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ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY, AND MATERIAL SUSTAINABILITY

DIVISION OF AIR QUALITY

Air Pollution Control

Prevention of Air Pollution from Architectural Coatings

Proposed Amendments: N.J.A.C. 7:27-23.1, 23.2, 23.3, 23.4, 23.5, and 23.6; and 7:27A-3.10

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3.e, 13:1D-9 and 26:2C-1 et seq., in particular, 26:2C-8.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 08-24-06.

Proposal Number: PRN 2024-090.

A **public hearing** concerning this notice of rule proposal and proposed State Implementation Plan (SIP) revision will be held on October 15, 2024, at 9:00 A.M. The hearing will be conducted virtually through the Department of Environmental Protection's (Department) video conferencing software, Microsoft Teams. A link to the virtual public hearing and telephone call-in option will be provided on the Department's website at https://www.nj.gov/dep/rules/notices.html.

Submit comments by close of business on October 18, 2024, electronically at www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Attention: DEP Docket No. 08-24-06

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

If you are interested in providing oral testimony at the virtual public hearing, please email the Department at heidi.jones@dep.nj.gov, no later than 5:00 P.M. on October 11, 2024, with your contact information (name, organization, telephone number, and email address). You must provide a valid email address so the Department can send you an email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer that can connect to Microsoft Teams. Please note that the hearing will be recorded. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared remarks to the Department through email.

The proposed amendments will become operative 60 days after their adoption (see N.J.S.A. 26:2C-8). This notice of proposal may be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes amendments at N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings, to help the State make progress toward attainment of the health-based National Ambient Air Quality Standards (NAAQS) for eight–hour ozone. In a separate notice of proposal, published elsewhere in this issue of the New Jersey Register, the Department is proposing amendments to N.J.A.C. 7:27-24, Prevention of Air Pollution from Consumer Products. The primary benefit of the proposed amendments to both the architectural coatings and consumer products rules will be the reduction in the emissions of volatile organic compounds (VOCs), which are precursor emissions that lead to the formation of tropospheric (ground level) ozone. Exposure to ground-level ozone is a health concern in New Jersey. Moreover, New Jersey is in nonattainment of the Federal ozone NAAQS and the proposed rules will help in the goal of attainment. Ozone is a highly reactive gas formed in the lower atmosphere or troposphere from the chemical reaction involving oxides of nitrogen, and VOCs in the presence of sunlight. At elevated levels, it causes a variety of human health effects, as well as damage to crops and materials. The ozone NAAQS were established by the United States Environmental Protection Agency (EPA) pursuant to the Federal Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq., to set health and welfare standards for air pollutants. By reducing emissions that contribute

to increases in ground level ozone, the proposed amendments are expected to mitigate the impacts of climate change. As an additional co-benefit, these proposed amendments are projected to reduce emissions of hazardous and toxic air pollutants.

The proposed amendments will add 12 new specialty categories to New Jersey's existing rules at N.J.A.C. 7:27-23 that will be subject to new VOC emission limits. The proposed amendments will also lower the VOC emission limits for 12 existing categories and discontinue 15 of the existing specialty categories for products manufactured on or after the operative date of the new VOC limits, which is proposed to be one year after the effective date of this rulemaking. Coatings previously applicable to one of the discontinued categories will be subject to VOC limits in one of the existing categories. Additionally, the amendments revise the methods used to calculate the VOC content and update the applicability provisions, several of the test methods, as well as certain definitions. The Department is also proposing amendments to the penalty provisions at N.J.A.C. 7:27A-3.10 that correspond to the proposed amendments at N.J.A.C. 7:27-23. The amendments in this rulemaking constitute proposed revisions to the New Jersey State Implementation Plan for the attainment and maintenance of the eight-hour ozone NAAQS.

These proposed amendments are based on the Ozone Transport Commission 2011 Model Rule for Architectural and Industrial Maintenance Coatings (OTC 2011 AIMs model rule), which is largely based upon the California Air Resources Board Suggested Control Measure for Architectural Coatings, approved October 26, 2007 (CARB 2007 SCM). The OTC 2011 AIMs model rule process was a regional process, which included several stakeholder meetings, conference calls, and opportunities to comment on the model rule. The Department sent out

notices to its email listserv publicizing the OTC open comment period and soliciting comments on the model rule. The Department held a stakeholder meeting on September 6, 2019, to discuss the proposed amendments. On June 15, 2022, the Department sent an electronic notice to stakeholders indicating that it would accept supplemental written comments through Monday, July 28, 2022.

The portions of this Summary that follow are organized by topic; consequently, some provisions of the amendments, such as the definitions, are discussed in several places in the Summary.

The Connection between Climate Change and Ozone

In 2007, New Jersey's Legislature passed the Global Warming Response Act (GWRA), which recognized that climate change, primarily caused by emissions of heat-trapping greenhouse gases, poses a threat to the earth's ecosystems and environment. See N.J.S.A. 26:2C-38. Additionally, the Legislature recognized that reducing emissions of greenhouse gases was not only possible, but necessary, to prevent further detrimental impacts on human, animal, and plant life. *Id*. A dozen years later, the Legislature amended the GWRA to acknowledge the role that short-lived climate pollutants play in climate change and to require the State to develop programs to reduce emissions of both greenhouse gases and short-lived climate pollutants through a comprehensive strategy. See P.L. 2019, c. 197.

On January 27, 2020, Governor Murphy issued Executive Order No. 100 (2020) (EO No. 100), which directed the Commissioner of the Department to, among other things, reform and modernize its air and land use regulations to mitigate the effects of climate change and to gather information to inform future climate-related rulemaking. In response to EO No. 100, former

Commissioner Catherine McCabe issued Administrative Order 2020-01 (AO No. 1), https://www.nj.gov/dep/njpact/, which directs the Department to propose rules that reduce emissions of CO_2 and short-lived climate pollutants, as well as identify the rules and programs that should be updated to better respond to the challenges presented by climate change.

