determined, through intensive studies of various sectors of the consumer products industry (as documented in the Consumer and Commercial Products Report to Congress), that product VOC content affects not only the technical performance of consumer products, but the compatibility of ingredients with each other and with packaging materials, the consumers' perception of efficacy, product life, and aesthetic appeal. Additionally, particular populations of consumers are sensitive to, or cannot use, some VOC ingredients, which are therefore replaced with alternate ingredients in similar products. Therefore, replacement of VOC ingredients requires a series of relatively complex product development, and consumer and market testing activities.

The range of VOC content levels in consumer products currently on the market reflects the range of products that provides for the wide variety of applications and expectations that comprise the consumer products market. These VOC content levels also reflect several years of negotiation between manufacturers and State regulatory agencies, and subsequent redesign of products to meet State limits. Setting VOC content limits equivalent to the lower end of the range currently marketed has the potential to adversely affect consumer choices and to eliminate certain product applications and efficacy levels from the market. The EPA does not have evidence or information to indicate that such impacts are warranted to achieve an additional level of emission reductions. To the contrary, the recommended VOC content limits will achieve significant VOC emission reductions without eliminating any identifiable product niches or applications, and without adverse market impacts. Therefore, the EPA has determined that the recommended VOC content limits reflect BAC, and the EPA is proposing those limits in this action.

### C. Selection of Special Provisions

The standards proposed today include several special provisions; these provisions were necessary to ensure that the standards apply only where necessary and where the EPA has concluded that the standards can be

met. These provisions include methods for calculating VOC content of specific products, as well as exemptions for specific product types.

#### 1. Determination of VOC Content

As discussed in Section IV.B of this preamble, the EPA has limited the VOC that are included for compliance determination. For aerosol antiperspirant and aerosol deodorant products, the proposed VOC content limits apply only to HVOC, which are defined as VOC with a vapor pressure equal to or greater than 80 mmHg at 20° C. As a result, only the propellants in these products are regulated. Other VOC ingredients in these products have vapor pressures less than 80 mmHg. Ethanol is the most prevalent nonpropellant VOC ingredient in antiperspirants and deodorants. Information submitted by the CTFA states that ethanol provides several different functions in antiperspirants and deodorants including active ingredient (as an antimicrobial), a solvent for other active ingredients, and fragrance enhancer. The CTFA reports that there is no non-VOC substitute for ethanol in these products. Consequently, the proposed standards do not apply to nonpropellant VOC in antiperspirants and deodorants.

In addition, the EPA has concluded that the minimum feasible fragrance content in consumer products is two weight-percent. Therefore, in calculating the total VOC weight-percent of a product to demonstrate compliance, fragrance ingredients up to a combined level of two weight-percent are not included; fragrance ingredients in excess of two percent must be included in the calculation of total VOC content.

#### 2. Products for Use Outside the U.S.

The EPA has also included a provision that limits the standards to consumer products manufactured or imported for use in the United States. The intent of Section 183(e) of the CAA is to limit VOC from the use of consumer and commercial products in the United States; therefore, impacting products exported for sale in other countries is beyond the scope of these standards.

#### 3. Product-Specific Exemptions

Several specific exemptions have been provided in cases where the EPA has determined that no alternative technology exists. Insecticides containing 98 percent paradichlorobenzene or naphthalene are exempt from today's standards; no known reformulation technology exists

to replace these moth repellents. Similarly, air fresheners that consist entirely of perfume are exempt because there is not non-volatile replacement for perfumes.

Adhesives sold in containers less than one fluid ounce are also exempted from these standards. Virtually all adhesives sold in containers of less than one ounce are specialty hobby or instant bond glues that are used in very small amounts (e.g., a few drops per application). Again, the EPA has concluded that no reformulation technology exists for these specialty adhesives. In addition, as these glues form bonds, the volatile compounds absorb water from the air and become nonvolatile. Therefore, emissions from their use are negligible.

The proposed standards allow one additional year before compliance is required for subject FIFRA-registered products. This extra compliance time is necessary due to the testing, labeling, and registration burden associated with FIFRA compliance.

The EPA has added a specific exemption for insect bait standards from the proposed standards. These products contain solid material designed to be ingested by insects and contain no VOC. Without an exemption, these products would be covered under the crawling insect category. While these products could easily meet the standard, there is no justification to require any reporting or recordkeeping for these products.

