

QUESTIONS AND ANSWERS FOR ARCHITECTURAL COATINGS RULE

(Updated 6/24/99)

The EPA compiled these questions and answers from inquiries received after the publication of the final architectural coatings rule and from questions raised at meetings with industry associations. They are intended to be an informal means of assistance in understanding and interpreting the rule. For official EPA applicability determinations, however, please contact the appropriate EPA Regional Office as listed in the rule.

APPLICABILITY

1. **Question:** Where are paint and varnish removers classified in the rule?

Answer: Paint and varnish removers are not covered by the rule; they are not coatings.

2. **Question:** What is EPA's position on a product that is produced in the US after the compliance date, is above the limit, and is shipped to Canada?

Answer: A product that is manufactured solely for export is not subject to the rule's requirements.

3. **Question:** Are coatings that are 100% solids exempt from the rule?

Answer: No, these products are not exempt from the rule. If the coatings comply with the VOC limits, then the manufacturer's or importer's burden for these products would be limited to the initial report and labeling.

4. **Question:** Are coatings that do not contain VOC exempt from the rule?

Answer: No, these products are not exempt from the rule. The manufacturer's or importer's burden for these products would be limited to the initial report and labeling.

5. **Question:** Are bonding agents that are used to enhance the bond between a cement floor and a cement patch or between a floor and a carpet underlayment covered by the rule?

Answer: No, the EPA considers these products to be adhesives, and therefore, they would not be covered by the architectural coatings rule.

6. **Question:** Are epoxies that are used to form a firm bond between a cement road and a top layer of road surface covered by the rule?

Answer: No, the EPA considers these products to be adhesives, and therefore, they would not be covered by the architectural coatings rule.

7. **Question:** Does the rule apply to coatings designed for application by original equipment manufacturers (OEM)?

Answer: No, the architectural coatings rule does not cover any coatings that are sold solely for shop application (whether shop-applied or applied by a consumer). However, these coatings may be covered by other rules. VOC requirements for OEM coatings are already in place, in the form of Control Technique Guidelines (CTG), for:

- shipbuilding and ship repair coatings,
- aerospace coatings, and
- wood furniture coatings.

VOC requirements for OEM coatings are scheduled for development for seven other categories:

- flatwood paneling
- large appliances
- metal furniture
- miscellaneous metal products
- plastic parts
- automobile & light duty truck manufacturing
- paper, film, and foil.

8. **Question:** Is a coating user who transfers paint from one container to another and adds solvent to it subject to the regulation?

Answer: EPA did not intend the rule to cover coating users that conduct such activities as stirring, shaking, thinning, or changing containers in preparation for coating application. The intent was to regulate those who produce, package, repackage, or import coatings for sale or distribution in the U.S. A coating user who transfers paint from one container to another and adds solvent in preparation for applying the paint is not regulated by this rule.

APPLICABLE EMISSION LIMIT

1. **Question:** If I market my coating in one category and my coating meets the technical definition in the rule for another category, which limit is my coating subject to?

Answer: Your coating is subject to the lower of the two VOC content limits. There are two ways a coating can be found to fall under a particular coating category definition:

1. The coating meets the technical criteria of the definition, or
2. You make any representation which indicates that your coating meets the definition of a coating category. “Any representation” means a representation made anywhere on the container; on any label or sticker affixed to the container; or

in any sales, advertising, or technical literature supplied by you or anyone acting on your behalf.

If a coating falls under a category definition by one of these ways, then it is subject to that category limit. If a coating falls under more than one category, then it is subject to the lowest limit of those categories. However, some exceptions to the requirement of meeting the lowest applicable limit are listed in section 59.402(c) of the rule.

For example, if a coating meets the technical definition for a metallic pigmented coating and is recommended by the manufacturer for use as a floor coating, then the coating is subject to the lower of the limits for those categories - 400 g/l for floor coatings.

2. **Question:** Does the name of a coating inherently qualify as a coating in one category or another? For example: Does a “metal handrail coating” qualify as a rust preventative or an industrial maintenance coating? Is a coating recommended for application “direct-to-metal” a rust preventative because the name implies so?

Answer: As described above, there are two ways a coating can be found to fall under a particular coating category definition; by meeting the technical criteria of a definition, or based on your representation that indicates that your coating meets the definition of a coating category.