As noted in the Department's 2020 Report on Climate Change, the public health and environmental concerns associated with ozone pollution are heightened because of the interaction between climate change and air quality. See New Jersey Department of Environmental Protection, New Jersey Scientific Report on Climate Change, June 2020, p. 61, https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf (2020 Report on Climate Change). High temperatures, ample sunshine, and stagnant air masses are conducive to high ground-level ozone (ozone) levels. *Ibid.* Also, though precursor emissions may decrease, they are expected to remain high in dense urban areas and air quality generally will deteriorate due to a warming climate. *Id.* at 62. To mitigate the impacts of climate change, the Department must not only reduce pollutants that directly contribute to climate change, such as greenhouse gases and short-lived climate pollutants, but also pursue strategies to reduce pollutants, such as VOC emissions, which are a precursor of ground-level ozone.

Architectural Coatings Rules - Background

The Department's rules at N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings, as well as the Federal rules at 40 CFR 59.401 through 59.413, National Volatile Organic Compound Emission Standards for Architectural Coatings, control emissions from architectural coatings by establishing limits on the VOC content of the products. Architectural coatings include, but are not limited to, paints, varnishes, stains, industrial

maintenance coatings, and traffic coatings. An architectural coating is applied at the site of installation to stationary structures, rather than in a shop or factory where pollution control equipment may be installed. Architectural coatings contain solvents, some of which evaporate when they are applied. VOCs, which are precursors to ozone formation, are emitted from these products as the result of the evaporation of solvents during use.

The proposed amendments for architectural coatings primarily impact manufacturers of architectural coatings. To comply with the rules, manufacturers may have to reformulate some of their products to meet the new requirements or refrain from selling non-compliant products in New Jersey for use in New Jersey. Distributors and suppliers will need to ensure proper distribution of products to the appropriate states. Retailers must take precautions so as not to be held accountable for selling non-compliant products. Existing N.J.A.C. 7:27-23 requires that persons who apply coatings for compensation must not purchase coatings from another state that has VOC content limits less stringent than the New Jersey VOC limits, and then apply the coatings in New Jersey. In addition, persons who apply coatings for compensation must follow the thinning instructions on the label, so as not to exceed the proposed VOC limits, and must keep containers closed when not in use.

New Jersey's first architectural coatings rules for the control of VOCs were adopted in 1989. New Jersey submitted an ozone attainment demonstration for its multi-state nonattainment areas to the EPA in 1998, that was conditionally approved by the EPA, contingent upon New Jersey submitting additional measures needed to achieve greater emission reductions. The EPA issued a similar action to the states in New Jersey's multi-state nonattainment areas and formally requested that the states work together to develop regional strategies to reduce emissions. Those

states, in conjunction with the OTC, worked together to develop regional model rules to reduce emissions of ozone precursors to meet EPA requirements. The OTC 2001 AIMs model rule was one of the first regional model rules in response to EPA's requirements. See https://otcair.org/document.asp?fview=modelrules. The rule was based on a statewide model rule developed in California, the California Air Resources Board Suggested Control Measure for Architectural Coatings, dated June 22, 2000 (CARB 2000 SCM).

On July 21, 2003, the Department proposed rules, based on the OTC 2001 AIMs model rule, and adopted those rules on May 21, 2004 (36 N.J.R. 2218(a)). Though the Department has made no substantive amendments at N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings, since the 2004 adoption, the OTC updated the OTC Model Rule for Architectural and Industrial Maintenance Coatings on June 21, 2011 (OTC 2011 AIMs model rule). See https://otcair.org/document.asp?fview=modelrules. The OTC 2011 AIMs model rule is largely based upon the CARB 2007 SCM. It also contains some updates from the CARB 2000 SCM that were not incorporated in the first model rule. The CARB 2007 SCM was developed as a model rule for the air quality management districts in California. To date, 15 of the air quality management districts in California have adopted the CARB 2007 SCM, or VOC limits that are more stringent, which comprises 92 percent of California's population.

The CARB prepares substantial technical documentation as part of its development of the architectural coating SCMs for its air quality districts, including the technical basis for its VOC content limits. The OTC and the Department reviewed the CARB's VOC limits and data for applicability in the Ozone Transport Region (OTR), which includes New Jersey, and generally agreed with the conclusions. As it did when it drafted the OTC 2001 AIMs model rule, the OTC

members relied on the experience, research, and technical expertise of the CARB in drafting the OTC 2011 AIMs model rule. The proposed amendments to the Department's rules are based on the OTC 2011 AIMs model rule and the CARB 2007 SCM. For supporting documentation on the OTC 2011 AIM model rule, see the OTC Model Regulations for Nitrogen Oxides (NO_x) and Photo-Reactive Volatile Organic Compounds (VOCs) Technical Support Document (TSD) dated August 25, 2016 (OTC 2016 TSD) posted on the OTC's website at https://otcair.org/document.asp?fview=modelrules. For supporting documentation on the CARB 2001 and 2007 SCM's see https://ww2.arb.ca.gov/our-work/programs/coatings/architectural-coatings/suggested-control-measure.

Key Differences Between the New Jersey Rules, the CARB SCMs, and the OTC Model Rules

To maximize consistency and uniformity of the rules from state to state, the OTC strives to ensure that the VOC limits, definitions, exemptions, and flexibility options in the OTC AIMs model rules are consistent with those used in the CARB SCMs for architectural coatings. However, it is not always practical or feasible for the OTC or individual states to adopt rules identical to the CARB SCMs. Hence, there are some differences between the OTC 2011 AIMs model rule and the CARB 2000 and 2007 SCMs. For instance, the operative date for compliance with the proposed VOC limits in the OTC 2011 AIMs model rule is January 1, 2014. This date is four years after the operative date for the VOC limits in the CARB 2007 SCM. The delayed operative date allows more time for the products to be manufactured and used in California, before implementation in the northeast states.

The OTC 2001 AIMs model rule included six categories that were in the Federal rules but were not in the CARB 2000 SCM. These additional categories are retained in the OTC 2011 AIMs model rule and are, therefore, being retained in the Department's proposed amendments. These categories are calcimine recoaters, concrete surface retarders, conversion varnishes, impacted immersion coatings, nuclear coatings, and thermoplastic rubber coatings and mastics.