#### 4. Innovative Product Provisions

The proposed rule includes an alternate compliance method that manufacturers and importers of consumer products may choose in lieu of meeting a VOC content limit. The innovative product provisions exempt a specific product formulation from the VOC content limits if that product can be shown to emit less VOC than a representative product in the same category that does meet the VOC content limit. The manufacturer or importer must demonstrate to the Administrator's satisfaction that use of the innovative product will result in equal or less VOC emissions than a representative complying product due to the innovative product's formulation, design, delivery system, or other characteristics. The innovative product provisions are included in the proposed rule to allow flexibility to consumer product formulations without compromising VOC emission reductions, and to encourage formulators to pursue new technologies that may reduce VOC emissions. The consumer products industry is characterized by frequent introduction

of new and modified products. Through the innovative product provisions, manufacturers can continue to market a variety of product choices while achieving the proposed emission reductions. In addition, manufacturers or importers would be allowed to market innovative products immediately upon notifying the Administrator of their intent to do so, and provided that all required documentation on the innovative product's potential emissions has been submitted.

#### 5. Compliance Variance

The proposed rule includes a variance provision whereby manufacturers or importers of subject consumer products may apply to the Administrator for a temporary variance from compliance with the standards. A variance will be granted if the applicant demonstrates that compliance would result in economic hardship, and that granting the variance would better serve the public interest than would requiring continuous compliance under the conditions of economic hardship. The EPA intends for this provision to allow manufacturers and importers some flexibility in responding to unforeseen circumstances that may cause additional, unanticipated compliance burden. The EPA recognizes that certain interruptions in the availability of raw materials and/or manufacturing processes may affect ability to continuously comply with the standards. In particular, the EPA anticipates that this variance provision will help to mitigate impacts to small businesses. Within the consumer products industry, small businesses are likely to have fewer research and development resources, and therefore, will benefit from the allowed variance.

#### D. Selection of Recordkeeping and Reporting Requirements

In selecting reporting and recordkeeping requirements for this rule, the EPA balanced the need to ensure compliance with the directive to ensure that burden is minimized. The proposed standards include the minimum reporting and recordkeeping requirements that the EPA determined were necessary to ensure compliance. Recordkeeping requirements must be met for each product formulation by the manufacturer or importer listed on the product label. If more than one party is listed on the label, the company for whom the product was manufactured is required to carry out recordkeeping and reporting requirements.

For products listed on Tables 1 and 2 (i.e., all subject products except

charcoal lighter fluid), records must be kept for three years of each product's formulation, and daily records must be kept of the weight percent of each VOC ingredient included in each product. For charcoal lighter fluid, records must be kept for three years of the data collected and results for all emissions tests performed according to Section 59.208.

The only report required is a one-time initial notification report, due on September 1, 1996, and required of all manufacturers or importers of subject consumer products. The report must include identifying and location information for the respondent, a description of their product date coding systems, and a list of subject products manufactured, imported, or distributed. An updated description of any date code that may have been revised subsequent to the initial notification report must be submitted within 30 days of its first use.

#### E. Selection of Test Method

The proposed standards rely predominantly on formulation information to demonstrate compliance. The VOC content for each product must be calculated based on mass balance of the constituents used to manufacture the product and any other byproducts or waste streams.

The EPA is proposing a separate test protocol for determining compliance for charcoal lighter materials. In order to accomplish their intended purpose, charcoal lighter materials consist entirely of VOC. The standard for charcoal lighter fluid, therefore, consists of a limit on the amount of VOC that can be emitted during use.

#### F. Alternative Regulatory Approaches

##### 1. Other Systems of Regulation

Section 183(e)(4) allows the EPA to consider "any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emission rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product." Accordingly, the EPA requests comment on any alternative to the proposed system of regulation.

##### 2. Regulation with the Use of CTG

Section 183(e)(3)(C) gives the EPA the flexibility to "issue control techniques guidelines under this Act in lieu of regulations required under

subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone."

