Energy Center, L.P. (WSREC), in the Village of Summit, Illinois, had failed to establish that the incinerator described in its prevention of significant deterioration (PSD) permit application is still viable, and concluded that no PSD permit to construct should be issued to WSREC under these circumstances. The EAB remanded the matter to the Illinois Environmental Protection Agency (Illinois EPA) to issue a final permit decision denying the federal PSD permit. On April 22, 1999, the Illinois EPA denied the WSREC application for a federal PSD permit.

**DATES:** Judicial review of the PSD permit denial is available pursuant to 307(b)(1) of the Clean Air Act and only by filing a petition for review in the United States Court of Appeals for the Seventh Circuit by September 13, 1999.

**ADDRESSES:** Documents relevant to the above action are available for public inspection during normal business hours at the following addresses:

Illinois Environmental Protection Agency, Bureau of Air, Permit Section, 1021 N. Grand Ave. East, Springfield, Illinois 62794

United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd. (AR–18J), Chicago, IL 60604

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Marquardt, United States Environmental Protection Agency, Region 5, 77 West Jackson (AR–18J), Chicago, Illinois 60604. (312) 353–3214.

**SUPPLEMENTARY INFORMATION:** On November 4, 1998 the EAB issued an Order to Show Cause Why Appeal Should Not Be Dismissed As Moot (''Show Cause Order'') in this case. The Show Cause Order directed the permittee/petitioner, WSREC, to ''affirm that it is presently committed to construct the resource recovery facility'' that is the subject of this appeal. Show Cause Order at 7. In particular, WSREC was to ''demonstrate that it has the means to obtain control over the properties identified in its site plan for purposes of construction.''. *Id.* At 8. The purpose of the Show Cause Order was to give WSREC an opportunity to defend against the dismissal of this appeal on the ground that ''WSREC does not intend, or is unable, to construct the facility identified in its permit application.'' *Id.*

In light of WSREC's failure to affirm that it intends to construct the facility described in its PSD permit application and the evidence of property transfers covering the proposed project site, the EAB concluded that there is no realistic prospect that construction will commence within the regulatory time frame specified in 40 CFR 52.21(r). Further, the EAB found that WSREC failed to show cause why this appeal should not be dismissed as moot. The appeal was dismissed by the EAB and the matter was remanded to the Illinois EPA for the purpose of issuing a final permit decision denying the permit. The EAB instructed that the Illinois EPA's final decision shall be considered final agency action for the purposes of judicial review.

Dated: June 23, 1999

**Jerri-anne Garl,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 99–17770 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[AD–FRL–6375–2]**

**RIN 2060–AG59**

## Consumer and Commercial Products: Wood Furniture, Aerospace, and Shipbuilding and Ship Repair Coatings: Control Techniques Guidelines in Lieu of Regulations

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

**ACTION:** Final determination.

**SUMMARY:** This final determination announces our final decision to list wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings for regulation in the first group of consumer and commercial product categories to be regulated under section 183(e) of the Clean Air Act (Act). We determined that emissions of volatile organic compounds (VOC) from these coatings have the potential to cause or contribute to ozone levels that violate the national ambient air quality standards (NAAQS) for ozone. Ozone is a major component of smog which causes negative health and environmental impacts when present in high concentrations at ground level.

This final determination also announces our determination under section 183(e) of the Act that control techniques guidelines (CTG) are substantially as effective as national regulations in reducing VOC emissions from wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings which contribute to violations of the NAAQS for ozone. With this final determination, we may issue CTG in lieu of national regulations for each of these specific categories.

We based our final determination on comparison of the effectiveness of VOC control in the wood furniture manufacturing CTG (61 FR 25223, May 20, 1996), the aerospace CTG (63 FR 15006, March 22, 1998), and the shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996) with the estimated effectiveness of control possible from national regulations for these product categories.

**EFFECTIVE DATE:** July 13, 1999.

**ADDRESSES:** *Docket.* Docket No. A–96–23 contains supporting information for this final determination. You can inspect this docket and copy material between 8:30 a.m. and 5:30 p.m., Monday through Friday. The docket is located at our Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. Telephone (202) 260–7546, FAX (202) 260–4400. You may have to pay a reasonable fee for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Brown, (919) 541–5305, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (*brown.dan@epa.gov).*

**SUPPLEMENTARY INFORMATION:**

*Whom does this action affect?* Entities potentially affected by this action are those wood furniture manufacturing operations, aerospace manufacturing and rework operations, or shipbuilding and ship repair (surface coating) operations which are (or have the potential to become) ''major'' sources of VOC emissions and are located in certain ozone nonattainment areas. Potentially affected entities are included in the following table:

| Category | Examples of potentially affected entities |
|---|---|
| Industry | Wood furniture or wood furniture component(s) manufacturing. (SIC Codes 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, 5712).<br>Any manufacturing, reworking, or repairing of aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles. (SIC Codes 3720, 3721, 3724, 3728, 3760, 3761, 3764, 3765, and 4581). |

| Category | Examples of potentially affected entities |
|---|---|
| Federal Government | Any building or repairing, repainting, converting, or alteration of ships. The term ship means any marine or fresh-water vessel, including self-propelled by other craft (barges), and navigational aids (buoys). Note: Offshore oil and gas drilling platforms and vessels used by individuals for noncommercial, nonmilitary, and recreational purposes that are less than 20 meters in length are not considered ships. (SIC Code 3731)<br>Federal agencies which undertake aerospace manufacturing or rework operations (see above) such as the Air Force, Navy, Army, and Coast Guard.<br>Federal agencies which undertake shipbuilding or ship repair operations (see above) such as the Navy and Coast Guard. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities which are the focus of this action. This table lists the types of entities that we are now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected.

*What is the judicial review process for this determination?* We proposed this section 183(e) determination on August 22, 1997 (62 FR 44672). Today's final determination is our final administrative action concerning that proposal. Under section 307(b)(1) of the Act, you can challenge this final determination only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 13, 1999. Under section 307(d)(7)(B) of the Act, you can raise an issue during judicial review only if someone raised it with reasonable specificity during the public comment period.