The OTC 2011 AIMs model rule incorporates the VOC limit of 250 grams per liter (g/l) for industrial maintenance coatings from the CARB 2000 SCM, which is also consistent with the VOC limit for that category in the CARB 2007 SCM. Three other specialty coating categories in the OTC 2011 AIMs model rule have a higher VOC limit than the CARB 2007 SCM. This is discussed in more detail below in the coating category summaries. Specifically, the VOC content limit for the aluminum roof category in the OTC 2011 AIMs model rule is 450 g/l, while the CARB 2007 SCM VOC limit is 400 g/l. The VOC content limit for the bituminous roof category in the OTC 2011 AIMs model rule is 270 g/l, while the CARB 2007 SCM VOC limit is 50 g/l. The VOC content limit for the roof coating category in the OTC 2011 AIMs model rule did not change, while the CARB 2007 SCM VOC limit was lowered to a more stringent 50 g/l. Further, the OTC 2011 AIMs model rule adds two new specialty categories, conjugated oil varnish and reactive penetrating carbonate stone sealer, that were not included in the CARB 2000 or 2007 SCMs. These variations are discussed in more detail below.

The Department has not amended the existing sell-through provision in its rules at N.J.A.C. 7:27-23.3, which allows any person to supply, sell, or apply a coating that complied with the VOC content limits in effect at the time of its manufacture for an unlimited period. This differs from the OTC 2011 AIMs model rule and CARB 2007 SCMs, which have a three-year

sell-through limit. The unlimited sell-through is consistent with the OTC 2001 AIMs model rule and is intended to reduce the burden on manufacturers, small businesses, and retailers in regard to tracking the products on the shelf or possibly having to clear products from the shelf.

A more detailed summary of the proposed amendments to New Jersey's architectural coatings rules follows.

Applicability, N.J.A.C. 7:27-23.1

The Department is proposing several amendments at N.J.A.C. 7:27-23.1, Applicability, that are consistent with the OTC 2011 AIMs model rule. First, the Department is proposing an amendment at existing N.J.A.C. 7:27-23.1(d), which lists the architectural coatings that are exempt from the provisions of this subchapter. Pursuant to the existing rule, architectural coatings that are sold or manufactured for use outside of New Jersey are exempt. The proposed amendments add to the exemption those products that are supplied or offered for sale for use outside of New Jersey.

Existing N.J.A.C. 7:27-23.1(d)3 exempts an architectural coating that is sold in a container with a volume of one liter or less. The Department proposes to add specific types of containers and packaging that qualify for the exemption. A kit that includes more than one container with different colors, types, or categories of coatings, or a two-component product falls under the "one liter or less" exemption, so long as the total volume of the architectural coatings contained within the kit is one liter or less. Also exempt are multiple containers of one liter or less that are packaged together, provided the individual containers are not intended or required to be sold as a unit and the coatings are in packaging from which the coating cannot be applied, such as a cardboard box. Containers that individually

hold one liter or less, that are bundled together for sale or are marketed for the purpose of being combined into one container such as a bucket, are not exempt.

The Department proposes to delete N.J.A.C. 7:27-23.1(f) and portions of subsection (e). Existing N.J.A.C. 7:27-23.1(e) exempts from the VOC standards any person who applies an architectural coating for compensation within the State, if the person purchased a coating from another state with an identical or more stringent rule. Existing N.J.A.C. 7:27-23.1(f) lists states with identical or more stringent rules. Neither of the provisions are in any of the OTC AIMs model rules or the CARB SCMs. In the 20 years since the Department's last amendments to these rules, several states nationwide have adopted architectural coatings rules. Each state has the option to change portions of the model rule during its own rulemaking process. It is not practical or feasible for the Department to determine whether each aspect of another state's rules is identical to or more stringent than New Jersey's rules. Therefore, the Department is deleting the provision. It is the responsibility of the person applying an architectural coating for compensation within the State to determine if the coating being applied is in compliance with New Jersey's rule, if the coating was purchased out of State.

Coating Category Definitions and Standards at N.J.A.C. 7:27-23.2 and 23.3

CARB regularly updates its SCMs for architectural coatings. With each update, CARB undertakes a great deal of research and technical analysis. Specifically, CARB staff conducts a survey of architectural coatings, meets with manufacturers, industry groups, the public and the EPA, conducts technology assessments, and prepares environmental and economic analyses. See the CARB Technical Support Document For Proposed Amendments To The Suggested Control

Measure For Architectural Coatings, September 2007, https://ww2.arb.ca.gov/our-work/programs/coatings/architectural-coatings/suggested-control-measure, (CARB 2007 SCM TSD). It is this research and analysis that the OTC and the Department rely on when proposing amendments to the AIMs rules.

The Department proposes to define new categories of coatings at proposed amended N.J.A.C. 7:29-23.2, Definitions. The Department also proposes to amend the definitions of some existing coatings. The proposed new and amended definitions are consistent with the OTC 2011 AIMs model rules and/or the CARB 2007 SCM.

Proposed Discontinuation of VOC Limits for Existing Categories

The Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to discontinue certain specialty categories for products manufactured on or after the operative date of the proposed new VOC limits and categories, which is one year after the effective date of this rulemaking. The Department proposes to indicate this by designating the VOC limit for certain categories in Table 1 at N.J.A.C. 7:27-23.3, Standards, as "NA," which is defined in a proposed note to Table 1. A manufacturer of a product that is covered by one of these categories will need to reassess the applicable category to ensure compliance with the corresponding VOC limit. Some of the products that satisfy the existing definition of a category proposed to be discontinued will satisfy the definition of a different (either new or existing) category in Table 1. Other products that satisfy the existing definition of a category proposed to be discontinued will not fall within the definition of a new or existing specialty category. For these products, the VOC content limits will be determined

based on the classification of the architectural coating's gloss as flat, non-flat, or non-flat high gloss.

Antenna Coating

As noted in the CARB 2007 SCM TSD, only a small volume of antenna coatings is sold annually. There were no products in this category reported in the CARB's 2005 survey. *Id.* at 5-4. Thus, CARB found that coatings for antennas could be covered in other existing categories, such as industrial maintenance coatings or rust preventative, or could utilize the one liter exemption. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits.

Antifouling Coating

As described in the CARB 2007 SCM TSD, there were no products in the antifouling coating category reported in the CARB 2001 or 2005 survey. CARB found that antifouling coatings are primarily covered by marine rules. In New Jersey, marine coatings would be included at N.J.A.C. 7:27-16.12, Surface coating operations at mobile equipment repair and refinishing facilities. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits.