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, where benefits of reducing VOC emissions may be less. 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. Also, for a potentially large share of nonattainment area VOC emission sources, enforcement and compliance could effectively be focused at the source of the VOC emissions through the use of a CTG, be it the point of manufacture, the point of end-use, or both. However, for small volume consumer products that are widely used (e.g., the products covered by this proposed rule), a CTG might not be effective at reducing VOC emissions because of difficulties in enforcement. The EPA requests comment on whether and how a CTG approach (by itself, or in combination with any other regulatory alternatives) would be as effective as a national rule in reducing VOC emissions in ozone nonattainment areas, not only for the proposed consumer products rule but also for other product categories scheduled for regulation under Section 183(e) of the CAA (see 60 FR 15264, March 23, 1995).

##### 3. VOC Standards for a Subset of Categories

Individual cost-effectiveness values for each of the 24 product categories are based primarily on cost information which was developed and provided by industry representatives to the EPA. The calculated cost-effectiveness of the 24 categories varies widely, from \$68 to \$10,400 per Mg (\$62 to \$9455 per ton). Rather than regulate all 24 product categories, the EPA could select a more cost-effective subset. With this approach, it appears that the rule could achieve most of the emissions reductions for a portion of the cost. For example, regulating 15 categories of consumer products would yield about 80 percent of the emissions reductions expected to be achieved by the proposed rule at about 30 percent of the total cost. As discussed in Section V.B., the EPA has included requirements for all 24



product categories based on input from State and industry representatives. The industry representatives have suggested that national regulations for these products benefit industry by promoting consistent regulation throughout the country. A national rule makes it less likely that additional States will adopt different standards to limit VOC emissions from the same products. The industry representatives have also asserted that inconsistent State standards could impose additional costs on the industry. The EPA requests comment on setting emission limits for the most cost-effective subset of the 24 consumer product categories as discussed here.

#### 4. Discretion to Consider Section 183(e) Ranking Factors During Rulemaking

In establishing criteria for regulating consumer and commercial products, Section 183(e)(2)(B) requires the EPA to consider the following factors: (1) the uses, benefits, and commercial demand of consumer and commercial products; (2) the health or safety functions (if any) served such consumer and commercial products; (3) those consumer and commercial products which emit highly reactive VOC into the ambient air; (4) those consumer and commercial products which are subject to the most cost-effective controls; and (5) the availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

In order to develop the schedule for regulation of consumer and commercial products under Section 183(e), the EPA established and exercised criteria based on the above factors and other considerations. Others have suggested that the five factors should be considered not only in setting priorities but also at the time of rulemaking for specific categories of products. The EPA requests comment on their discretion to consider the five factors in specific regulatory actions.

### VI. Administrative Requirements

#### A. Executive Order 12866

Under Executive Order 12866 (58 FR 5173, (October 4, 1993)), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

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

Pursuant to the terms of the executive order, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the executive order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the docket (see ADDRESSEES).

#### B. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, the EPA has involved State and local governments in the development of this rule. State and local air pollution control associations (CARB, New Jersey Department of Environmental Protection, Wisconsin Department of Natural Resources, and STAPPA/ALAPCO) have provided regulatory review support.

#### C. Unfunded Mandates

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, the 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 the EPA to identify and consider a reasonable number of regulatory alternatives and 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 the 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 the 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 the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's 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. The rule imposes no enforceable duties on any of these governmental entities. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

#### D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. \_\_\_ ) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St. SW.; Washington, DC 20460 or by calling (202) 260-2740.

The information required to be collected by this proposed rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the CAA. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36092, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43

FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The total annual reporting and recordkeeping burden for this collection averaged over the first three years is estimated to be 28,386 hours per year. The average burden, per respondent, is 129 hours per year. The total annualized recordkeeping and reporting costs for the proposed rule are estimated to be \$964,416 and consist wholly of operation and maintenance costs. There are no capital or startup costs, or purchased services costs, associated with the reporting and recordkeeping requirements of this rule. There would be an estimated 220 respondents to the proposed collection requirements. Average annualized cost of reporting and recordkeeping, per respondent, is \$4,384.

The proposed rule requires an initial one-time notification from each respondent and subsequent notifications each time the date code is changed.