The information presented in this document is organized as follows:



## I. Why are we taking this action?

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

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

In 1990, Congress enacted section 183(e) of the Act, establishing a new regulatory program to control VOC emissions from consumer and commercial products. Section 183(e) directed the Administrator to study the VOC emissions from these products and report to Congress concerning their potential to contribute to levels of ozone which violate the NAAQS for ozone. The statute also directed us to identify, list, and schedule for regulation those categories of products which account for at least 80 percent of VOC emissions from all such products in ozone nonattainment areas.

Following these directions, we studied these products and determined that VOC emissions from consumer and commercial products have the potential to contribute to ozone levels that violate the NAAQS for ozone. We also identified coatings used in wood furniture manufacturing, aerospace, and shipbuilding and ship repair as product categories to regulate to reduce VOC emissions. For a more detailed discussion of our findings, see:

- ''Consumer and Commercial Products Report to Congress'' (EPA–453/R–94–066–A).
- **Federal Register** document announcing the schedule for regulating consumer and commercial products (60 FR 15264).
- **Federal Register** document summarizing significant public comments and the EPA's responses regarding the section 183(e) study, Report to Congress, and the list and schedule for regulation (63 FR 48792).

Section 183(e) of the Act directs us to regulate consumer and commercial products using best available controls (BAC). The statute defines ''consumer and commercial'' products 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 statute defines ''BAC'' as:

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

Although the statute provides that we may use ''any system or systems'' of regulation to achieve VOC emission reductions, it provides two primary options for reducing VOC emissions from these products, national

regulations or CTG. Because of the difference between the entities subject to regulation under each mechanism, the statute permits us to obtain VOC emission reductions either at the point of manufacture or at the point of use. A regulation under section 183(e) may only apply to certain regulated entities defined in the statute as:

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

Thus, section 183(e) does not allow us to issue regulations that would directly regulate end users of these products. Alternatively, section 183(e) also includes provisions that allow us to control these emissions at the point of use by issuing CTG. We may issue CTG instead of national regulations, under section 183(e)(3)(C) of the Act, if the Administrator determines that CTG will be ''substantially as effective as'' regulations in reducing VOC emissions from consumer and commercial products which contribute to ozone in areas that violate the NAAQS.

Although not specifically defined in the Act, a CTG is a guidance document issued by the EPA which, under section 182(b)(2), triggers a responsibility for States to submit reasonably available control technology (RACT) rules for stationary sources of VOC that are covered by the CTG as part of each State's State Implementation Plan. The EPA defines RACT as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'' (44 FR 53761, September 17, 1979). Each CTG includes a ''presumptive norm'' or ''presumptive RACT'' that we believe satisfies the definition of RACT. If a State submits a RACT rule that is consistent with the presumptive RACT in the CTG, the State does not need to submit additional support to demonstrate that the rule meets the Act's RACT requirement. However, if the State submits an alternative emission limit or level of control for a source or source category for which there is a presumptive RACT and deviates from the CTG, the State must submit independent documentation as to why the rule meets the statutory RACT requirement.

In our proposed determination, we discussed a number of factors we may consider in making our determination that CTG are substantially as effective as rules under section 183(e) (62 FR 44672, August 22, 1997). For these three product categories, we considered the following factors to determine if CTG are substantially as effective as national regulations:

—the product's distribution and place of use;

—the most effective entity to regulate in order to control emissions (in other words, whether it is more effective to achieve VOC reductions at the manufacturer level or the user level);

—consistency with other VOC control strategies; and

—estimates of VOC emission reductions.

As we consider other product categories in future phases of regulation under section 183(e), there may be other factors that will be relevant for given product categories.

The distribution and use of these products is focused on the industrial sector with fewer large users (e.g., industrial facilities), rather than many small users (e.g., individual consumers in the general public). Users often add thinning solvent to these coatings at the industrial facility after purchase from the coating manufacturer. Hence, we believe the industrial facility (i.e., the coating user) will be the most effective entity to target for VOC emission reductions from these products. This approach would be consistent with previous efforts to reduce VOC emissions from industrial coatings by issuing CTG for the industrial facilities where the coatings are applied. Furthermore, the historical use of CTG to control VOC emissions from similar coating operations has proven to be effective in reducing VOC emissions. In order to assess the relative effectiveness of each mechanism, we also compared the VOC emission reductions that we estimated for a CTG with those that we estimated for a national regulation for each product category. For the comparison, we used the existing CTG issued for wood furniture manufacturing (61 FR 25223), aerospace coatings (63 FR 15006), and shipbuilding and ship repair (61 FR 44050) to estimate VOC emission reductions for the CTG. We then made estimates of the projected VOC emission reductions from national regulations by estimating what would constitute BAC for each product category.

For wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings, we determined that CTG would be substantially as effective as national regulations in reducing VOC emissions in ozone nonattainment areas. For these product categories, the VOC emissions typically occur in fixed industrial settings where CTG enable monitoring and enforcement of controls during use of the product. We described the level of control presumptively established for each category in the proposed determination (62 FR 44672, August 22, 1997) and in the wood furniture manufacturing CTG (61 FR 25223, May 20, 1996), the aerospace CTG (63 FR 15006, March 22, 1998), and the shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996).

## II. What were the significant comments we received and our responses to them?

We placed our proposed determination and supporting documentation in a docket open to the public when we published the proposal in the **Federal Register** on August 22, 1997 (62 FR 44672). At that time, we asked for comments and later received comment letters from manufacturers and importers, trade groups, environmental groups, and one private citizen. All of the public comments on our proposed determination, and our responses to the comments, are in the docket (A–96–23), as referenced in the **ADDRESSES** section of this document. We requested but did not receive comments on the listing of these three commercial products in our proposed determination on August 22, 1997 (62 FR 44672). We discuss the most significant issues raised by commenters and our response to them in this document.