Bituminous Pavement Sealer

The bituminous pavement sealer coating category (bituminous coating or bituminous sealer

in the definitions) is not found in the OTC 2011 AIMs model rule or the CARB 2007 SCM; this specialty category is specific to New Jersey's existing architectural coatings rules. The Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits, to be consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. Those products that are covered in the existing bituminous pavement sealer category are covered in the proposed new category, driveway sealer, which is discussed in greater detail below.

Fire Retardant Coating: Clear and Opaque

As described in the CARB 2007 SCM TSD, the fire retardant categories of clear and opaque are no longer needed because these products can be classified by their gloss, and are able to comply with the VOC limits of the flat or non-flat categories. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits.

Flow Coating

As described in the CARB 2007 SCM TSD, there were no products in the flow coating category reported in the CARB 2005 survey. CARB found that flow coatings could be covered in other existing categories, such as industrial maintenance coatings. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits.

Clear Brushing Lacquer; Lacquer, including Lacquer Sanding Sealer; Sanding Sealer; and Varnish

As described in the CARB 2007 SCM TSD, the specialty categories of: clear brushing lacquer; lacquer, including lacquer sanding sealer; sanding sealer; and varnish were recommended for consolidation into a single new category, to be known as wood coatings. The CARB 2007 SCM consolidated these four categories into the wood coatings category in order to develop an inclusive definition that would capture both waterborne and solvent-borne products. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits. The products in these categories are included in the newly proposed category, wood coatings, which will be discussed in greater detail below.

Quick-Dry Enamel

As described in the CARB 2007 SCM TSD, the quick-dry enamel category is no longer needed because products that meet the existing definition can be classified by their gloss, instead. These products can comply with the VOC limits of the default category, which classifies coatings by their gloss as flat, nonflat, or nonflat high gloss. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits.

Quick-Dry Primer, Sealer, Undercoater

CARB cautioned in the 2000 version of its SCM for architectural coatings that the quick-dry primer, sealer, and undercoater category would eventually become obsolete. Consistent with its warning, CARB determined in 2007 that a separate quick-dry category was no longer necessary, and the products that were covered in this specialty category could comply with the VOC limits in the primer, sealer, undercoater category. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits. The proposed amendments further reflect the addition of the definition of the term "primer, sealer, and undercoater," which is consistent with the discontinuation of the quick-dry primer, sealer, undercoater category for products manufactured on or after the operative date of the new VOC limits.

Swimming Pool Repair and Maintenance Coating

CARB cautioned in the 2000 version of its SCM for architectural coatings that it would eventually eliminate the swimming pool repair and maintenance coating category. Consistent with its warning, CARB determined in 2007 that a separate swimming pool repair and maintenance coating category was no longer necessary, and the products that were covered in this specialty category could comply with the VOC limits in the swimming pool coating category, with an amended definition. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC

limits. The proposed amendments further reflect the amendments to the definitions of swimming pool coating, which are consistent with the discontinuation of the swimming pool repair and maintenance coating category for products manufactured on or after the operative date of the new VOC limits.

Temperature-Indicator Safety Coating

As described in the CARB 2007 SCM TSD, there were no products in the temperature-indicator safety coating category reported in the CARB 2001 or 2005 survey. CARB found that the products falling in the temperature-indicator safety coatings category could be covered in, and comply with, the VOC limits of other categories, such as industrial maintenance and high temperature coatings. Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits.

Tile-Like Glaze Coating

The tile-like glaze coating category is not found in either the OTC 2011 model rule or the CARB 2007 SCM; this specialty category is specific to New Jersey's architectural coatings rules. The Department proposes to amend Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the category for products manufactured on or after the operative date of the new VOC limits. The amendments are consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Waterproofing Sealer and Waterproofing Concrete/Masonry Sealer

Consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes amendments in Table 1 at N.J.A.C. 7:27-23.3, Standards, to indicate that it is discontinuing the waterproofing sealer and waterproofing concrete/masonry sealer categories for products manufactured on or after the operative date of the new VOC limits. CARB explained in its 2007 TSD that it was recommending the removal of waterproofing from the category name because most of the products claim to have water resistant properties, as opposed to waterproofing capabilities. While a number of the products that met the definition of the two specialty categories will be covered primarily in the proposed new category of concrete/masonry sealer, CARB indicated that some of the products will be re-categorized in the basement specialty coating, waterproofing membrane, and reactive penetrating sealer categories.

Proposed New Specialty Categories

The Department proposes 12 new specialty categories. The VOC limits for these new categories are shown in proposed amended Table 1 at N.J.A.C. 7:27-23.3 and will be operative one year after the effective date of the proposed amendments. Some of the proposed new categories replace one or more of the categories that will be discontinued for products manufactured on or after the operative date of the VOC limits. Other new categories will encompass products that fall within existing categories for which VOC limits are not proposed to be discontinued. The Department proposes to define each of the new categories at N.J.A.C. 7:27-23.2, Definitions. The proposed definitions are consistent with the definitions of the terms in the OTC 2011 AIMs model rule and/or the CARB 2007 SCM.

Aluminum Roof Coating

As described in the CARB 2007 SCM TSD, CARB formed a new aluminum roof coatings category that consists of certain products that were previously covered in the metallic pigmented coating category. The products included in the new specialty category are distinct from the metallic pigmented coating category because aluminum roof coatings are exclusively for application to roofs and contain a higher amount of elemental aluminum pigment.

Though the CARB 2007 SCM recommended a VOC content limit of 400 g/l for the aluminum roof coating category, the OTC 2011 AIMs model rule proposed a VOC content limit of 450 g/l based on stakeholder comments regarding differences in climate between the northeast and California and technical issues with the formulation. The Department is proposing a VOC limit of 450 g/l for the aluminum roof coatings category in Table 1 at N.J.A.C. 7:23.3, Standards, which is consistent with the OTC 2011 AIMs model rule. New Jersey is part of the OTR; therefore, the Department is maintaining consistency within the OTR region, to the extent feasible and practical.