Formulations and ingredient usage would be recorded for each batch of production. Respondents seeking a variance must submit an application which provides information to the EPA necessary in determining whether to grant the variance. The application would include the specific grounds on which the variance is sought, proposed date by which the requirements of the rule will be met, and a plan for achieving compliance. Supporting documentation is required of companies who wish to market a product subject to the "innovative products" provision of the proposed rule. This documentation includes information on VOC emissions from the use of the product as compared to emissions from a product formulated in compliance with the Table of Standards. The proposed rule requires that the labels of all subject consumer products display the date of manufacture. However, there should be no additional burden imposed due to this labeling requirement, because manufacturers routinely date-code their products. The date can be in coded form. All manufacturers and importers of subject products must submit an explanation of all date codes used. Date code explanations must be submitted with the initial report. Thereafter, respondents must submit explanations of any new date codes within 30 days of their first use.

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.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St. S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. N.W.; Washington, DC 20503; marked "Attention: Desk Officer for EPA". Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 2, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by May 2, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (or RFA, Public Law 96-354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

- (1) Annual compliance costs increase total costs of production by more than five percent, or
- (2) Annual compliance costs as a percentage of sales are at least 20 percent higher for small entities, or
- (3) Capital cost of compliance represents a significant portion of capital available to small entities, or
- (4) The requirements of the regulation are likely to result in closures of small entities.

A "substantial number" of small entities is generally considered to be

more than 20 percent of the small entities in the affected industry.

The RFA requires the EPA to consider potential adverse impacts of proposed regulations on small entities and to consider regulatory options that might mitigate any such impacts. It is currently the EPA's policy to perform a regulatory flexibility analysis of the potential impacts of proposed regulations on small entities whenever it is anticipated that any small entities may be adversely impacted. Because it is anticipated that some small consumer product manufacturers could be adversely impacted from implementation of the proposed standards, a regulatory flexibility analysis was performed.

The analysis of small entity impacts focused on the potential impacts on small manufacturers producing consumer products. Almost 80 percent of the consumer product firms identified as subject to the regulation are considered "small" by the Small Business Administration's standard for this industry. However, these small firms only generate about two percent of the total revenue and employment associated with all identified firms.

The proposed regulations are expected to have some negative impact on small producers by virtue of the fact that they have a large presence in the regulated industries, and because they may be likely to experience significant rates of product withdraws because it may not be cost-effective to reformulate very small volume products. The regulation does not, however, appear more stringent for product categories with higher small business presence. The potential effect on small businesses is somewhat mitigated by the fact that overall regulatory costs are a relatively small share of total industry revenues. The complete economic impact and regulatory flexibility analysis is provided in the docket.

In conclusion, and pursuant to Section 605(b) of the RFA, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above.

Table 1. Product Category Table of Standards VOC Content Limits

Product category	VOC content limit (weight-percent VOC)	Product category	VOC content limit (weight-percent VOC)	Product category	VOC content limit (weight-percent VOC)
		Furniture maintenance products, Aerosols .....	25	Nail polish removers .....	85
		General purpose cleaners .....	10	Oven cleaners:	
		Glass cleaners:		Aerosols/pump sprays .....	8
		Aerosols .....	12	Liquids .....	5
		All other forms .....	8	Shaving creams .....	5
Air fresheners:		Hairsprays .....	80		
Single-phase .....	70	Hair mousses .....	16		
Double-phase .....	30	Hair styling gels .....	6		
Liquids/pump sprays .....	18	Household adhesives:			
Solids/gels .....	3	Aerosols .....	75		
Automotive windshield washer fluid, Bathroom and tile cleaners:		Contact .....	80		
Aerosols .....	35	Construction and panel .....	40		
All other forms .....	7	General purpose .....	10		
Carburetor and choke cleaners .....	5	Structural waterproof .....	15		
Cooking sprays, Aerosols .....	75	Insecticides:			
Cooking sprays, Aerosols .....	18	Crawling bug .....	40		
Dusting aids:		Flea and tick .....	25		
Aerosols .....	35	Flying bug .....	35		
All other forms .....	7	Foggers .....	45		
Engine degreasers .....	75	Lawn and Garden .....	20		
Fabric protectants .....	75	Laundry prewash			
Floor polishes/waxes:		Aerosols/solids .....	22		
Products for flexible flooring materials .....	7	All other forms .....	5		
Products for nonresilient flooring .....	10	Laundry starch products .....	5		
Wood floor wax .....	90				

TABLE 2.—ANTIPERSPIRANT AND DEODORANT TABLE OF STANDARDS HVOC<sup>1</sup> CONTENT LIMITS

Product category	Percent HVOC <sup>1</sup> content limit (weight-percent HVOC)
Antiperspirants (aerosols) .....	60
Deodorants (aerosols) .....	20

<sup>1</sup> HVOC are volatile organic compounds with vapor pressure greater than 80 millimeters of mercury at 20 °C (68 °F).