### *A. Estimated Levels of Control for Reasonably Available Control Technology (RACT) and Best Available Controls (BAC)*

1. Comparing BAC and RACT

*Comment*: BAC, the degree of control required for a national regulation under section 183(e), allegedly should be more stringent than RACT, the degree of control required for CTG. The commenter noted that we should base BAC on ''best'' available controls, whereas we can base RACT on controls that are ''reasonably'' available. The commenter stated that to show that a CTG would be substantially as effective as a regulation, we would thus have to show that RACT is substantially as effective as BAC. The commenter's essential point is that it would be very difficult to establish that ''reasonably'' available controls could be substantially as effective as ''best'' available controls, because ''best'' implies a higher degree of controls.

*Response*: We disagree that BAC must automatically be a more stringent level

of control than RACT. Each of these terms refers to the optimum degree of control within its respective regulatory program and, as discussed in the proposed determination, we believe that BAC is not necessarily more stringent than RACT. We note that although section 183(e) contemplates the implementation of ''best'' available controls, it does so in terms that direct us to determine what is ''best'' in light of enumerated factors, including technological and economic feasibility.

We believe the degree of emission reduction in a national regulation based on BAC should reflect nationwide usage of coatings within a category under all conditions. This includes situations where high-VOC coatings are necessary to achieve product performance requirements. The level of control should be achievable considering, among other things, economic impacts. Thus, we believe that it is appropriate to consider the continued availability of high-VOC coatings in the selection of BAC if they are essential to fill a necessary product niche. In addition, we must base BAC (like RACT) on available control technologies that are achievable based on technological feasibility. Therefore, we cannot automatically select lower VOC-emitting products that are not proven for the range of uses in a category as dispositive of BAC simply because they have the lowest VOC emissions.

High-VOC coatings, if essential to fill a necessary product niche, could significantly influence the selection of BAC in development of a national regulation and result in a higher VOC limit to allow their continued production and use. High-VOC coatings would also impact the selection of controls for RACT. However, the impact would be lessened for RACT to the extent that regulations of the ''use'' of high-VOC coatings through CTG could lead to a lower VOC limit for specific applications and, hence, lower overall VOC emissions. Rules reflecting a CTG's presumptive RACT control level could also include provisions for more efficient coating application equipment, air pollution control devices, process changes, and work practice standards to further reduce VOC emissions. Thus, it is possible that a national regulation utilizing BAC could be less stringent than a RACT rule triggered by issuance of a CTG. We believe that this outcome is likely for many coatings used in industrial manufacturing processes where higher VOC coatings are often essential for product performance, but where on-site emission reduction measures through RACT rules can mitigate the VOC emissions to the atmosphere.

Because Congress explicitly provided for the use of CTG in lieu of a national regulation pursuant to section 183(e), we believe it is reasonable to assume that ''reasonably available control technology'' can be substantially as effective as ''best available control'' under certain conditions and for some categories. Congress, however, did not provide a distinct standard or methodology for EPA to consider when determining whether CTG are substantially as effective as regulations. Furthermore, the legislative history does not directly address this issue. Given the ambiguity in the statute, we have chosen to make this comparison based on reasonable considerations as set forth in the proposed determination.

Most importantly, we do not consider the comparison of numerical emission reduction estimates as the sole factor in the evaluation of whether a CTG is ''substantially as effective.'' As discussed in the proposed determination, other factors related to implementation and enforcement are equally important in determining the overall emission reduction effectiveness of each regulatory strategy. Such factors include consideration of the most effective entity to target for reductions (e.g., the product manufacturer or the product user), the distribution and site of product use (e.g., distributed and used in an established stationary facility or widely dispersed for use in varied locations), and consistency with other control strategies (e.g., have existing control strategies proved effective). Thus, in making the determination that CTG for wood furniture, aerospace, and shipbuilding and ship repair operations will be substantially as effective as regulations pursuant to section 183(e), we did not rely solely on the comparison of emission reduction estimates. We believe a proper determination requires consideration of the estimates of BAC, the corresponding emission reduction estimates, and the implementation and enforcement factors described in the proposal.

2. Selecting BAC

*Comment:* In comparing potential emission reductions from a CTG versus a national regulation, one commenter stated that we used unsupported estimates of the stringency of BAC standards that we would develop under a national regulation. The commenter suggested that our estimated standards were themselves illegal under section 183(e) because we did not consider all of the statutory factors in estimating what would constitute BAC under a projected national regulation.

*Response:* We maintain that we performed the proper analysis necessary to compare the potential emission reductions from a CTG to the potential emission reductions from a national regulation for each of these three product categories. As an initial matter, we note that section 183(e) does not stipulate how to assess whether a CTG is substantially as effective as a regulation in obtaining VOC emission reductions. As explained in the proposed determination, neither the statute nor the legislative history provides a distinct standard that Congress directed us to use for this analysis (62 FR 44672, 44674, August 22, 1997).

We acknowledge that the statute is ambiguous regarding how we are to make the determination that a CTG for a given product category would be substantially as effective as a national regulation in achieving VOC emission reductions. We believe that it is reasonable to interpret the provisions to allow a comparison of the estimated VOC emission reductions achievable by the alternative mechanisms of a CTG or a regulation. Moreover, we believe it is appropriate to interpret the provisions to allow us to choose a reasonable means to estimate the projected emission reductions. It would be unreasonable to require us, in effect, to perform a complete rulemaking process before making an informed determination that a CTG would be substantially as effective as a national regulation.

As detailed more fully in the proposed determination, we concluded that it would be reasonable to compare the expected VOC emission reductions from existing CTG for these product categories with the projected VOC reductions from national regulations that we might develop for the same products. We noted explicitly in the proposed determination that the projected VOC reductions from a national regulation were, by necessity, estimates based upon the information available to us. Contrary to the assertions of the commenter, we believe that we had adequate information regarding the affected industries and products to make reasonable estimates. For these three product categories, we completed an in-depth and detailed review of the industries during the development of national emission standards for hazardous air pollutants (NESHAP) and CTG. Based upon this information, as described in Docket No. A–96–23, we were informed about the industries and the issues that would

potentially affect development of any national regulation governing these products used in an industrial setting.