Basement Specialty Coatings

As described in the CARB 2007 SCM TSD, CARB formed a new basement specialty coating category that includes products that were previously covered in the waterproofing concrete/masonry sealer and waterproofing sealer categories. The new specialty category includes those products that provide a hydrostatic seal for basements and other below-grade surfaces. The Department proposes a VOC limit of 400 g/l for the new category in Table 1 at N.J.A.C. 7:27-23.3, Standards, which is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Concrete Masonry/Sealer

As described in the CARB 2007 SCM TSD, CARB formed a new concrete masonry/sealer category that includes products that were previously covered in the waterproofing concrete/masonry sealer and waterproofing sealer categories. The new specialty category includes those products that perform one or more functions, such as the prevention of penetration of water; resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light; or the hardening or dustproofing of aged or cured concrete surfaces. The Department proposes a VOC limit of 100 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, which is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Conjugated Oil Varnish

The Department proposes a new special category for conjugated oil varnish, which is a coating category specific to the OTR. The Department proposes to define this specialty category, consistent with the OTC 2011 AIMs model rule, to include products that provide a clear or semi-transparent wood coating based on a natural occurring conjugated vegetable oil (tung oil) and modified with other natural or synthetic resins. The Department proposes a VOC limit of 450 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, which is consistent with the OTC 2011 AIMs model rule. OTC included this category based on stakeholder comments that conjugated oil varnish is used in high-end floor restoration/renovation and results in a unique finish that cannot be achieved by other floor finishing products. This category is a small volume niche category, most usually applied by contractors; as a result, the oil is generally more expensive as compared to other consumer applied floor finish products. CARB mentioned in its 2007 TSD that this

category may need a higher VOC limit in other parts of the country outside of California. Ohio and Canada have adopted this category.

Driveway Sealer

As described in the CARB 2007 SCM TSD, CARB formed a new driveway sealer category that includes products formerly covered by the CARB default category of other products. Driveway sealers are coatings that are used to restore weathered asphalt driveways. They can extend driveway longevity and protect against weather, erosion, oil, and gasoline. As discussed above, New Jersey has a category called bituminous pavement sealer (bituminous coating or bituminous sealer in the definitions) with a VOC limit of 100 g/l, which is being replaced with this category for products manufactured on or after the operative date of the new VOC limits to be consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. The Department proposes to add a driveway sealer category with a VOC limit of 50 g/l for the new category consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Reactive Penetrating Sealer

As described in the CARB 2007 SCM TSD, CARB formed a new reactive penetrating sealer category, which includes products that were previously covered in the waterproofing concrete/masonry sealer and waterproofing sealer categories. CARB determined that a new specialty category is necessary to capture those products that penetrate into concrete and masonry substrates and chemically react to form a seal. The CARB definition requires that the sealers meet four criteria concerning water repellency, water vapor transmission, performance criteria, and labeling. The Department proposes a VOC limit of 350 g/l in Table 1 at N.J.A.C. 7:27-23.3,

Standards, consistent with the OTC 2011 model rule and the CARB 2007 SCM.

Reactive Penetrating Carbonate Stone Sealer

The Department proposes a new special category for reactive penetrating carbonate stone sealer, which is a coating category specific to the OTR. The proposed category includes products that provide a clear or pigmented coating for application to above-grade carbonate stone substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate. Similar to the definition for a reactive penetrating sealer, the proposed definition of reactive penetrating carbonate stone sealer at N.J.A.C. 7:27-23.2 requires that the coating meet certain criteria concerning water repellency and water vapor transmission.

The OTC included this category in the 2011 AIMs model rule based on stakeholders' comments. Stakeholders stated that carbonate stone is widely utilized as an exterior structural and façade component in commercial and institutional construction in the northeast. Limestone, marble, and other carbonate substrates are generally durable and sustainable; however, they are subjected to accelerated weathering and decay due to biological growth, water intrusion, and freeze/thaw cycles, and are particularly sensitive to acid rain. The northeastern United States has an estimated inventory of 50,000 buildings, 10,000 memorials, and tens of millions of grave markers constructed of carbonate stone that need protection from acid rain degradation.

Penetrating reactive carbonate stone sealers make up a niche category and are typically specified by building maintenance specialists and conservators. These sealers function by penetrating the surface and reacting at a molecular level. They do not form a surface film and therefore allow outward migration of internal moisture while preventing water intrusion. The

basic formulation building blocks are the same as with specialty stone consolidants; however, carbonate stone does not contain necessary silicates for reaction, so a bridging silicate source is required. Reactive penetrating carbonate stone sealer products are incompatible with aqueous carriers, thus requiring a higher VOC content. The CARB recognized the need for higher VOC limits for historical preservation/renovation in the CARB 2007 SCM TSD. The Department proposes a VOC limit of 500 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, which is consistent with the OTC 2011 AIMs model rule.

Stone Consolidant

As described in the CARB 2007 SCM TSD, CARB identified a new stone consolidant category that includes products that were previously covered in the waterproofing concrete/masonry sealer category and the default category, which classifies coatings by their gloss. CARB determined that a new specialty category is necessary to capture those products that penetrate into stone substrates to create bonds between particles and consolidate deteriorated material. The Department proposes to add a stone consolidant category with a VOC limit of 450 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, consistent with the OTC 2011 AIM model rule and the CARB 2007 SCM.

Tub and Tile Refinish Coating

As described in the CARB 2007 SCM TSD, CARB formed a new tub and tile refinish coating category that includes products that were previously covered in the existing default category, which classifies coatings by their gloss. CARB determined that a new specialty category was necessary to capture those products that are labeled and formulated exclusively for refinishing

the surface of a bathtub, shower, sink, or countertop. The CARB definition requires that these products meet four criteria concerning scratch hardness, weight, endurance to exposure, and adhesion rating. The Department proposes a VOC limit of 420 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Waterproofing Membrane

As described in the CARB 2007 SCM TSD, CARB formed a new waterproofing membrane category, which includes products that were covered in other categories known as waterproofing concrete/masonry sealer and waterproofing sealer. CARB determined that a new specialty category is necessary to capture those products that are labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane. The proposed definition of waterproofing membrane at N.J.A.C. 7:27-23.2 is consistent with the CARB's definition and includes a list of specific applications for these products, as well as criteria that must be met. The Department proposes to add a waterproofing membrane category with a VOC limit of 250 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Wood Coating

As described in the CARB 2007 SCM TSD, CARB formed a new wood coating category, which includes products that were previously covered in four separate categories. CARB determined that a new specialty category is necessary to capture those products that are labeled and formulated for application to wood substrates only. The new category encompasses clear and semi-transparent coatings, including lacquers and varnishes applied to wood substrates to

provide a transparent or translucent solid film. The Department proposes to add a wood coating category with a VOC limit of 275 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

The Department proposes to define at N.J.A.C. 7:27-23.2, several terms that are in the new definition of wood coating. These are medium density fiberboard, particleboard, plywood, semitransparent coating, veneer, and wood substrate.