In cases where there is potential confusion about a category, it is within your ability and your best interest to clarify on the container the intended use of your coating in a way that clearly establishes the category or categories into which it fits. For example, an ambiguous term like “direct-to-metal application” in and of itself is not a clear representation that the coating is a “rust preventative” coating. The Agency would look to additional representations on the container and other literature that you supply to make a finding. The final determination will be based on the claims that you make and not about other possible uses of the coating that you do not suggest or imply.

3. **Question:** Does a verbal representation alone make a coating legally subject to a category limit?

Answer: No, section 59.402(b) of the rule indicates that written representations will be used to determine the category for the coating.

4. **Question:** Is a manufacturer responsible for complying with VOC limits based on misrepresentations made by a sales person?

Answer: No, as mentioned above, verbal representations alone will not determine the category for the coating. However, you are responsible for representations made

by your marketing staff through any advertising media or in any written material. You are not responsible for representations (written or otherwise) made by those not acting on your behalf (e.g., retail stores, general contractors, painting contractors).

5. **Question:** Can an industrial maintenance coating be sold for applications including residential uses and still qualify as an industrial maintenance coating?

Answer: Yes. Your coating must meet two conditions to qualify as an industrial maintenance coating. First, the coating must be recommended for use under at least one of the five extreme environmental conditions listed in the definition of an industrial maintenance coating. Second, the coating must be recommended for use in an industrial, commercial, or institutional setting.

The fact that a coating is sold for use in a residential setting as well does not prohibit the coating from being classified as an industrial maintenance coating. For example, a coating recommended for application on exterior metal structures in industrial settings could also be recommended for use on metal hand rails in residential settings. But, a coating recommended for application to metal hand rails in residential settings only would not qualify as an industrial maintenance coating.

6. **Question:** I sell coatings for shop application by wood furniture manufacturers only. However, some of my customers that make custom cabinets apply the coating after installation. How do I identify my coating so that it is not considered to be an architectural coating? Also, some consumers may misinterpret the term “shop application,” thinking it refers to home workshops.

Answer: EPA wants to provide manufacturers the flexibility to label their coatings in the clearest and best way for their respective markets. Although not required by the rule, the container of each coating should include sufficient information to allow EPA, consumers, and industrial customers to recognize any coating that is intended for use as a shop-applied coating only. In the example given, the manufacturer could label the coating as “for industrial use only” or “for furniture manufacturing only” or some other appropriate designation. The choice is left to each manufacturer.

7. **Question:** How does a manufacturer demonstrate that an industrial maintenance coating was “formulated” for application under one of the five conditions in the industrial maintenance coating definition?

Answer: The category determination will be based on representations by the manufacturer regarding the substrates for which a coating is intended and the performance characteristics of the coating.

8. **Question:** Is stucco a concrete sealer or waterproofing sealer?

Answer: No, stucco is not considered to be a concrete sealer or a waterproofing sealer. Traditional stucco, which is a mixture of sand, lime, portland cement, and water, is not considered to be an architectural coating and, therefore, is not covered by the architectural coatings rule.

9. **Question:** If I introduce a new architectural coating in the future, is there a way to obtain a new category definition and emission limit in the rule?

Answer: If none of the current coating categories apply to your coating, then you must either comply with the flat/nonflat limits, use the tonnage exemption, or pay an exceedance fee. If the EPA determines that a new technology merits the addition of a new category, the regulation will be revised to include the new category and an applicable VOC content limit.

DATE CODE

1. **Question:** Must the date code be month-day-year or is month and year sufficient? Is a batch code sufficient if the manufacturer can demonstrate that the batch was produced after September 13, 1999?

Answer: You may use any system of date coding that you choose as long as:

1. The coding allows the EPA to determine when the coating was manufactured, and
2. You clearly explain the date coding system in the initial report, and
3. You notify the Administrator within 30 days after you initiate the use of any new date coding system.

Therefore, the date code could be the date, a system using batch codes, or any other system as long as the EPA can readily determine when the coating was manufactured by comparing the code on the product label to the date code explanation you provide in the initial notification report or subsequent notifications of changes to the date coding system.

LABELING

1. **Question:** Can a label indicate that a coating can be thinned “as necessary”?

Answer: No, the label must specify a precise recommendation for thinning or specify that the coating is to be applied without thinning. Compliance with the VOC content limits will be determined based on the coating as thinned according to your recommendations.

2. **Question:** If a coating is sold as both an architectural coating and a coating for shop application, can the label provide two different sets of thinning requirements, one for consumer use and one for shop application?

Answer: Yes, the label can provide two sets of thinning requirements as long as the coating meets the VOC content limit with the maximum thinning recommendation on the label, whether it is for shop application or for use as an architectural coating. However, without any indication as to the amount of coating intended for each application, EPA will assume that the entire volume could be used for the application with the most stringent VOC limits. Therefore, if the maximum thinning recommendation results in the coating exceeding the VOC content limit, then the entire volume of coating would be considered out of compliance with the limit.

3. **Question:** Can the rule be changed to allow the use of either metric or English units of measure on product labels? Many manufacturers have substantial stocks of labels with the VOC content information in English because some States require English units.

Answer: Yes, EPA is changing the rule to allow labeling of the VOC content to be in either English (pounds/gallon) or metric (grams/liter) units. However, VOC compliance will be determined based on the metric units. A public notice indicating this change will be published in the Federal Register.

4. **Question:** Will there be a grace period for the labeling requirements so that manufacturers can use up their stocks of existing labels?

Answer: The rule provides a compliance lead time of one year (one and a half years for FIFRA- registered coatings) before the rule requirements take effect. This compliance period runs from the date of publication of the final rule on September 11, 1998 to September 13, 1999 (March 13, 2000 for FIFRA-registered coatings). In addition, any coatings that are manufactured (meaning they are in containers, labeled, and available for sale or distribution) prior to these dates are not subject to the rule's requirements.

5. **Question:** Are coatings sold in containers with a volume of one liter or less subject to the labeling requirements?

Answer: No, coatings sold in containers with a volume of one liter or less are exempt from the rule.

6. **Question:** Would a general statement on the label of a coating stating that the VOC content information will be found on the bottom of the container meet the VOC labeling requirement?

Answer: No, section 59.405(a)(3) states that the VOC content of the coating must be on the label or the lid of the coating container.

7. **Question:** Labeling on the lid of the can is often confusing. In addition, lids often get switched easily or inks are erased or covered by spills. Will there be any latitude in allowing labeling in other locations?

Answer: The rule does allow flexibility in the location of the labeling information. The date code can be placed on the label, lid or bottom of the can. Other required labeling can be placed on the label or the lid of the can. At proposal, the date code was allowed on the label or the lid of the can. However, based on comments received during the public comment period, the bottom of the can was added as an acceptable location for the date code. During the public comment period the agency did not receive any other requests to allow labeling in other locations.

REPORTING

1. **Question:** Do I have to notify EPA if at some time in the future I acquire a new division that manufactures an architectural coating?

Answer: No, the requirement for manufacturers and importers to notify EPA about the location of their facilities is a one-time requirement. Future changes do not have to be reported. However, if you have never manufactured or imported an architectural coating and you begin to do so on or after the compliance deadline, then you must submit an initial report within 180 days after the first coating is manufactured or imported.

2. **Question:** Can records and reports of tonnage exemption and exceedance fees be done in English units of measure rather than metric? If not, please put the conversion factors in the rule.

Answer: All reports must be submitted in metric units. All of the limits and calculations in the rule are on a metric basis. In addition, compliance will be determined based on metric units. To convert to liters, multiply gallons by 3.785412.

To assist in preparing reports, a set of example tables that can be used for reporting is included in EPA's "Small Entity Compliance Guide." The tables contain conversion factors for English-to-metric units of measure. The compliance guide will be available on EPA's Technology Transfer Network web site: <http://www.epa.gov/ttn/uatw/183e/aim/aimpg.html>. It will also be available through other channels, to be announced later.

3. **Question:** Must the initial report include information on plants that manufacture only OEM coatings?

Answer: No, only plants manufacturing architectural coatings that are subject to the rule must be reported. However, you may want to voluntarily include plants manufacturing OEM coatings in the report and keep voluntary records to prove that architectural coatings were not being manufactured at those facilities on or after the compliance deadline. This practice may protect you by eliminating any misunderstanding associated with future changes in production.

4. **Question:** Where do importers report?

Answer: An importer must report to the EPA Regional Office for the Region in which the corporate headquarters of the importer resides.

SMALL CONTAINER EXEMPTION

1. **Question:** If I am paying the exceedance fee, must I pay fee also on the volume of coating that is sold in containers of 1 liter or less?

Answer: No, the fee is computed only on the volume sold in containers containing more than 1 liter. If you sell a coating in containers larger than 1 liter and containers smaller than 1 liter, then (although the rule does not specifically require it) you should consider retaining, as part of the fee computations, careful records of the volume sold in each size. Similarly, if you are using the tonnage exemption, then any volume sold in containers of 1 liter or less does not count toward mass allowance of VOC that can be exempted.

2. **Question:** If a manufacturer changes a coating's packaging to contain 1 liter or less, is this considered circumvention?

Answer: No, the circumvention section of the rule (Section 59.411) prohibits the alteration, destruction, or falsification of any record or report to conceal what would otherwise be noncompliance.

EXCEEDANCE FEE

1. **Question:** For computing the fee, the computation of the volume of coatings manufactured includes water and exempt solvents. Will EPA change the rule to exclude water and exempt solvents?

Answer: No change will be made to the rule. The rule was written in this manner to simplify compliance demonstration and recordkeeping.

2. **Question:** What if I want to comply by using the exceedance fee, but my coating is regulated by a State with a VOC limit that would not allow me to use an exceedance fee?

Answer: You should work with the State on any problems pertaining to conflicts with the Federal rule. The Federal rule does not override more stringent State limits. However, the Federal rule does override State limits that are less stringent than the Federal rule.

3. **Question:** How do I determine the exceedance fee if I sell a coating as both a regulated coating and a non-regulated coating (e.g., a varnish sold for residential use and as a shop-applied coating)? Do I have to label them differently or is it sufficient to keep records of purchasers (such as by SIC code) that show the volume of coating sold for shop application?

Answer: The rule does not include specific labeling requirements for the situation described. However, if EPA were to do a compliance check on such a coating, the label that describes the product category would be one piece of information to use in determining whether the coating is subject to the rule. Additional collaborative literature could also be used, such as the manufacturer's/distributor's production records, marketing literature, and shipping documents. Keeping records of purchasers and their purchased amounts (such as by SIC code) would be one means of documenting the volume of coating that is sold as a non-regulated coating and the amount sold as a regulated coating. Of course, the records would need to be sufficiently detailed and thorough to be convincing evidence of compliance with the rule. EPA may also use other available information in determining compliance.

TONNAGE EXEMPTION

1. **Question:** If I acquire a company that currently is using the tonnage exemption and my company also is using the tonnage exemption, does one or the other company lose the exemption?

Answer: Yes, because the tonnage exemption is provided on a per company basis. Therefore, if two companies merge to form a new company, the new company would be allowed a total exemption of 23 megagrams (25 tons) during the period of September 13, 1999 through December 31, 2000. The new company would not be allowed an exemption of 46 megagrams (23 plus 23). The new company can use the exemption for whichever products it chooses, as long as it does not exceed the 23 megagrams (25 tons) exemption for that period.

COMPLIANCE DEMONSTRATION

1. **Question:** I plan to demonstrate compliance using records of the formulation of each batch of coating manufactured. Because my product is mixed at an elevated temperature, I often must add proportionally more solvent than appears in the final product to account for evaporation during the manufacturing process. Does this solvent affect my compliance status?

Answer: The VOC content limits are based on the amount of VOC in the product container, not the VOC consumed on-site during manufacturing. If you choose to demonstrate compliance by using batch records and you want to allow for evaporation, then you must be able to demonstrate to EPA the amount of VOC loss to evaporation in each batch. You may do this by any credible means. Keep in mind, however, that if questions or uncertainties arise about the VOC content, then you may be asked to demonstrate compliance by conducting a test of the coating using EPA Method 24.

2. **Question:** How will EPA ensure that imported products meet the VOC content limits and that non-complying coatings do not have an unfair market advantage?

Answer: Imported coatings are subject to the same emission limits as coatings manufactured in the U.S. Importers must file an initial report and comply with the same labeling requirements. One method of auditing compliance will be by shelf sampling of coatings. Imported products will be subject to the same sampling and importers will be held accountable if they bring noncompliant coatings into the country.

3. **Question:** How would I demonstrate compliance by using formulation data?

Answer: To demonstrate compliance with the VOC limits using formulation data you should maintain records that show that the VOC content of your product does not exceed the applicable VOC limit in the rule. This would include the formulation of the product along with batch records to demonstrate that the formulation was followed. As mentioned above, if questions or uncertainties arise about the VOC content, then you may be asked to demonstrate compliance by conducting a test of the coating using EPA Method 24.

RECYCLED COATINGS

1. **Question:** Returned goods (e.g., off-spec paint) are not considered to be post-consumer coating and so cannot be used to compute an adjusted VOC content. What about unsold goods returned from a retail distributor (e.g., hardware store)? In other words, what does "...distributed to a customer but not applied..." mean? Is ABC Hardware a customer?

Answer: The recycled coating provision is intended to apply only to coatings that are purchased by the consumer and was not meant to apply to returned goods or to unsold goods. This distinction is made in the definition of "post-consumer coating" through the use of the term "consumer" rather than the term "customer."