The commenter suggested that we had insufficient support for our estimates, thereby invalidating the comparison of CTG to national regulation. Taken to its logical extreme, however, the commenter's argument would require us to proceed through every step of a rulemaking process (e.g., regulatory development, proposal, response to comments, interagency review, and drafting of a final regulation) before we could have sufficient certitude about the level of control possible from a national regulation to make a valid comparison with CTG. We do not believe that section 183(e) requires such an extensive process in order to make a valid comparison between the efficacy of a national regulation and that of a CTG.

The commenter also stated that we underestimated the reductions feasible through a national regulation, thereby invalidating the comparison. We disagree because in making our estimation, we took into account the very issues that would have been relevant in the development of a national regulation. As detailed in the proposed determination, we explained alternative approaches, industry issues, and constraints for regulating each of the three product categories. We could not, of course, predict with perfect accuracy what the emission limits would have been for a national regulation. Such a determination would be possible only after completion of an actual rulemaking process. We did, however, utilize our expertise and familiarity with the issues to give an informed estimation of the VOC limits in a national regulation for these product categories. As the commenter acknowledged, we must consider a variety of factors in assessing what level of control is BAC for a product category. For a regulation with national scope, that level is not necessarily the lowest possible VOC content.

Even if we were conservative in estimating the potential VOC reductions achievable through a national regulation or a CTG, we note that the precise amount of reductions possible through one mechanism or another is but one factor for consideration. As stated in the proposed determination, we believe that we may take into account a variety of different factors related to implementation and enforcement such as the most effective entity to target for reductions (e.g., the product manufacturer or the product user), the distribution and site of use of the product (e.g., distributed and used in an established stationary facility or widely dispersed for use in varied locations), and consistency with other control strategies (e.g., have existing control strategies proved effective) (62 FR 44675). Thus, for example, it might be possible to achieve greater numeric reductions through a national regulation rather than a CTG, but other factors might render a CTG substantially as effective as or more effective than a national regulation.

Simply put, some products are more suitable for control through a national regulation at the point of manufacture and some products are better controlled at the point of use instead. For example, VOC control for a product like house paint is more effective through a regulation governing manufacturers, whereas control of products used by a smaller number of large sophisticated industrial end users is more effective through a CTG. As explained in greater detail in the proposed determination, we believe that these three product categories are appropriate for VOC control through a CTG rather than a regulation for a variety of reasons.

*Comment:* One commenter claimed that we provided incorrect estimates of the potential VOC emission reductions from a national regulation for wood furniture manufacturing coatings. Because we identified three possible control technologies: waterborne coatings, high solids coatings, and ultraviolet curable coatings, the commenter indicated that properly estimated BAC standards should have reflected some combination of these technologies. The commenter noted that we concluded in the proposed determination that waterborne and high-solids coatings are not necessarily compatible for all products. The commenter stated that the primary reason for our rejection of certain technologies was our concern that manufacturers would not be able to produce the same quality of product and would therefore suffer economically. The commenter stated that the proposed determination did not indicate that we made any effort to verify the assertions of manufacturers or to balance economic consequences against environmental and health benefits.

*Response:* As previously noted, the data and information that we used to support the BAC estimate came from extensive regulatory negotiations under the Federal Advisory Committee Act (FACA) to support development and promulgation of a NESHAP under section 112 of the Act and a CTG under section 183(b) of the Act. We believe these data are adequate to support an estimate of BAC for a national regulation because we examined all available coating technologies and the total VOC emissions from these coatings in these industries when developing the existing CTG.

In the selection of the level of control that is BAC and evaluation of its potential economic impacts, we believe it is reasonable to consider the impact on coating users if necessary coatings were no longer available. For the wood furniture manufacturing industry, sealer and top-coat coatings must be compatible to ensure acceptable finishes on the wood. Even though there may be lower VOC coatings that could potentially justify a lower level for BAC, we believe it is necessary to evaluate whether a limit based solely on such coatings would eliminate the availability of necessary compatible sealers and top-coats. We established BAC limits for wood furniture coatings based on broadly defined coating types (e.g., top-coats and sealers) so that all of the necessary coating technologies available within the coating type (e.g., waterborne, high solids, and conventional) would remain available to meet the needs of coating users to fill a product niche.

An alternative to establishing a single VOC content limit as BAC considering all coating technologies would be to establish less broadly defined categories of coatings with individual BAC limits for each type of coating technology. As we discussed in the proposed determination, we considered subcategorizing wood furniture coating types into several technology groups: waterborne coatings with a BAC limit based only on waterborne technology, high-solids coatings with BAC based only on high-solids technology, and conventional coatings with BAC based only on conventional coating technology. Although this approach might lead to lower VOC limits for the individual coating technologies, we do not believe it would automatically lead to the use of lower VOC coatings. Regulations under section 183(e) regulate the manufacturer, distributor, or processor of a coating; these regulations do not regulate how or under what circumstances the end user can apply a specific technology. Therefore, under this scenario, a wood furniture manufacturer would be able to use a coating technology with a higher VOC limit (e.g., solvent based) even if a lower VOC coating technology (e.g., waterborne) could achieve the same results.

Alternatively, regulators can specifically address the use of coating technologies with a CTG restricting the use of higher VOC coating technology to

only those applications where the use of lower VOC technology is not compatible with the specific sealer and top-coat system. Thus, a CTG can include stricter requirements on the actual use of coating technologies whereas a national regulation could not. Furthermore, since regulators can more effectively monitor and enforce compliance with requirements on the use of these products in wood furniture manufacturing facilities, these facilities can be better targeted for effective VOC reductions with a CTG.

In assessing the projected VOC emission reductions from a national regulation, we had to consider the limitations imposed by section 183(e). We believe that for purposes of comparing the potential emission reductions from a regulation for wood furniture coatings, establishing a single BAC level that is the lowest achievable level that does not preclude any necessary coating technology is appropriate.