Zinc-Rich Primer

As described in the CARB 2007 SCM TSD, CARB formed a new zinc-rich primer category that is mainly comprised of certain products that were previously covered in the metallic pigmented coating category. As discussed in the CARB TSD, the products included in the new specialty category are distinct from the metallic pigmented coating category because they contain at least 65 percent metallic zinc powder or zinc dust by weight. The Department proposes a VOC limit of 340 g/l in Table 1 at N.J.A.C. 7:27-23.3, Standards, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

The proposed definition of zinc-rich primer at N.J.A.C. 7:27-23.2, Definitions, includes the required percentage of zinc by weight and requires the coating be formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings and be intended for professional use, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. Amendments to the definition of metallic pigmented coating are related.

Proposed Lower VOC Limits for Certain Existing Categories

The Department proposes to lower the VOC content limit for products in certain existing categories, for products manufactured on or after the operative date of the new VOC limits, based upon the research and analyses of CARB and OTC. For some categories, the Department is amending not only the standard in Table 1 at N.J.A.C. 7:27-23.3, but also the definition of the category at N.J.A.C. 7:27-23.2.

Bituminous Roof Coating

The Department proposes to lower the VOC content limit for the bituminous roof coating category from 300 g/l to 270 g/l, consistent with the OTC 2011 AIMs model rule. Though the CARB 2007 SCM proposed to lower the VOC content for this category to 50 g/l, OTC chose an alternate limit that OTC felt was more appropriate for the northeast, based on stakeholder comment and information in the CARB 2007 TSD. The Department also proposes to amend the definition of bituminous roof coating to clarify that the primary purpose of the coating is to prevent water penetration consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Dry Fog Coating

The Department proposes to lower the VOC content limit for the dry fog coating category from 400 g/l to 150 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit is reasonable based on its review of survey data, the high complying market share, the number of companies making complying products, and product information from manufacturers.

Flat Coating

The Department proposes to lower the VOC content limit for the flat coating category from 100 g/l to 50 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit is reasonable based on its review of the number of companies making complying products, testing data, and product information from manufacturers.

Floor Coating

The Department proposes to lower the VOC content limit for the floor coating category from 250 g/l to 100 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit would be technologically and commercially feasible by January 1, 2010, based on the high complying marketshare, the number of companies making complying products, and information provided by manufacturers. The Department also proposes to amend the definition of floor coating at N.J.A.C. 7:27-23.2, Definitions, to expand the list of applicable flooring to include garage floors, which is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Industrial Maintenance Coating

The Department proposes to lower the VOC content limit for the industrial maintenance coating category from 340 g/l to 250 g/l. In 2000, CARB staff proposed a VOC limit of 250 g/l for this category, except in certain climatic areas where a higher VOC limit could be justified. In the CARB 2000 SCM, CARB determined those limits were technologically and commercially feasible

by the 2004 effective date based on its review of the data. See the CARB Staff Report for the proposed suggested control measures for architectural coatings, June 2000, p. 147 (CARB 2000 SCM Staff Report). In the CARB 2007 SCM, CARB staff proposed to keep the 250 g/l VOC limit for this category and remove the exemption for the higher limit. The Department's proposed VOC limit of 250 g/l for this category is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. The Department also proposes to amend the definition of industrial maintenance coating at N.J.A.C. 7:27-23.2, Definitions, to clarify that substrates include floors, to correct grammar, to delete repetitive phrases, and to correct cross-references to other rule provisions that will be recodified as part of this rulemaking, which is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Mastic Texture Coating

The Department proposes to lower the VOC content limit for the mastic texture coating category from 300 g/l to 100 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit was technologically and commercially feasible by January 1, 2010, based on the complying marketshare, the number of companies making complying products, and product information from manufacturers.

As shown in Table 1 at N.J.A.C. 7:27-23.3, the waterproof mastic coating category was discontinued for products manufactured after January 1, 2005. Coatings meeting the definition of waterproof mastic coating are subject to the VOC limit that corresponds to mastic texture coatings. The Department proposes to amend the definitions of mastic texture coating and waterproof mastic coatings to clarify that prior to January 1, 2005, these products met the definition of a waterproof

mastic coating, but for products manufactured on or after January 1, 2005, waterproof mastic coatings are included under the mastic texture coating category.

Non-Flat Coating

The Department proposes to lower the VOC content limit for the non-flat coating category from 150 g/l to 100 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit was technologically and commercially feasible by January 1, 2010, based on the complying marketshare, the number of companies making complying products, and product information from manufacturers.

Non-Flat High Gloss Coating

The Department proposes to lower the VOC content limit for the non-flat high gloss coating category from 250 g/l to 150 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit was technologically and commercially feasible by January 1, 2010, based on the complying marketshare, the number of companies making complying products, and product information from manufacturers. The Department also proposes to amend the definition of this term to reference the proposed new labeling requirements at N.J.A.C. 7:27-23.5.

Primer, Sealer, and Undercoater

The Department proposes to lower the VOC content limit for the primer, sealer, and undercoater coating category from 200 g/l to 100 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit was

technologically and commercially feasible by January 1, 2010, based on the complying marketshare, testing, and product information from manufacturers.

Rust Preventive Coating

The Department proposes to lower the VOC content limit for the rust preventive coating category from 400 g/l to 250 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined in its 2007 SCM that the lower VOC content limit would be technologically and commercially feasible by January 1, 2012, which provided additional time to allow manufacturers to reformulate. By lowering the VOC limit to 250 g/l, CARB intended to eliminate many high-VOC solvent-borne coatings that were shifted to the rust preventative category after VOC limits were implemented from the 2000 SCM. CARB expected new products in the rust preventive category and existing products that comply with the proposed limit to use waterborne acrylic latex technology. The Department also proposes to amend the definition of rust preventative coating at N.J.A.C. 7:27-23.2, Definitions, to clarify the products covered by this term, including a list of the applications those products are used for, to add a list of product uses that would not be covered in the category, and to state that the products are for metal substrates only. The amendments are consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. The Department proposes to eliminate the sell-through exemption for a rust preventative coating unless the coating meets the VOC limit for industrial maintenance coatings at proposed N.J.A.C. 7:27-23.3(g).