TABLE 3.—Currently Enforced State Volatile Organic Compound Limits

Product category	Percent volatile organic compound by weight			
	Proposed VOC limit	California	New York	Texas
Air fresheners:				
Single-phase .....	70	70	70	70
Double-phase .....	30	30	30	30
Liquids/pump sprays .....	18	18	18	18
Solids/gels .....	3	3	3	3
Automotive windshield washer fluids .....	35			23.5
Cold climate areas .....		35		
All other areas .....		10		
Bathroom and tile cleaners:				
Aerosols .....	7	7		7
All other forms .....	5	5		5
Carburetor and choke cleaners .....	75	75		75
Cooking sprays— aerosols .....	18	18		18
Dusting aids:				
Aerosols .....	35	35		35
All other forms .....	7	7		7
Engine degreasers .....	75	75		75
Fabric protectants .....	75	75		75
Floor polishes/waxes:				
Products for flexible flooring materials .....	7	7		7
Products for nonresilient flooring .....	10	10		10
Wood floor wax .....	90	90		90
Furniture maintenance product, Aerosols .....	25	25		25
General purpose cleaners .....	10	10	10	10
Glass cleaners:				
Aerosols .....	12	12		12
All other forms .....	8	8		6
Hairsprays .....	80	80	80	80
Hair mousses .....	16	16		16
Hair styling gels .....	6	6		6
Household adhesives:				
Aerosols .....	75	75		75
Contact .....	80	80		80
Construction and panel .....	40	40		40
General purpose .....	10	10		10

TABLE 3.—Currently Enforced State Volatile Organic Compound Limits—Continued

Product category	Percent volatile organic compound by weight			
	Proposed VOC limit	California	New York	Texas
Insecticides:				
Crawling bug .....	40	40	.....	40
Flea and tick .....	25	25	.....	25
Flying bug .....	35	35	.....	35
Foggers .....	45	45	.....	45
Lawn and garden .....	20	20	.....	20
Laundry prewash:				
Aerosols/solids .....	22	22	.....	22
All other forms .....	5	5	.....	5
Laundry starch products .....	5	5	.....	5
Nail polish removers .....	85	85	.....	75
Oven cleaners:				
Aerosols/pump sprays .....	8	8	.....	8
Liquids .....	5	5	.....	5
Shaving creams .....	5	5	.....	5
Antiperspirants-Aerosol .....	60 <sup>a</sup>	60 <sup>a</sup> /20 <sup>b</sup>	60 <sup>a</sup> /20 <sup>b</sup>	60 <sup>a</sup>
Deodorants-Aerosol .....	20 <sup>a</sup>	20 <sup>a</sup> /20 <sup>b</sup>	20 <sup>a</sup> /20 <sup>b</sup>	20 <sup>a</sup>

<sup>a</sup> Limit is for VOC with vapor pressure equal to or greater than 80 mmHg at 20°C (vp ≥ 2.0 mmHg @ 20°C).

<sup>b</sup> Limit is for VOC with vp ≥ 2.0 mmHg @ 20°C.