REGULATED ENTITY

1. **Question:** What are the implications of the provision that divisions, subsidiaries, and parent companies are considered to be a single manufacture or importer?

Answer: The primary implication of this provision is for the tonnage exemption. Only one tonnage exemption is allowed for each manufacturer or importer, which includes all divisions, subsidiaries, and parent companies.

DEFINITIONS

1. **Question:** In the definition of "concrete curing and sealing compounds," should the following phrase "...reduce the loss of water during the hardening process *and* to seal old and new concrete..." be changed to "...reduce the loss of water during the hardening process *or* to seal old and new concrete?" The current wording seems to incorrectly imply that these processes must be occurring simultaneously.

Answer: This change is not appropriate because it would allow curing-only and sealing-only products to be classified as "concrete curing and sealing compounds." This would defeat the intent of having this category.

2. **Question:** Should the definition of "concrete protective coatings" specify that they must be applied "in a single coat to be classified in this category?" Many concrete protective coatings are applied in two coats.

Answer: The EPA intended that this definition specify that the coating must cover in one application to clarify the types of concrete protective coatings for which the VOC content limit was intended.

3. **Question:** In the definition of “concrete protective coatings” should the phrase “uncured concrete” be changed to “fresh concrete?” Uncured concrete usually means poor quality concrete.

Answer: The EPA believes that the rule is clear as written and no change is needed.

4. **Question:** In the definition of “concrete protective coatings” should the term “spalling” be replaced with “scaling?” Spalling indicates a breaking down of the concrete at a joint after movement in the concrete took place, whereas scaling means flaking or peeling of random areas of a concrete surface.

Answer: No, the term spalling in the concrete protective coating definition correctly describes the function of concrete protective coatings to protect concrete from the cracking and breaking that results from the freezing and thawing of water that has penetrated into pores or cracks in the concrete.

5. **Question:** In the definition of “concrete protective coatings,” was it the Agency’s intent that the coatings in this category be designed to adhere to formed concrete surfaces where form release agents were used?

Answer: Yes, the intent of the definition is that the concrete protective coatings can be applied to concrete with or without the removal of the form oils.

6. **Question:** Should “cross walks and stop bars (or lines)” on public roads and highways be added to the definition of zone markings? These applications may be problematic for latex paints. They are typically applied with a walk-behind striper working out of five gallon cans. The only alternatives are to use thermoplastics or tapes, which have additional expense and problems such as snowplow removal.

Answer: The zone marking category was not intended to include cross walks and stop bars on public roads and highways. These markings are applied by State Departments of Transportation (DOTs). The 5-gallon size restriction in the definition of zone markings was intended to discourage the use of zone marking coatings in large-scale applications such as those for general traffic markings intended for public roads and highways. However, crosswalks and stop bars (or lines) in driveways, parking lots, sidewalks, curbs, or airport runways that are applied from containers with a volume of 5 gallons or less would be covered under the zone marking category.

7. **Question:** Should an exception paragraph for zone markings that also meet the definition of traffic markings be added to the rule? Since the traffic marking definition uses overlap with zone marking uses, and the definition of traffic marking is not restricted to >5 gallons, a coating could easily meet both definitions.

Answer: The EPA agrees that there is an unintended overlap problem with these definitions. Therefore, an exception paragraph is being added to the rule.

8. **Question:** Should an exception paragraph be added to the rule for rust preventative coatings that meet the definition of flat, nonflat, primer, sealer, or undercoater coatings? Rust preventative coatings are always going to be either flat or nonflat, and may be the primer, sealer, or undercoater coating.

Answer: Since flats and nonflats are defined as “a coating that is not defined under any other definition,” an exception for these categories is not needed. However, an exception paragraph for rust preventative coatings that meet the definition of primers and undercoaters is appropriate and is being added to the rule. There is no need for an exception for sealers because both sealers and rust preventative coatings have a VOC content limit of 400 grams per liter.

9. **Question:** In the exceptions to the lowest VOC content limit section of the rule (Section 59.402(c)(13)), there is an exception that states: Quick-dry primers, sealers, and undercoaters that also meet the definition for primers and undercoaters are subject only to the VOC content limit for quick-dry primers, sealers, and undercoaters. Were sealers intentionally left out of this exception?

Answer: The EPA did not intend to exclude sealers from the exception for quick-dry primers, sealers, and undercoaters. This was an inadvertent omission in the rule that is being corrected.