Specialty Primer, Sealer, and Undercoater

The Department proposes to lower the VOC content limit for the specialty primer, sealer, and undercoater coating category from 350 g/l to 100 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit was technologically and commercially feasible by January 1, 2012, based on the complying marketshare, test data, the number of companies making complying products, and product information from manufacturers. The Department also proposes to amend the definition of specialty, primer, sealer, and undercoater at N.J.A.C. 7:27-23.2, Definitions, to add a provision that separately defines products that fall within the category that are manufactured on or after one year after the effective date of this rulemaking, which is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

Traffic Marking Coating

The Department proposes to lower the VOC content limit for the traffic marking coating category from 150 g/l to 100 g/l, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. CARB determined that the lower VOC content limit was technologically and commercially feasible by January 1, 2010, based on the complying marketshare, the number of companies making compliant products, and product information from manufacturers.

Other Amendments to Coating Categories

The Department is proposing to rename the term “sign paint or graphic arts coating” as

"graphic arts coating or sign paint" at N.J.A.C. 7:27-23.2 and relocate the term to be alphabetically correct. The Department is also proposing to rename the term "wood preservative coating" as "wood preservative" at N.J.A.C. 7:27-23.2 to eliminate the reference to coating as unnecessary, which is consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. The Department proposes corresponding amendments to Table 1 at N.J.A.C. 7:27-23.3.

Other Amendments to Standards, N.J.A.C. 7:27-23.3

The Department proposes additional amendments at N.J.A.C. 7:27-23.3 to be consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM. First, the Department proposes to update the VOC limit compliance provision to make clearer that the limits include thinning as recommended by the manufacturers and also exclude any colorant added to tint bases. These instructions are being relocated from the existing footnote 1 of Table 1 to proposed N.J.A.C. 7:27-23.3(a) and 23.2 for the definition of VOC content. Second, the existing most restrictive limit provision at N.J.A.C. 7:27-23.3 requires that if a coating is recommended for use in more than one of the coating categories listed in Table 1, the most restrictive (or lowest) VOC content limit shall apply. The provision also has a list of specialty categories that are exempt from the most restrictive limit provision, as the purpose of the specialty categories is to allow a higher limit. The Department proposes to amend N.J.A.C. 7:27-23.3(b) to divide the most restrictive limit provision into subsections (b) and (c), recodify the remaining subsections, and update cross-references. Proposed amended N.J.A.C. 7:27-23.3(b) applies to products manufactured before one year after the effective date of the amendments. Proposed new N.J.A.C. 7:27-23.3(c) applies to products manufactured on or after one year after the effective date of this rulemaking. At proposed new N.J.A.C. 7:27-23.3(c), the Department proposes a list of the exempt specialty

categories based upon the proposed discontinued and new categories in this rulemaking. The Department also proposes to amend recodified N.J.A.C. 7:27-23.3(k)4 to correct the cross-reference to N.J.A.C. 7:27-24.6(c). The correct cross-reference is N.J.A.C. 7:27-23.6(c).

The Department proposes to replace "VOC content limits" with "standards" at recodified N.J.A.C. 7:27-23.3(d) and to add non-flat high gloss coating to the provision that applies to coatings that are not classified in any other category at recodified N.J.A.C. 7:27-23.3(h). These proposed amendments are consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

The Department proposes to amend recodified N.J.A.C. 7:27-23.3(g) to require persons applying a rust preventive coating for industrial use that was manufactured before one year after the effective date of this rulemaking to comply with the industrial maintenance coating VOC limit. This provision is no longer necessary after one year after the effective date of this rulemaking because the limit for rust preventative coatings will be the same as industrial maintenance coatings.

The Department proposes to amend recodified N.J.A.C. 7:27-23.3(i) regarding thinning of lacquers to only apply for products manufactured before one year after effective the date of this rulemaking, this provision is no longer necessary after one year after the effective date of this rulemaking because the lacquer categories are being discontinued.

Lastly, the Department proposes to amend certain additional notes to Table 1. In particular, new note 6 consolidates the existing "NA" or "not applicable" notes. The consolidated note does not identify specific categories for a coating for which the VOC limit is no longer applicable. Instead, new note 6 explains that if a specific category's VOC limit is no longer applicable, the VOC limit for a coating that would otherwise fall within that category is determined based on the

definitions of applicable categories for which there is an applicable VOC limit, and any other relevant provision of the subchapter. The Department also proposes to add two new footnotes that will clarify changes in category names as discussed above in each specific category.

Compliance Provisions and Test Methods, N.J.A.C. 7:27-23.4, and Definitions, N.J.A.C. 7:27-23.2

The existing rules at N.J.A.C. 7:27-23.2, Definitions, and 23.4, Compliance provisions and test methods: standards, define VOC content using two formulas for determining VOC content in grams. One formula is to be used for all coatings, except low solids coatings. The second formula is to be used for low solids coatings. Based on updates in the OTC 2011 AIMs model rule and the CARB 2007 SCM, the proposed amendments redefine "VOC content" by adding two new terms: "VOC actual" and "VOC regulatory." The VOC regulatory formula is replacing the existing VOC content formula and the VOC actual formula is replacing the existing low solids formula. The Department proposes to amend the definition of "VOC content" and the compliance provisions and test methods at N.J.A.C. 7:27-23.4(a) to clarify how the VOC content of a coating shall be calculated for a multi-component product, a coating that contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, and coatings that have been thinned. The proposed amended definition of "low solids coating" is also consistent with these amendments.

The Department proposes to add new test methods at N.J.A.C. 7:27-23.4(b) for exempt compounds and is adding 10 new test methods at N.J.A.C. 7:27-23.4(e) that correspond to several of the new coating categories, consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM.

The Department proposes other amendments at N.J.A.C. 7:27-23.4, and throughout the subchapter, that will update references to test methods, thereby ensuring the most current cross-references appear in the rules, and also to update the location where the test methods can be obtained.

Throughout N.J.A.C. 7:27-23, the Department incorporates by reference documents such as test methods, reports, Federal rules and other states' rules, and includes the term "including subsequent revisions" or "as amended and supplemented." These frequently repeated phrases are especially numerous at N.J.A.C. 7:27-23.4(b) and (e). To simplify, the Department proposes amendments at N.J.A.C. 7:27-23.4(b) and (e) to clarify that whenever documents such as test methods, reports, Federal rules or other states' rules are referenced in the subchapter, they are inherently incorporated by reference, as amended and supplemented, without stating it at each occurrence in the rules, unless the Department's rules explicitly state otherwise.

