

implemented by CARB and conducted on a statewide basis.

Deficiency #5 was identified in our 2003 proposal (68 FR 47279) but not specifically noted in our 2002 proposal (67 FR 59229). This deficiency, however, was described in each of the Technical Support Documents (TSDs) for the three rules that were the subject of our 2002 proposal (67 FR 59229) and was a basis for our limited disapproval of each of the first three rules listed in Table 1. Because the language contained in all seven of these rules is similar and they are all components of a larger statewide program, we are now clarifying that this last deficiency is a basis for our limited disapproval of all seven rules listed in Table 1. Our proposed actions contain more information on the basis for this rulemaking and on our evaluation of the submittals.

The deficiencies identified in our 2002 proposal (67 FR 59229) of the first three rules listed in Table 1 also differed slightly from the deficiencies identified in our 2003 proposal (68 FR 47279) for the last four rules listed in Table 1. Other deficient provisions identified in our 2002 proposal (67 FR 59229) but not in our 2003 proposal (68 FR 47279) included the following:

1. The rules allow the VOC content displayed on a coating to be calculated using product formulation data but lack a clear and enforceable definition for the term formulation data.

2. The rules contain typographical errors that make the rules confusing to regulated sources and less enforceable. Based on information received during and after the comment period of our 2002 proposal, we no longer consider these to be deficiencies in these rules. See Comments and Responses #2 and #8.

II. Public Comments and EPA Responses

EPA's proposed actions provided 30-day public comment periods. During the comment period for the 2002 proposal (67 FR 59229), we received comments from the following parties.

1. Howard Berman, Environmental Mediation, Inc. (EM) representing Dunn-Edwards (DE), a California based manufacturer and retailer of coatings; letter dated October 17, 2002.

2. Madelyn K. Harding, Sherwin Williams (SW), a worldwide manufacturer of coatings; letter dated October 17, 2002.

3. Mike Villegas, VCAPCD; letter dated October 17, 2002.

4. Scott Nester, SJVUAPCD; letter dated October 17, 2002.

5. Ellen Garvey, Bay Area Air Quality Management District (BAAQMD); letter dated October 18, 2002.

6. Michael P. Kenny, CARB; letter dated October 21, 2002.

We did not receive any comments during the comment period for the 2003 proposal (68 FR 47279) although we made clear that comments submitted on our 2002 proposal would be considered to apply to our 2003 proposal where appropriate. The comments and our responses are summarized below.

Comment #1: EM comments that their client, DE, disagrees, as does CARB, with our conclusion that these rules are subject to EPA's Economic Incentive Program Guidance (EIP Guidance). DE and CARB filed extensive comments as to why these rules do not fall within the scope of the EIP Guidance. CARB comments further that the EIP Guidance is a non-binding guidance document.

Response #1: An EIP is any program which may include State established measures directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or to provide more flexible, lower-cost approaches to meeting environmental goals (EIP Guidance, page 158). These rules (1) regulate architectural coatings, an area source, (2) were submitted to EPA in order to meet the National Ambient Air Quality Standards (NAAQS), and (3) allow manufacturers to reduce emissions from their products to comply with the requirements of the rules in a more flexible and lower-cost manner. Furthermore, these rules fall under the category of emission averaging EIPs because they enable a source, in this case a particular coating, emitting above its allowable emission rate limit to comply with that rate limit by averaging its emissions with a second source, a different coating, emitting below that second source's regulatory rate limit (EIP Guidance, page 91). Clearly, these rules meet the definition of an EIP and it is, therefore, appropriate to apply the EIP Guidance. Any comments submitted by DE and CARB on the EIP Guidance were considered by us before finalization of the guidance and do not need to be reconsidered in the current context. The EIP Guidance is EPA's most recent guidance for economic incentive programs. It is being used to help ensure consistent interpretation of the CAA where its application to detailed EIP requirements is unclear.

Comment #2: EM and BAAQMD state that formulation data is a reliable means for calculating a product's VOC content because manufacturers know how their

products are formulated and that everyone understands what is required to calculate VOC content. SW and CARB state that defining the term formulation data is unnecessary because the EPA's National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR part 59 subpart D, the National Rule) also allows formulation data to be used without including a separate definition for the term. SW adds and VCAPCD, SJVUAPCD, BAAQMD and CARB also comment that the VOC content is ultimately determined by testing with Method 24 of appendix A of 40 CFR part 60. If EPA requires a definition of formulation data, DE would want EPA to state that formulation data is preferred over Method 24 because of the inherent unreliability and wide margin of error associated with Method 24.

Response #2: While manufacturers may know exactly what goes into their products, they often report paint formulation data by indicating a range for each component within a product. These ranges may often be quite wide, making the particular VOC content of a product difficult to determine. The National Rule does not, in fact, have a separate definition for formulation data. As with all analytical methods, there is some uncertainty associated with Method 24; however, it is a reliable method that has gone through extensive quality assurance and round robin testing to ensure that it is replicable and reliable for determining VOC content. Because the National Rule and these rules ultimately rely on Method 24 to validate the VOC content of coatings for compliance purposes, we concur that a separate definition for the term formulation data is not necessary. As a result, we are not finalizing our concern regarding formulation data as a deficiency. We encourage DE to submit an alternative test method to EPA for consideration if they deem another method to be more reliable than Method 24.

Comment #3: EM, SW, VCAPCD, BAAQMD and CARB comment that the sell through of averaged coatings is not problematic. SJVUAPCD, BAAQMD and CARB state that labeling on coatings indicating the date of manufacture and the coating's participation in an averaging program is sufficient to determine compliance. SW and CARB state that averaging plans calculate emissions based on shipments into the state and that all emissions are counted at the start of an averaging program even though the coating may not yet have been sold. EM claims that the standard sell through provision of all coatings is more problematic.