Regarding our reliance on information provided by manufacturers on coating technologies and economic impacts used to establish the estimated BAC for this category, our assessment was based on information from the regulatory negotiation process under FACA, described above. The FACA committee was comprised of industry groups, public interest groups, and governmental agencies and conducted extensive discussions regarding the feasibility of coating technologies, economic impacts, and environmental benefits. We believe that such a process provided more reliable and less biased information than the commenter suggested. We maintain that the information developed during this FACA process is adequate to support estimates of the VOC emission reductions from a potential national regulation for purposes of making this determination.

*Comment:* One commenter criticized our estimates of the stringency of BAC standards for aerospace and shipbuilding and ship repair coatings. The commenter questioned our assertion that the best available control measures (BACM) presented in the aerospace and shipbuilding CTG ''represent the best performing sources in the industry'' and, thus, would be ''similar if not equivalent'' to BAC. The commenter stated that we did not indicate how BACM standards represent the best performing sources or why the best performing sources would be equivalent to BAC. The commenter concluded that there are indications that properly written national regulations for these products would be more stringent than those we used for comparison purposes, and that it is impossible for us or the public to reach a valid determination that CTG are substantially as effective as national regulations for these product categories without more information and more thorough analysis.

*Response:* We reaffirm our conclusion that the BACM levels of control we presented in the aerospace and shipbuilding CTG represent the best performing sources in the industry and, thus, would be similar if not equivalent to BAC for these products for purposes of this analysis. We indicated in our proposed determination that BACM was based on data used to support development and promulgation of NESHAP for the aerospace and shipbuilding and ship repair industries under section 112 of the Act and CTG under section 183(b) of the Act. We believe these data are adequate to support an estimate of BAC for a national VOC regulation because we examined VOC emissions from these coatings when developing the NESHAP and CTG.

Data analysis supporting development of the NESHAP includes the selection of maximum achievable control technology (MACT) to reduce emissions from aerospace and shipbuilding and ship repair coatings, after considering the energy, environmental, and economic impacts of the technology, and other costs. The MACT is based on industry sources with the best performing emission reduction technology. While typically there may be differences in the level of emission reduction provided by MACT, BACM, BAC, and RACT, when there is a limited range of control options for a specified industry, such as coating technologies, the level of control may be identical. We determined that MACT, BAC, BACM, and RACT were all identical for these industries based on the lowest achievable emission levels for the aerospace and shipbuilding and ship repair coatings.

In conducting our review of available data to make today's final determination, we did not find any clear indications that properly written national regulations based on BAC would be more stringent. Nor did we receive any such information during the comment period for the proposed determination. We believe that we have sufficient information to make a valid comparison of the projected emission reductions from a CTG and national regulation for each of these product categories. We believe it is appropriate to make such determinations based on readily available information, thereby maximizing the use of limited resources. Furthermore, we believe this was the intent of the Congress in section 183(e)(3)(C), which gives the Administrator discretion to determine if CTG would be substantially as effective as regulations and to issue CTG in lieu of regulations when appropriate.

*B. Emission Reductions Attributed to CTG*

*Comment:* A commenter stated that we failed to quantify or support our estimate of VOC emission reductions possible from CTG. The commenter stated that in the discussion of the CTG for aerospace facilities, we indicated that 1,288 tons per year (tpy) of the total 4,288 tpy estimated reductions would come from equipment and work practice standards, but we did not provide any indication of how we reached this number. For the wood furniture manufacturing CTG, the commenter stated that we provided no allocation of the sources of reduction at all. Finally, the commenter stated that we appear to have reached the estimated 1,366 tpy in VOC reductions for the shipbuilding and ship repair category without accounting for any reductions from work practices.

*Response:* We do not agree that we failed to quantify and support the estimates of VOC reductions from CTG for these three categories. The docket for this action includes memoranda that document the calculations made for each category (Docket No. A–96–23).

As discussed in the proposed determination and in the responses above, the advantage of a CTG is that it targets VOC emission reductions at the source. A CTG can limit the amount of VOC in a coating when applied, including any VOC the user adds to the product as manufactured (e.g., thinning solvents). Additionally, CTG can include requirements for pollution control devices, process changes, work practices, and other means which can further reduce emissions of VOC from coating use and other sources (e.g., VOC emissions from equipment cleaning and coating mixing). National regulations under section 183(e) apply to manufacturers, processors, wholesale distributors, and importers of commercial products such as these industrial coatings and, therefore, could only limit the amount of VOC in the coatings as sold and distributed.

For CTG that include recommended requirements for process changes or control equipment, the additional VOC emission reductions are typically a function of the amount of coating applied. Therefore, with estimates of the amount of coating applied, emission

reductions resulting from such requirements can often be quantified. The aerospace CTG recommended such requirements for coating application equipment. This equipment improves the efficiency of the coating operation resulting in less VOC emissions. Since the VOC reductions correlate with the amount of coating used, we were able to quantify the additional reductions associated with the CTG's recommended requirement and consider them in making our proposed determination (Docket No. A–96–23).

The commenter is correct that we did not allocate and account for additional VOC emission reductions associated with the CTG for shipbuilding and wood furniture manufacturing. As discussed in the proposed determination, we expect the CTG to achieve additional VOC reductions since RACT VOC limits regulate coatings as-applied (i.e., including any VOC added after purchase). It was also discussed that CTG recommend work practice standards for the cleaning of coating equipment. Since VOC are used to clean coating equipment, these work practices will potentially achieve additional VOC reductions from the industrial facilities that we could not achieve with a regulation governing the VOC content of products as manufactured. In making our estimate of VOC reductions from a CTG, we could not definitively quantify additional emission reductions from such limits and work practices, based on available data. In these cases, the full benefit of a CTG over a national regulation may not be completely quantifiable. In this respect, we agree that our estimation of the reductions from the CTG may be conservative and that we would anticipate greater reductions. However, even without quantifying and allocating the precise amount of projected VOC reductions, we concluded that a CTG would be substantially as effective for each category. We do not believe that section 183(e) requires us to quantify precisely the projected reductions from a potential regulation or CTG before we can reasonably make our determination.

*Comment:* The development of the existing wood furniture manufacturing CTG was a coordinated effort between industry, State, and local agencies and environmental groups. The commenter asserted that the advantage of a CTG over a national regulation is its ability to reduce emissions from coatings as they are used in the actual workplace setting. The commenter suggested that coatings purchased from vendors are often modified prior to application due to the variety of wood species and application equipment used in the industry. Attempting to control VOC emissions by reducing VOC in the product as manufactured would, therefore, be less effective for this product category. The commenter suggested that a CTG is a proven mechanism for reducing VOC emissions from this industry by placing limits on the coatings as applied and including work practice standards to reduce VOC emissions from other associated operations. The commenter supported our determination that CTG are substantially as effective as a national regulation for this product category.

*Response:* We concur with these comments for this product category. We recently promulgated a NESHAP for the wood furniture manufacturing industry under section 112 of the Act, and issued a final CTG for this industry under section 183(b) of the Act on May 20, 1996. As discussed above, in making our determination under section 183(e), we considered several factors related to implementation, enforcement, and estimated emission reductions from CTG and a national regulation for this product category. In estimating emission reductions, we considered pertinent information regarding the wood furniture industry that was gathered during the development of the NESHAP and CTG. Based on the analysis of this industry information, as documented in Docket No. A–96–23, we determined that a CTG would be substantially as effective as a national regulation under section 183(e) for wood furniture manufacturing coatings.

*Comment:* One commenter suggested that CTG are better targeted to reduce VOC emissions from solvent use in ozone nonattainment areas and that there are valid reasons for such reductions in most of these areas, except for those that are $NO_X$-limited. The commenter claimed that national regulations would impose additional restrictions in ozone attainment areas, for which the commenter believes there is no environmental justification. In addition, the commenter asserted that such national regulations would impose unnecessary costs on the users of products and on solvent producers. The commenter supported our determination that CTG are substantially as effective as national regulations under section 183(e) in reducing VOC emissions from these product categories.

*Response:* As discussed in previous responses, we made our determination to issue CTG for these product categories based upon consideration of various factors including implementation, enforcement, and emission reductions. In weighing whether to implement national regulations versus CTG, we also considered the nature of the product and its use. For example, we believe that a national regulation is an appropriate means to reduce emissions in accordance with section 183(e) for products that are, by their nature, easily transported across area boundaries, are widely distributed, and are used by widely varied types of end users in widely varied locations. Examples of such products are architectural coatings, consumer products (household and personal care), and automobile refinish coatings. Therefore, for this and other reasons, we promulgated national regulations for those three product categories on September 11, 1998 (63 FR 48792).

In the case of wood furniture, aerospace, and shipbuilding and ship repair coatings, we considered the fact that they are industrial coatings which, by their nature, are typically used by specific end users in specific locations. Furthermore, after purchasing these industrial coatings, end users often modify them to meet the specific needs of the industrial application. Because of the fixed location of their use and the ability to identify and locate the end users for compliance assurance and enforcement purposes, we concluded that control of VOC emissions from these product categories is more effectively accomplished through requirements imposed on the user rather than on the coating manufacturer. Thus, a CTG is a better mechanism to achieve VOC emission reductions for these categories of products. We do not agree with the commenter's assertion that there is no environmental benefit to reducing VOC emissions from solvents in ozone attainment areas (see the September 11, 1998 **Federal Register** documents referenced above for a discussion of EPA's position on this issue).

*Comment:* One commenter stated that since section 183(e) authorizes the imposition of national regulations on only the product manufacturers, processors, wholesalers, distributors, or importers or suppliers thereof, a national regulation could not reach the end-user operations that generate VOC emissions. For this reason, the commenter agreed that a CTG would be substantially as effective, if not more effective, than a national regulation in reducing VOC emissions from aerospace coatings. The commenter's reasons for this were:

—A CTG can affect equipment and work practice standards resulting in additional VOC emission reductions,

such as those associated with the use of solvents in cleaning operations; and

—A CTG can affect the coatings ''as applied'' which is the most effective way to control VOC emissions from aerospace coatings since users sometimes add VOC-containing solvents to the coatings before application.

*Response:* The commenter's points are in agreement with our conclusions regarding aerospace coatings. As noted in the response above, the EPA believes that some products are better suited to regulation through national regulations.

*Comment:* One commenter stated that Congress recognized that the nature, distribution, and use of some products would make a CTG a more effective control option and, therefore, specifically authorized EPA to issue CTG in lieu of national regulations.

The commenter agreed with us that CTG are substantially as effective as national regulations for the three categories under discussion here. Specifically, the commenter stated that site specific factors and the ability of end-users to control VOC emissions with equipment and work practices support the selection of CTG in lieu of regulations for these three categories.

*Response:* We agree with these statements regarding these products. There are many sources of VOC emissions from industrial facilities, only one of which is the actual use of commercial coating products. Other steps in the overall process involve the use of VOC and result in VOC emissions. Such steps include the cleaning of surfaces prior to application of a coating, the mixing and amendment of coatings prior to use, the cleaning of equipment and work spaces after coating use, and the storage and transfer of VOC used in these operations.

*C. Estimated Number of Affected Facilities*

*Comment:* One commenter claimed that we failed to explain how the difference in the number of facilities covered by CTG and national regulations would affect emission reductions. Specifically, the commenter noted that for wood furniture coatings, we estimated that only 950 of the 4,500 facilities in nonattainment areas would be covered by a CTG. The commenter also noted that we estimated a shipbuilding and ship repair CTG would cover just 100 of the 187 facilities in nonattainment areas. Similarly, with regard to aerospace coatings, the commenter noted that we estimated a CTG would cover only 64 percent of sources. In each case, the commenter questioned our statements that sources not covered by the CTG would not use significant amounts of the coatings. The commenter stated that we failed to support our contention that facilities not covered by CTG would not contribute significantly to VOC emissions.