TABLE 4.—FEASIBILITY OF VOC CONTENT LIMITS

Product category	Proposed VOC content limit <sup>a</sup> (weight-percent VOC)	Percentage of products achieving recommended limit <sup>a</sup>	Percentage of tons sold in 1990 achieving recommended limit
Air fresheners:			
Single phase .....	70	13	28
Dual phase .....	30	66	8
Liquids/pumps sprays .....	18	60	27
Solids/gels .....	3	49	63
Bathroom tile cleaners:			
Aerosol .....	7	61	91
Other .....	5	83	57
Carburetor and choke cleaners .....	75	48	13
Cooking sprays—aerosols .....	18	36	11
Dusting aids:			
Aerosol .....	35	64	88
Other .....	7	56	73
Engine degreasers .....	75	64	83
Fabric protectants .....	75	55	76
Floor polishes/waxes:			
Flexible floors .....	7	100	100
Non-resilient materials .....	10	100	100
Wood .....	90	97	98
Furniture maintenance products .....	25	65	86
General purpose cleaners .....	10	74	88
Glass cleaners:			
Aerosols .....	12	49	29
Other .....	8	40	88
Hairsprays .....	80	33	14
Hair mousses .....	16	61	58
Hair styling gels .....	6	71	82
Household adhesives:			
Aerosols .....	75	88	86
Contact .....	80	93	98
Construction and panel .....	40	84	94
General purpose .....	10	61	83
Non-agricultural insecticides .....	40	57	61
Crawling insects .....	45	50	55
Foggers .....	25	69	78
Flea/tick .....	35	54	87
Flying bug .....	20	59	83
Lawn and garden .....	.....	.....	.....
Laundry prewash aerosols/solids .....	22	64	23

TABLE 4.—FEASIBILITY OF VOC CONTENT LIMITS—Continued

Product category	Proposed VOC content limit <sup>a</sup> (weight-percentage VOC)	Percentage of products achieving recommended limit <sup>a</sup>	Percentage of tons sold in 1990 achieving recommended limit
Antiperspirants—aerosols .....	60 <sup>b</sup>	33	3
Deodorants—aerosols .....	20 <sup>b</sup>	40	33

## List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Consumer products, Consumer and commercial products, Ozone, Volatile organic compound.

Dated: March 26, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96-8005 Filed 4-1-96; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 23

RIN 1018-AD63

## Export of River Otters Taken in Missouri in the 1996-97 and Subsequent Seasons

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Exports of animals and plants listed on Appendix II of CITES require an export permit from the country of origin. As a general rule, export permits are only issued after two conditions are met. First, the exporting country's CITES Scientific Authority must advise the permit-issuing CITES Management Authority that such exports will not be detrimental to the survival of the species. This advice is known as a "no-detriment" finding. Second, the Management Authority must make a determination that the animals or plants were not obtained in violation of laws for their protection. If live specimens are being exported, the Management Authority must also determine that the specimens are being shipped in a humane manner with minimal risk of injury or damage to health.

The purpose of this proposed rule-making is to announce proposed

findings by the Scientific and Management Authorities of the United States on the export of river otters harvested in the State of Missouri, and to add Missouri to the list of States and Indian Nations for which the export of river otters is approved. The Service intends to apply these findings to harvests in Missouri during the 1996-97 season and subsequent seasons, subject to the conditions applying to approved States.

**DATES:** The Service will consider comments received on or before June 3, 1996 in making its final determination on this proposal.

**ADDRESSES:** Please send correspondence concerning this proposed rule to the Office of Scientific Authority; Room 725 (Room 750 for express and messenger-delivered mail), U. S. Fish and Wildlife Service, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Scientific Authority Finding—Dr. Marshall A. Howe, Office of Scientific Authority; phone 703-358-1708; FAX 703-358-2276.

Management Authority Findings/State Export Programs—Ms. Carol Carson, Office of Management Authority; Mail Stop: Arlington Square, Room 420c; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703-358-2095; FAX 703-358-2280).

**SUPPLEMENTARY INFORMATION:** On January 5, 1984 (49 FR 590), the Service published a rule granting export approval for river otters and certain other CITES-listed species of furbearing mammals from specified States and Indian Nations and Tribes for the 1983-84 and subsequent harvest seasons. In succeeding years, approval for export of one or more species of furbearers has been granted to other States and Indian Nations, Tribes, or Reservations through the rule-making process. These approvals were and continue to be

subject to certain population monitoring and export requirements. The purpose of this notice is to announce proposed findings by the Scientific and Management Authorities of the United States on the proposed export of river otters, *Lontra canadensis*, harvested in the State of Missouri, and to add Missouri to the list of States and Indian Nations for which the export of river otters is approved. The Service proposes these findings for the export of specimens harvested in the State of Missouri during the 1996-97 season and subsequent seasons, subject to the conditions applying to other approved entities.

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

In the January 5, 1984, Federal Register (49 FR 590), the Service announced the results of a review of listed species at the Fourth Conference of the CITES Parties that certain species of furbearing mammals, including the river otter, should be regarded as listed in Appendix II of CITES because of similarity in appearance to other listed species or geographically separate populations. The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor