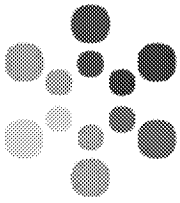

AmericanCoatings
ASSOCIATION

May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket Number EPA-HQ-OA-2017-0190;
Executive Order 13777, Enforcing the Regulatory Reform Agenda

Dear Associate Administrator Dravis:

The American Coatings Association, Inc. (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint, coatings and adhesives industry and the professionals who work in it. Our membership includes paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA membercompanies collectively produce some 95% of the total dollar volume of architectural paints and industrial coatings in the United States.

ACA member companies operate nearly 1,300 manufacturing facilities, warehouses and distribution centers in all 50 states. More than 275,000 people in the United States are employed in the paint and coatings industry, including those who manufacture, distribute, store, sell, and apply our products. Product shipments by U.S. paint and coatings producers totaled an estimated $28 billion in 2015.

ACA appreciates the opportunity to participate in this regulatory reform effort and provide the agency with the benefit of its experience regarding certain EPA regulations and requirements. We have participated in several of the public meetings, providing information about regulatory requirements that have been costly and problematic for our industry for many, many years.

ACA is hopeful that the regulatory reform effort will allow the agency to take a holistic approach to regulations and modernize requirements with an eye towards synergistic compliance. ACA urges EPA to examine those regulations and requirements that are unnecessary, costly and inconsistent with other requirements and do not further the mission of environmental protection. Below we highlight such requirements and provide cost data along with a specific recommendation for repeal, replacement or modification.

ACA is providing comments on the following regulations and requirements:

1. The 8-Hour Ozone Standard, EPA-HQ-OAR-2008-0699;
2. "Once-in, Always-in" Policy Under National Emissions Standards for Hazardous Air Pollutants for Source Categories;
3. National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA—HQ—OAR—2006—0971;
4. Triennial Reporting for Aerosol Coatings, EPA—HQ—OAR—2006—0971;
5. TSCA Nanomaterials Reporting Rule, EPA-HQ-OPPT-2010-0572;
6. TSCA, Section 5(e) Consent Orders: Regulation of Chemicals Pending Development of Information During the PMN Process;
7. FIFRA: Requirement to Gain Final Approval for a Reformulated FIFRA-registered Paint Product prior to Distribution or Marketing;
8. FIFRA, Prohibition of Truthful Comparative Information on a Label;
9. FIFRA, Language Requirements for Export Labels;
10. FIFRA, Review of Label Elements upon Application for a Label Amendment;
11. FIFRA, Regulation of Product Claims for Paint Products with Antimicrobial Agents; and
12. EPA Environmentally Preferable Purchasing Program Pilot to Assess Standards and Ecolabels for EPA's Recommendations to Federal Agencies

1. The 8-Hour Ozone Standard, EPA–HQ–OAR–2008–0699

Issue: In October 2015, the National Ozone Standard was lowered from 0.75 ppm to 0.70 ppm.

Implementation of the new standard requires U.S. states to identify whether they are in attainment or in non-attainment by February 2017. Reviewing the ozone standard is a recurring mandate under the Clean Air Act.

Concern: EPA's final rule on the ozone standard is forcing a significant number of states that are currently "in attainment" to "non-attainment" status, triggering a requirement to revise their State Implementation Plans and adopt even stricter volatile organic compound (VOC) emission regulations for coatings. This triggering event is being realized as ozone monitors across the country are demonstrating a marked improvement in air quality under the 2008 standard of 0.75 ppm. Indeed, the previous standard of 0.75 ppm was not yet fully implemented.

Cost to the Coatings Industry: EPA's final stringent ozone standards will limit business expansion in nearly every populated region of the United States. and impair the ability of U.S. companies to create new jobs. EPA's lowered range adds unnecessary red tape for companies seeking to expand even in areas that can attain those standards. Increased costs associated with restrictive and expensive permit requirements will likely deter companies from siting new facilities in a nonattainment area. ACA shares the practical concerns of

manufacturers regarding potential exorbitant costs this regulation would create for the paint and coatings industry without commensurate benefits to public health or the environment. *A study conducted by the National Association of Manufacturers (NAM) and NERA Economic Consulting, estimated this final rule could cost the economy $140 billion per year, result in 1.4 million fewer jobs, and cost the average household $830 per year in the form of lost consumption — making this the "costliest regulation in history" and threatening manufacturing.*

Recommended Solution: ACA urges a two-step solution to this problem: 1) EPA should revert to the 2008 standard of 0.75 ppm and fully implement this standard so that the forward progress already achieved can be extended without unnecessarily burdening the paint and coatings industry with increased standards and costs for many years to come; and 2) EPA should amend the Clean Air Act Regulations to extend the time for review of the ozone standard to every 10 years. Currently the law requires a review every five (5) years. Extending the review of the ozone standard to every 10 years will allow for more stability in the marketplace for formulators while still protecting human health and the environment.

2. **"Once in, Always in" Policy under National Emission Standards for Hazardous Air Pollutants for Source Categories**

This "regulation" is a May 16, 1995 EPA memorandum titled, "Potential to Emit (PTE) for MACT Standards – Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors — commonly known as the "Once in, Always in" memo — and may be found here: https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

Issue: A "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources."

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable Maximum Achievable Control Technology (MACT) standard (also referred to as National Emission Standards for Hazardous Air Pollutants or NESHAP). However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT *even if it subsequently reduces HAP emissions below major source levels at a later date*. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

Note that that EPA published a proposed rule on January 3, 2007 to replace the "once-in always in" policy rule - (docket number EPA-HQ-OAR-2004-0094. https://www3.epa.gov/ttn/atw/gp/fr03ja07.pdf). However, this rulemaking was never finalized.

Concern: The coatings manufacturing industry has substantially reduced the use of HAPs since the 1990s. In fact, many facilities subject to the Miscellaneous Coatings Manufacturing (MCM) and Miscellaneous Organic Chemical Manufacturing MACT (MON) MACTs are now "area source" facilities, but still must comply with the MCM requirements even though they are not major source facilities. While many coating and resin manufacturing operations could reduce emissions prior to the first compliance date of the MCM and MON, other facilities could not. Facilities that could not reduce their emissions have since installed expensive thermal oxidation units.

This guidance is outdated and unnecessary and imposes a substantial burden on industry that well exceeds any benefits. This "policy" or "guidance" has been applied by EPA as a "rule," with binding effects on the regulated community, including very burdensome compliance costs. Industry resources spent on compliance could be used instead for R&D, or modernization activities. This policy also acts as a disincentive for industry, since facilities have no incentive to voluntarily reduce HAP emissions below major source thresholds.

Cost to the Coatings Industry: Thermal oxidation units require a significant capital investment (millions of dollars per facility) and annual operation and maintenance costs (several hundred thousand dollars per facility per year in fuel cost alone). These units consume large amounts of electricity and natural gas, which results in additional emissions of carbon dioxide, nitrogen oxides and carbon monoxide. *EPA has estimated that installation and operating of air pollution controls for the MCM and MON rules would require an overall energy demand increase of 5.83 trillion BTUs; a total capital expenditure of $184 million; yearly operating costs of nearly $91 million; and an increase in NOx, CO, SOx emissions of 987 tons per year.*

Recommended Solution: ACA recommends that EPA withdraw or rescind this policy.

3. **National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA—HQ—OAR—2006—0971**

Issue: The regulatory landscape for aerosol coatings has historically been relatively simple. There are two primary regulating agencies that govern aerosol coatings: the U.S. EPA and the California Air Resources Board (CARB). In 2008, EPA finalized a national rule for aerosol coatings that largely mirrored CARB's 1999 aerosol coatings regulation. Since EPA's initial rulemaking in 2008, scientific research has resulted in a more accurate mechanism for calculating the

reactivity of specific compounds. As a result, CARB amended its aerosol coatings regulations and updated its reactivity values in 2010. CARB's standards are now more stringent than EPA's standards.

Concern: There are no longer consistent, uniform categories or standards for aerosol coatings throughout the country. EPA's Table of Maximum Incremental Reactivity (MIR) Values are outdated and no longer align with CARB's Table of MIR Values. Thus, a significant compliance challenge exists as there are now two different MIR Values for a single compound: one that needs to be employed for compliance calculations in California and a different one that will apply for the EPA national rule. This has complicated classification, formulation, calculation, and labeling for aerosol coatings manufacturers.

Impact on Industry: The impact of CARB's amendments has been substantial on the aerosol coatings industry because EPA's standards are no longer consistent with CARB's standards. The most pressing concern for aerosol coatings manufacturers is calculating two different values for compliance purposes. The process takes more time, costs more money, and expends more resources. In addition, EPA's outdated standards are stifling innovation and not utilizing the most recent scientific research available. Under EPA's current regulations, it is not worth it for industry members to come up with different formulations using new compounds with lower VOC emissions because the trade-off is having to use a high default value. Overall, the inconsistencies between EPA and CARB's aerosol coatings regulations have created burdens with compliance that is costly for industry.

Recommended Solution: ACA recommends that EPA modify its aerosol coatings regulations by updating the reactivity values in MIR Tables 2A, 2B and 2C, adjusting the default value, amending the regulatory language to allow for changing the value of existing compounds, and adding new compounds to the tables. These slight modifications would align EPA's aerosol coatings regulations with the most recent scientific research available and promote uniformity and consistency throughout the country. ACA is not asking EPA to impose California's regulations across the country; rather, ACA is asking EPA to update its standards and reactivity values. Since EPA's aerosol coatings regulations are originally based on CARB's regulations, this harmonization seems to be natural and practical. Most importantly, it will resolve inconsistencies and reduce burdens and costs on the aerosol coatings industry.

4. **Triennial Reporting for Aerosol Coatings, EPA—HQ—OAR—2006—0971**

Issue: EPA's current aerosol coatings regulations require regulated entities to report certain information to EPA every three years (40 CFR § 59.511(i)). In these triennial reports, aerosol coatings manufacturers must report VOC formulation data, VOC amounts, individual product codes, and other identification information.

Concern and Impact on Industry: These triennial reporting requirements are not only burdensome and costly for aerosol coatings manufacturers, but they also provide little, if any, useful value or information to EPA. This additional reporting requirement costs the industry in time, money, and resources. Plus, if there are compliance issues, this same information can be requested by the Agency and manufacturers would then be required to provide it. So, this additional triennial reporting requirement is unnecessary.

Recommended Solution: ACA urges EPA to eliminate the triennial reporting requirements for aerosol coatings manufacturers. This same information can be requested by EPA at any time should compliance issues arise.

5. **TSCA Nanomaterials Reporting Rule, EPA-HQ-OPPT-2010-0572**

EPA's "Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements - Final Rule" was published on January 12, 2017.

Issue: Our industry consists of downstream processors of emulsions and dyes containing some particles in the nanoscale. These raw materials are used during manufacture to produce a final product with no inhalation risk for nanomaterials. Reporting from such downstream processors is duplicative, unnecessary, and costly

The final EPA "Nanomaterial Reporting" rule requires a one-time report and recordkeeping of existing exposure and health and safety information on nanoscale chemical substances in commerce. This rule requires companies that manufacture, import or process certain chemical substances already in commerce as nanoscale materials to notify EPA of certain information, including specific chemical identity; production volume; methods of manufacture; processing, use, exposure and release information; and available health and safety data. The compliance deadline for this report is August 14, 2018.

Impact on Coatings Industry: The use of emulsion polymers and the milling of pigments during the coating manufacturing process could fall below the 100 nanometers threshold and potentially trigger reporting under the final rule. Emulsion polymers and milling processes have been conducted for decades in the coatings industry and there is minimal opportunity for exposure to the nanoscale material after the film cures. Nanoscale materials which may be incorporated into paint products would not be available since they would be bound in the dry coating film. During the manufacturing process, existing OSHA requirements for engineering controls and PPE adequately control any risks. A requirement to report on these materials would be unnecessary and duplicative. Given the low exposure and low risk of these applications, EPA should exempt these substances from the reporting requirements.

ACA estimates that about 10 to 15 coatings companies would report under this rule. Using a conservative estimate, the reporting requirement alone would cost at least $3.5 million to the coatings industry. These figures are based on EPA estimates and information from ACA member companies. EPA estimates that across all industry sectors, about 823 companies will be affected by this rule, with a distribution of 80/20 of large to small companies.[1] The agency estimates 295 companies will report each year, at 4.7 reportable substances per company.[2] However, this is contrary to the information industry has provided. Companies estimate upwards of 50 reportable substances. EPA estimates each report would take up to 175 hours to complete,[3] at a cost of $10,533 just to complete the form, excluding other related activities.[4] A company with 30 to 50 reportable substances could easily spend $300,000 to $530,000 to comply, bearing in mind some companies will have more than 50 substances to report.

Recommended Solution:
ACA recommends that EPA exempt processors from this reporting requirement. Reporting imposes significant costs on processors and does not provide EPA with new information. Exemption of processors would allow EPA to more effectively gather relevant information by reducing the number of superfluous processor reports.

ACA is also recommending that EPA exempt nanoscale materials that are incorporated into paint products. These processes are known to be low risk and the final product has a low exposure risk because nanoscale materials are encapsulated in a dried paint film. Existing OSHA regulations provide adequate safety standards. The addition of this reporting rule would be overbearing on industry and is duplicative as OSHA requirements address this risk.

ACA also urges EPA to extend the compliance period from one year after the effective date to two years after the effective date. This extension would allow upstream and downstream users of nanomaterials an appropriate amount of time to prepare these reports, which EPA estimated will take 175 hours to complete.

6. TCA, Section 5(e) Consent Orders: Regulation of Chemicals Pending Development of Information During the PMN Process

Under the revised Toxic Substances Control Act (TSCA), EPA must render a determination after considering each Pre-manufacture Notice (PMN) submission. (TSCA, Section 5(a)(3)). Companies expect EPA to increase the number of

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[1] RIN 2070-AJ54, *Economic Analysis for the Final TSCA Section 8(a) Reporting Requirements for Certain Chemical Substances as Nanoscale Materials*, p. 2-8, prepared by: Economic and Policy Analysis Branch; Chemistry, Economics, and Sustainable Strategies Division; Office of Pollution Prevention and Toxics.
[2] *Id.* at p. 2-6
[3] *EPA Nanomaterials Reporting Form*, available at Docket No. EPA-HQ-OPPT-2010-0572 (EPA reporting form estimates 175 hours to complete).
[4] *Id.* at f.n. 1, p. 3-3.

consent orders under Section 5(e), allowing restricted use of a PMN substance after EPA determines information is insufficient for a final determination. A Section 5(e) consent order allows a company to use a chemical while developing information that assists EPA in coming to a final determination. EPA issues complex consent orders with a variety of requirements including:

- Testing requirements for environmental fate and toxicity;
- Personal protective equipment;
- New chemical exposure limits;
- Hazard communication requirements;
- Restrictions on releases to water, air and/or land; and
- Recordkeeping.

These requirements are detailed in consent orders that are often more than 70 pages.
ACA supports EPA's efforts to expeditiously evaluate the current backlog of PMN submissions and control risks with consent orders while companies develop test data. EPA can reduce duplicative and excessive requirements in consent orders while maintaining the same degree of protection to public health and the environment.

With revisions to TSCA, EPA will now issue an interim consent order or a final determination for every PMN filed by a company – compounding costs and administrative difficulties associated with compliance. Requirements in consent orders often address issues covered under other EPA programs or OSHA requirements. Industry is burdened with developing a secondary compliance program for consent orders. Requirements in consent orders may also vary from requirements in other programs, creating a patchwork of compliance obligations and sometimes irregular compliance dates, as explained below.

Such requirements do not advance protections to public health or the environment, but increase the regulatory burden and associated costs to industry. Companies that remain committed to environmental responsibility find certain requirements in consent orders unnecessary and burdensome. One such company maintains a staff of five of employees devoted to product compliance full time at the corporate level, with 75% of time devoted to TSCA compliance. At the facility level, one employee at each facility devotes about 10% of their time to TSCA compliance activities. This company estimates at least 11760 hours per year devoted to TSCA compliance. Reduction in duplicative and inconsistent requirements in consent orders would reduce the administrative burden on such companies.

ACA suggests the following improvements:

- Reduce the number of requirements imposed in consent orders by referencing other statutory programs where an issue is already covered. Water discharges could be regulated through National Pollutant Discharge Elimination System (NPDES) permits or Resource Conservation and Recovery Act (RCRA) requirements rather than a restriction in a Section 5(e) consent order.
- EPA could repeal duplicative EPA hazard communication and burdensome PPE testing requirements while maintaining references to OSHA hazard communication and PPE requirements in consent orders.
- EPA could also stop requiring reporting of production and/or processing volumes while companies develop test data required in consent orders.

Additional details are included below:

a. Limits to discharges into waterways

Issue: Restrictions on effluent discharges in consent orders may duplicate or sometimes impose additional restrictions not included in a facility's NPDES permit, although the chemical at issue does not pose an eco-toxicological risk. To comply, companies must implement new control and monitoring systems, beyond those used to comply with NPDES requirements. Although an NPDES permit may not cover discharges from new pollutants, NPDES permits restrict overall percent nitrogen and phosphorous discharged, including contributions from new pollutants. Hazardous waste requirements under RCRA require containment and disposal of effluent discharge with new chemicals where appropriate.

Concern: Limits to discharge in consent orders do not enhance protections to environment and public health while imposing significant costs to industry. These restrictions are interim measures while companies submit additional eco-toxicological data. Similar protections are included in a facility's NPDES permit or through RCRA requirements.

Impact/Cost to the Coatings Industry: Companies can incur significant costs with little to no additional protection to public health or the environment. One company reports additional costs of $600,000 per year to comply with discharge requirements in just one order. This estimate does not include employee hours. Costs are compounded since companies are now subject to multiple consent orders. One company reports that it anticipates about 40 consent orders where it previously only had to comply with one or two orders per year.

Recommended Solution: ACA recommends that EPA issue consent orders that reference NPDES permit requirements and RCRA requirements without imposing additional restrictions to discharge. EPA should also rescind existing discharge requirements in consent orders currently in effect.

b. Hazard Communication standards (HCS) in consent orders

Issue: Human health hazard and precautionary statements required on safety data sheets for PMN substances are not aligned with OSHA's HCS. Consent orders typically replicate hazard communication specified for chemicals subject to SNURs at 40 CFR 721.72(g) and (h). In addition to health hazard and precautionary statements, consent orders include basic information that must appear on SDS and labels, such as manufacturer's identity, exposure levels and chemical identity. Although EPA largely replicates OSHA's SDS and labeling requirements, requirements are not identical, placing companies in a tenuous position by requiring compliance evaluations under both EPA and OSHA requirements.

Concern:
ACA believes that the human health hazard and precautionary statements prescribed in consent orders pose duplicative and unnecessary burdens on the coatings industry and create confusion among the workers. Given that the intention of these requirements is to communicate hazards to employees, providing similar hazard statements to employees in two different verbiages (HCS statements vs EPA statements) creates unnecessary complexity for employers and simply confuses workers. EPA's data requirements for SDS add another layer of complexity, requiring companies to check for compliance with both EPA and OSHA data requirements.

Impact to the Coatings Industry:
Our members must develop two compliance systems for hazard communication requirements, while evaluating differences and similarities of both systems to comply. This seemingly benign dual hazard communication system has aggregate impacts for management. Written hazard communication programs must be aligned with EPA and OSHA requirements. Companies must also align management systems, train workers, and correct SDS and labels as necessary to comply.

Recommended Solution:
ACA recommends that EPA minimize hazard communication requirements in consent orders to those relevant to environmental hazards (not covered by OSHA); and that EPAinclude one sentence requiring compliance with OSHA's HCS for all other requirements.

c. PPE testing requirement in consent orders

Issue: Consent orders adopt two standards related to permeation tests for PPE not required by OSHA: 1) ASTM F739, "Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact," and 2) ASTM F1194-99(2010), "Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing Materials." Companies must test and maintain records as specified in these standards.

Concern: EPA creates a secondary permeability assessment that may vary from a company's current testing practice for compliance with OSHA's requirement. EPA's testing standards may not be the most current or effective test methods. In contrast to EPA's requirement, OSHA's PPE maintenance requirement gives companies flexibility in implementing appropriate and current tests.

Impact / Cost to the Coatings Industry: Companies must modify policies and practices designed for OSHA compliance to meet EPA testing requirements. The costs of EPA-specified tests are in the range of $5,000-$10,000.

Recommended Solution: ACA recommends that EPA modify consent order language to delete references to permeability testing standards while maintaining reference to OSHA requirements for PPE at 29 CFR 1910.38 (hand protection) and 29 CFR 1910.133 (eye and face protection).

d. Volume reporting in consent orders

Issue: Consent orders require companies to report cumulative manufacture volumes every six months from the date of commencing manufacture, while developing test data. Reports must be submitted every six months until the PMN submitter develops final submission of test data.

Concern: This reporting requirements is of marginal use to EPA, but imposes administrative costs on industry. Moreover, the requirement causes staggered reporting dates that can be difficult to track when attempting to comply with several consent orders. EPA presumably uses data to enforce production limits for PMN substances, but other methods of reporting could achieve the same result.

Impact/Cost to the Coatings Industry: Administrative costs to industry can be significant when tracking compliance dates and drafting multiple reports. This burden is compounded by irregular compliance dates set every six months from the date of manufacture of each PMN substance.

Recommended Solution: ACA recommends that EPA repeal this requirement. Reported information is of little to no value to EPA, but significantly adds to a company's administrative burden. EPA could require a one-time submission of production volumes with final test data, once developed. In the interim, companies could report to EPA, if they exceed production limits or anticipate excess manufacture. At a minimum, EPA should require annual volume reporting at one set time during the year, instead of requiring reporting every six months from the date of manufacture.

7. **FIFRA: Requirement to gain final approval for a reformulated FIFRA registered paint product prior to distribution or marketing**

Issue: Paint and coatings manufacturers sometimes modify a FIFRA registered paint product with an active ingredient registered under FIFRA, triggering an application for amended registration under 40 CFR 152.44. Product reformulation does not alter the active ingredient. Coatings manufacturers must obtain EPA approval prior to marketing or distributing the reformulated product, potentially leading to delays or temporary withdrawal from market, pending final approval.

Concern: EPA has already deemed the active ingredient in the reformulated product as safe for the use at issue. Requiring prior approval inhibits innovation and delays bringing new formulations to market.

Impact on the Coatings Industry: ACA member companies can lose profits from delays in bringing a reformulated product to market while waiting for final approval.

Recommended Solution: ACA recommends that after submitting an application for amended registration, but prior to final approval, EPA allow formulators to market or distribute a reformulated product that is substantially similar to an existing FIFRA registered paint product. EPA can implement this change by amending language in 40 CFR 152.44.

8. **FIFRA - Prohibition of Truthful Comparative Information on a Label**

Issue: FIFRA prohibits the sale of misbranded pesticides (FIFRA Section 12(1)(E)), including pesticides with labels that are "false or misleading in any particular" (FIFRA Section 2(q)(1)(A)). FIFRA details its prohibition on false or misleading claims on labels at 40 CFR 156.10(a)(5) with specific examples, including, "A false or misleading comparison with other pesticides or devices..." In practice, EPA interprets this section to refuse approval of labels with truthful, non-misleading claims on a proposed label.

Concern: Manufacturers of FIFRA-registered paint products and non-registered paint products containing antimicrobials are barred from providing accurate information about their product, due to EPA's broad interpretation of "false or

misleading" claims. Paint and coatings manufacturers carefully formulate products with antimicrobials to optimize performance. Accurate comparative information on a label can assist buyers in purchasing a paint product that best meets their needs. Comparative statements also encourage competition and drive down product costs. Moreover, the prohibition of "false or misleading" claims under FIFRA is duplicative of Section 5 in the Federal Trade Commission Act prohibiting unfair or deceptive practices.

Cost to the Coatings Industry: Paint and coatings companies may not be maximizing market share for certain high-performance products because, in practice, EPA prohibits even truthful comparative information on labels of paints and coatings containing antimicrobials.

Recommended Solution: ACA recommends that EPA modify language in 40 CFR 156.10(a)(5)(ix) and (x), currently prohibiting safety claims in general to prohibit only "false or misleading" safety claims, thereby allowing legitimate safety claims and comparative statements. EPA should also generate guidance for industry and EPA staff encouraging truthful statements in labels while discouraging EPA staff from misinterpreting FIFRA prohibitions against false and misleading statements to prohibit truthful comparison claims.

9. FIFRA - Language Requirements for Export Labels

Issue: EPA requires that pesticides prepared for export include a label on the immediate product container in multiple languages — namely, in English — the language of the country of destination, and the official language of the importing country. (40 CFR 168.69(c)). To place a product in a foreign market, exporters must comply with domestic labelling laws of the foreign country, including language requirements. In effect, EPA's language requirement is burdensome and unnecessary, requiring compliance with a U.S. label requirement for products placed in foreign markets.

Concern: EPA's requirement creates an unnecessary labeling requirement that can significantly increase costs when EPA requires a label in a language not required by the product's destination country. EPA's requirement also creates an additional administrative burden to evaluate compliance.

Cost to the Coatings Industry: Companies may be forced to design, print and place multi-language labels on a product. Associated costs can be significant.

Recommended Solution: ACA recommends that EPA repeal 40 CFR 168.69(c) in its entirety.

10. FIFRA - Review of Label Elements upon Application for a Label Amendment

Issue: Amendments to labels of FIFRA-registered products, including FIFRA-registered paint products, require an application under section 40 CFR 152.108. EPA review of applications often results in EPA re-evaluating and requiring changes to label elements that it had previously approved, beyond the text of the requested amendment. These changes are due to shifts or evolution of EPA policy or practice regarding existing claims made on the label.

Concern: Upon application to amend a label, a paint or coatings manufacturer may be disadvantaged in the marketplace when EPA requires a change to previously approved label elements beyond the requested amendment when competitors are not required to change labels at the same time. EPA's approach creates an unlevel playing field by reopening review of settled label elements only for an applicant seeking an amended label.

Cost to the Paint and Coatings Industry: Paint and coatings manufacturers may lose market share due to varying label requirements.

Recommended Solution: ACA recommends that during review of an application for an amended label, EPA should reserve any issues with previously approved label elements, beyond the requested amendment, for a separate process, while focusing evaluation of the application on requested amendments. EPA should then require all registrants comply at the same time with any decisions about the reserved label elements. To require this approach, EPA can amend text of 40 CFR § 152.108 to require a separate proceeding when it initiates changes to label elements not proposed by the applicant.

11. FIFRA - Regulation of Product Claims for Paint Products with Antimicrobial Agents

Issue: Under an exemption to FIFRA registration requirements at 40 CFR §152.25, articles — including paints and coatings — containing antimicrobial pesticides are not subject to registration when the antimicrobial agent is used to protect the article itself and any related claims on the label relate to protection of the article, rather than any benefit to the user. However, where a product label includes claims that antimicrobial agents used to treat the article may also benefit the user, a manufacturer must register the paint or coating as a pesticide.

Concern: A paint or coating treated with an antimicrobial agent reduces bacterial contamination in the paint or coating itself. The antimicrobial agent prevents contamination since water is a highly sensitive breeding ground for bacterial growth; minimizes additional transportation and refrigeration during the distribution stage; and increases the products' lifespan and minimizes waste. In addition, the antimicrobial agent may also provide an ancillary public health benefit. Yet, manufacturers that wish to indicate any ancillary public health benefit on a label are required to register their paint or coating product as a

pesticide. Registration can be costly and time consuming while adding a disincentive for manufacturers to reformulate products containing antibacterial agents, thereby stifling innovation.

Cost to the Paint and Coatings Industry: Paint and coatings manufacturers may not be maximizing market share by failing to fully describe benefits of paints containing antimicrobial agents, without registering the paint or coating as a pesticide.

Recommended Solution: EPA should create a list of standard approved phrases for use with articles treated with specified antimicrobials. This approach would provide truthful public health claims for articles treated with antimicrobials where the article might have some ancillary public health benefit, but that benefit is not the main purpose of using the antimicrobial agent. This approach would also relieve manufacturers from registering articles whose main function is not as a pesticide, thereby conserving both agency and manufacturer resources.

12. EPA Environmentally Preferable Purchasing Program Pilot to Assess Standards and Ecolabels for EPA's Recommendations to Federal Agencies

Issue: Executive Order 13693 directed the U.S. Government to specify federal standards and ecolabels, such as Energy Star, WaterSense, and Safer Choice -- labels that identify products meeting strict federal standards for energy efficiency, water efficiency, and safer chemicals. EPA developed "Guidelines for the Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement" to create a "transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels to support the agency's mission and federal sustainable acquisition mandates." The guidelines were developed and piloted with participation and comments from multiple stakeholders, including industry, and finalized in December 2016.

Concern: ACA supports the stated goals of the pilot, "to create a transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels that support the Agency's mission and federal environmentally preferable purchasing mandates." However, ACA is concerned that major changes were made to the guidance document after the public comment period closed and without participation and feedback from the interested and impacted participants on the paint panel. While the results of the pilot indicate that many Standards Development Organizations (SDOs) could not comply with certain criteria, we understood that those criteria would signal the SDO community to improve their standards in the future. Instead, it appears that where the SDOs were unable to achieve critical criteria, such as open, transparent stakeholder involvement in standard development, the bar has been lowered to allow for closed door, arbitrary standard development.

Impact on the Coatings Industry: By requiring select standards or certification for products specified and purchased by the federal government industry must expend time and money to achieve or certify products to these multiple, and in some cases, arbitrary standards and ecolabels.

Recommended Solution: ACA recommends that EPA consider abandoning the guidelines or amendments to provide manufacturers flexibility to accommodate the variety of approaches to and types of standards and ecolabels that exist in the marketplace today.

Conclusion

ACA is encouraged by EPA's efforts to solicit the opinions and comments from affected parties. Our members are constantly working to understand and comply with the environmental requirements imposed by the agency and are pleased to see this Administration undertake such a comprehensive effort. We believe that there is a significant number of modifications and changes that can be made to some of the regulations that will streamline compliance efforts without jeopardizing the environment or the health and safety of customers, employees and the public. We have provided twelve (12) examples of regulations that are ineffective, outdated and inconsistent with other more relevant requirements. Regulatory reform is desperately needed to ensure a competitive and sustainable coatings industry.

Thank you for the opportunity to submit comments on this very important matter; we look forward to talking with you further about efforts to modernize these specific requirements.

If I may answer questions or provide additional information, please do not hesitate to contact me at 202.719.3686 or hmcauliffe@paint.org.

Respectfully submitted,

Heidi K. McAuliffe
Vice President, Government Affairs

Courtesy Copies:

Sarah Rees, US EPA, Office of Policy
Brittany Bolen, US EPA, Office of Policy

Keith Barnett, US EPA, Office of Air and Radiation
Kim Teal, US, EPA, Office of Air and Radiation
Kaye Whitfield, US EPA, Office of Air and Radiation