*Response:* The commenter is correct that the two regulatory approaches could potentially impact a different number of sources. We do not agree, however, that we failed to explain this fact. As discussed in the proposed determination, CTG affect ''major sources'' of VOC emissions by triggering requirements for State rules applicable in nonattainment areas. Section 182 of the Act requires certain States to adopt rules for major sources of VOC for which the EPA issues CTG. Therefore, to estimate the number of sources in ozone nonattainment areas potentially affected by a CTG, we assumed that minor sources would not be subject to RACT and, thus, not be covered by the CTG. In contrast, a regulation affecting the manufacturers, processors, distributors, or importers of a product could potentially result in VOC emission reductions at all facilities that use the product, regardless of size. Therefore, we assumed that all facilities using the product in ozone nonattainment areas would be affected by a national regulation.

We estimated the number of potentially affected facilities under each regulatory option (Docket No. A–96–23). In doing so, we relied on estimates of the number, size, and location of facilities from data developed to support NESHAP and CTG for these categories. To determine if facilities were ''major'' sources of VOC affected by the CTG, we estimated VOC emissions based on both coating usage and other sources of VOC emissions. We estimated that fewer wood furniture manufacturing and shipbuilding and ship repair facilities would be covered by CTG than by a national regulation because some facilities do not use enough coatings to be major sources of VOC. We estimated that all aerospace facilities are major sources of VOC and, therefore, that all such facilities would be affected by either a CTG or a regulation.

To estimate the respective VOC emission reductions from a CTG or a regulation, we assumed that the States would adopt and the entities affected by each of these control strategies would comply with, the recommended VOC limits and equipment and work practice standards specified in the CTG or regulation. The estimated emission reductions are described in Docket No. A–96–23.

Although fewer wood furniture facilities would be affected by a CTG than a regulation, as described in the proposed determination and docket, in ozone nonattainment areas we estimated that VOC reductions per facility would be greater with a CTG and account for greater overall VOC emission reductions compared to a national regulation. Similarly, we estimated that the emission reductions for each aerospace facility are greater with a CTG than a regulation, thereby resulting in greater overall VOC emission reductions from a CTG. We estimated the emission reductions for each shipbuilding and ship repair facility to be comparable for either a CTG or a regulation. As noted above, a national regulation can achieve emission reductions at all sources whereas a CTG will achieve reductions at major sources in most nonattainment areas. Therefore, we estimated greater potential emission reductions from a regulation for this product category since more shipbuilding facilities would be affected by a national regulation than by a CTG. However, as indicated in the above response to ''Emission Reductions Attributed to CTG,'' we were not able to quantify completely, and therefore did not give full credit for, the estimated amount of reductions from a CTG for shipbuilding and ship repair coatings. The estimated VOC emission reductions from a CTG and a national regulation were, however, comparable even without quantifying and allocating the precise amount of projected VOC reductions from a CTG.

As noted in the proposed determination, the numerical amount of emission reductions is not the sole relevant factor in determining whether a CTG will be substantially as effective as a regulation. We believe that a CTG will be substantially as effective as a regulation in reducing VOC emissions from each of these three categories based on consideration of the following:

- Estimates of VOC emission reductions.
- The product's distribution and place of use.
- The most effective entity to target in order to control VOC emissions.
- Consistency with other control strategies.

For each of these three categories we have considered these factors as part of our analysis. With respect to the amounts of emission reduction possible, we have concluded that the CTG will probably provide more reductions than a regulation for wood furniture coatings and aerospace coatings and will probably provide comparable reductions for shipbuilding and ship repair coatings. We have also examined the

distribution and typical place of use for these products. Unlike other categories of products such as personal care products, these coatings tend to be used by a relatively small number of large commercial facilities, rather than by a large number of small users. This pattern of use and distribution makes it more feasible to focus upon VOC emission control at the point of use rather than upon reformulation at the place of manufacture. The EPA or States can thus more effectively assure compliance and enforce VOC emission controls for these products through a CTG than for some other product categories.

Finally, we do not contend that facilities excluded from coverage under the CTG approach will not contribute to VOC emissions. We agree that a CTG will not cover all sources and, therefore, that emissions from unaffected sources will not be subject to control under rules reflecting the CTG's presumptive RACT control level. We remain concerned about these VOC emissions. In enacting section 183(e), Congress recognized that even small amounts of emissions from a large number of small sources can, in the aggregate, contribute significantly to ozone nonattainment. The purpose of our regulatory program under section 183(e) is to achieve meaningful aggregate VOC emission reductions from the many sources reflected on the list of categories of consumer and commercial products identified for regulation. However, we must utilize the regulatory tools provided in the statute. As discussed above, section 183(e) allows the EPA to promulgate national regulations or to issue CTG for each product category. Under either approach, we cannot prevent all VOC emissions. Instead, we must choose the method we deem most appropriate to achieve necessary VOC reductions from each product category. We have concluded for the reasons stated above that CTG are the most effective mechanism to obtain VOC emission reductions from the product categories covered by today's final determination and that national regulations are the most effective mechanisms for some other product categories. This should not suggest that we believe that any remaining VOC emissions under either approach are not significant. For purposes of today's final action the determination is which of the two statutorily provided alternatives will best achieve necessary VOC emission reductions for these three product categories.

## III. What is our Final Action?

We have made our final decision to list wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings for regulation in the first group of consumer and commercial product categories to be regulated under section 183(e) of the Act. We have determined that CTG are substantially as effective as regulations under section 183(e) of the Act in reducing VOC emissions from wood furniture manufacturing, aerospace, and shipbuilding and ship repair coatings which contribute to violations of the ozone NAAQS. We based this determination on a comparison of existing CTG and projected national regulations. For CTG, we utilized the final wood furniture manufacturing CTG (61 FR 25223, May 20, 1996), the final aerospace CTG (63 FR 15006, March 22, 1998), and the final shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996). For national regulations, we estimated the level of control possible for each product category. As a result of this comparison, we have concluded that CTG are substantially as effective as national regulations to obtain reductions of VOC emissions which contribute to ozone in areas which violate the ozone NAAQS. Accordingly, we have determined that we may issue CTG in lieu of national regulations for these three product categories.

## IV. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed determination. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (section 307(d)(7)(A) of the Act).

### *B. Paperwork Reduction Act*

This action does not involve any information collection requirements subject to an Office of Management and Budget (OMB) review under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.*

### *C. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether regulatory actions are significant and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive 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 in 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 Executive Order 12866, the EPA has determined that this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates. As such, the EPA submitted this action to OMB for review. Any changes made in response to OMB suggestions or recommendations are documented in the public record.

### *D. Executive Order 12875: Enhancing Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create a mandate on State, local, or tribal governments. The action does not impose any new enforceable duties on these entities. Accordingly, the

requirements of section 1(a) of Executive Order 12875 do not apply to this action.

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

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the EPA determines that a rule will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action because it does not impose any new requirements on small entities. Today's action is a final listing decision and final determination that already existing CTG are substantially as effective as regulations to achieve VOC emission reductions. Because these CTG already exist and those entities required to comply with these CTG are already obligated to do so, today's decision imposes no new requirements on small entities. The EPA has likewise determined that today's action will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA because the final decision to list these categories of products for regulation and the determination that CTG are substantially as effective as national regulations in reducing VOC emissions which contribute to ozone levels in areas which violate the NAAQS for ozone will impose no new obligations on small entities.

In addition, EPA notes that the determination that CTG are substantially as effective as regulations for control of VOC emissions from these product categories will not have an impact on small entities as contemplated by the RFA. The EPA does not directly regulate any small entities through issuance of CTG. Instead, EPA issues CTG to provide States with guidelines on appropriate RACT-based rules to obtain VOC emission reductions from the affected sources within certain nonattainment areas. The EPA's issuance of a CTG does trigger an obligation on the part of the States to issue State regulations, but the States are not obligated to issue regulations identical to the Agency's CTG. The CTG issued by the EPA include a presumptive norm to guide States, but States may deviate from the CTG with a proper showing to the Agency. Thus, States retain discretion in determining to what degree to follow the CTG and in determining which sources would be covered by the resulting State regulations.

*F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 UMRA, the EPA must prepare a written statement, including cost-benefit analysis, for proposed or final rules with ''Federal mandates'' that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. 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 the EPA did not adopt the alternative. 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 UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that because the final listing action and final determination that CTG are substantially as effective as regulations impose no requirements, today's action 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. In addition, EPA has determined that today's action does not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203, and 205 of UMRA.

*G. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective July 13, 1999.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to § 12(d) of the NTTAA. This action does not establish any such standards.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an ''Economically Significant'' rule as defined under Executive Order 12866 and because it is based on technology performance and not on health or safety risks.

*J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. Today's action does not impose any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Dated: July 1, 1999.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 99–17493 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[AD–FRL–6375–3]**

**RIN 2060–AG59**

## Consumer and Commercial Products: Wood Furniture, Aerospace, and Shipbuilding and Ship Repair Coatings: Control Techniques Guidelines in Lieu of Regulations

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

**ACTION:** Notice of issuance.

**SUMMARY:** This notice announces reissuance of control techniques guidelines (CTG) for the wood furniture coatings, aerospace coatings, and shipbuilding and ship repair coatings categories listed in the first group of consumer and commercial product categories to be regulated under section 183(e) of the Clean Air Act (Act). Our final listing of these categories for regulation and our final determination that CTG are substantially as effective as national regulations in reducing emissions of volatile organic compounds (VOC) from these three product categories is published elsewhere in today's **Federal Register**.

We based the final determination, in part, on the previously issued CTG for wood furniture coating (61 FR 25223, May 20, 1996), for aerospace coating (63 FR 15006, March 22, 1998), and for shipbuilding and ship repair coating (61 FR 44050, August 27, 1996) under section 183(b) of the Act. Accordingly, in this notice, we are reissuing these existing CTG as the CTG under section 183(e) for these three commercial product categories.

**EFFECTIVE DATE:** July 13, 1999.

**ADDRESSES:** *Control Techniques Guidelines.* Electronic copies of the CTG documents listed above may be obtained from our Technology Transfer Network Website (TTNWeb). The TTNWeb is a collection of related web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the internet via the World Wide Web at the following address, ''http://www.epa.gov/ttn.'' The web site specifically related to this action can be found at the following address, ''http://www.epa.gov/ttn/uatw/coat/aerocoat/aero__coat.html'' and the CTG can be accessed under the Existing Regulations section of this site.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Brown, (919) 541–5305, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (brown.dan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Whom does this notice affect?* These CTG, as originally issued, triggered requirements under section 182(b)(2) for States to submit rules requiring reasonable available control technologies for these industries if:

—they are located in areas that exceed the national ambient air quality standards for ozone; and

—they are (or have the potential to become) ''major'' sources of VOC emissions.

This issuance does not affect any additional entities.

### I. Why are we taking this action

The final determination that CTG are substantially as effective as national regulations is published in a separate action in today's **Federal Register** and provides a detailed description of ground level ozone and the steps we are taking under section 183(e) of the Act to reduce emissions of VOC from consumer and commercial products. Our final determination was based, in part, on a comparison of the level of VOC control in the previously issued CTG with the estimated level of control possible from national regulations for these product categories.

Upon making our final determination, we may issue CTG in lieu of national regulations in accordance with section 183(e)(3)(c) of the Act. This notice announces our decision to reissue these CTG as the section 183(e) CTG for these three product categories.

### II. Administrative Requirements

*1. General*

Today's action is not a rule; it is a notice that EPA is reissuing the existing CTG, already issued for other purposes, as CTG for section 183(e). Since EPA has already issued these CTG and because the CTG themselves do not include binding regulations, but rather