Labeling Requirements, N.J.A.C. 7:27-23.5

The Department proposes amendments to the labeling requirements at N.J.A.C. 7:27-23.5, consistent with the OTC 2011 AIMs model rule and/or the CARB 2007 SCM, that enhance the existing requirements, which will be effective for products manufactured on or after one year after the effective date of this rulemaking. First, the requirements for determining which version of VOC content should be included on the label of a product have been proposed to be amended. This includes for how the VOC content should be displayed if the coating recommends thinning, does not recommend thinning, is a multi-component product or a coating that contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process.

Additionally, the Department proposes amendments that require the labels on industrial maintenance coatings to display one of the two following statements: "for industrial use only" or "for professional use only." Pursuant to the existing rules, manufacturers have a third option that allows the statements: "not for residential use" or "not intended for residential use." CARB eliminated the "residential use" statements as an option because the suggested control measures do not contain a provision against residential use. Further, CARB noted that some coatings may have a use in residential settings, even if that was not typical.

Similarly, the Department proposes amendments that would require the labels on specialty primer, sealer, or undercoater coatings to display one of the three following statements: "for fire-damaged substrates," "for smoke-damaged substrates," or "for water-damaged substrates." Pursuant to the existing rules, manufacturers have another option that allows the statement: "for excessively chalky substrates." CARB eliminated this statement as an option and added the "for fire-damaged substrates" consistent with CARB's revisions to the definition of this category of coatings. The definition of this category of coating was revised in the OTC 2011 AIMs model rule and the CARB 2007 SCM to eliminate criteria related to chalkiness.

The Department also proposes amendments at N.J.A.C. 7:27-23.5 to include statements to be displayed on the labels of several of the newly proposed categories of coatings as follows:

Coating Category	**Statement to be displayed on label**
Faux finishing coating	"This product can only be sold or used as part of a faux finishing coating system"
Reactive penetrating sealer	"Reactive penetrating sealer"

Reactive penetrating carbonate stone sealer	"Reactive penetrating carbonate stone sealer"
Stone consolidant	"Stone consolidant – for professional use only"
Wood coating	"For wood substrates only"
Zinc rich primer	"For professional use only"

The new labeling requirements for the newly proposed categories are consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, except for zinc-rich primer, which is consistent with the CARB 2007 SCM only.

Finally, as discussed above, the Department proposes eliminating existing N.J.A.C. 7:27-24.5(c) and (d) because they are both obsolete. The requirement at subsection (c) for a manufacturer to include its marketing intention on the products label has been incorporated into each definition to be consistent with the OTC AIMs model rules and the CARB SCMs and the OTC model rule, rather than remain a separate provision. A separate provision was used in the 2004 adopted rules in order to avoid duplicate definitions for each of the categories. The exemption related to the Federal Insecticide, Fungicide and Rodenticide Act at subsection (d) applied prior to 2005 and is no longer applicable.

Administrative and Reporting Requirements, N.J.A.C. 7:27-23.3 and 23.6

The Department is amending N.J.A.C. 7:27-23.6, Administrative and reporting requirements, by eliminating the option to submit the required registration to the Department through a paper submission. The Department previously allowed manufacturers to make a paper

submission if the manufacturer could demonstrate a hardship. In this age of easily accessible computers, smartphones, and internet connections, the Department does not believe this exemption is needed. Moreover, the Department has never received a hardship request to submit a registration through the mail rather than email.

The Department is also amending the requirements for information that is to be included in a report that a manufacturer is required to submit upon the request of the Department. First, the Department proposes the removal of a reference to the CARB 1998 Architectural Coatings Survey Results Final Report since the reference is old and unnecessary. Second, the Department proposes to require the inclusion of several new pieces of information from a manufacturer: (1) the name(s) and CAS registry number(s) of any of the VOC constituents in the product; (2) the name(s) and CAS registry number(s) of any compounds in the product specifically exempted from the definition of VOC; (3) a declaration of whether the product is marketed as solventborne, waterborne, or 100 percent solid; (4) the density of the product; (5) a description of the resin or binder in the product; (6) a declaration of whether the product is a single-component or multi-component product; (7) the percent by weight of all solids, volatile materials, water, and any compounds in the product specifically exempted from the definition of VOC; and (8) the percent by volume of all solids, volatile materials, water, and any compounds in the product specifically exempted from the definition of VOC. The Department proposes these additions consistent with the changes to the OTC 2011 AIMs model rule and the CARB 2007 SCM. The Department is also amending N.J.A.C. 7:27-23.6(i) and (j) to clarify that a claim of confidentiality may not be submitted to the Department electronically. A manufacturer shall submit their confidentiality claim through hardcopy format, only. The Department also proposes

to amend N.J.A.C. 7:27-23.6(i) to reference proposed N.J.A.C. 7:27-23.6(c)5, rather than existing N.J.A.C. 7:27-23.6(c)6. The proposed amendments at N.J.A.C. 7:27-23.3(l) are consistent with the confidentiality amendments and also update the address for submitting documents in hardcopy format.

Other Amendments to Definitions, **N.J.A.C. 7:27-23.2**

In addition to the new and amended definitions discussed above, the Department proposes to update several definitions to be consistent with the OTC 2011 AIMs model rule and/or the CARB 2007 SCM at Definitions, N.J.A.C. 7:27-23.2. The proposed definition of "architectural coating" clarifies that an architectural coating does not include any adhesives, not merely those adhesives applied in a shop application. Likewise, the Department proposes to identify in the definition of "exempt compound" the test methods that shall be used in order to determine if a compound is exempt. The Department proposes to amend the definitions of "bituminous roof primer," "concrete curing compound," "faux finishing coating," "fire resistive coating," "low solids coating," "manufacturer's maximum recommendation," "post-consumer coating," "recycled coating," and "secondary industrial materials" (formerly known as "secondary coating (rework)"), "shellac," "stain," "metallic pigmented coating," and "roof coating" to more accurately depict the functions and/or design elements of those coatings. The Department also proposes to add definitions for "pearlescent" and "virgin materials," which are terms used in the amended definitions of "faux finishing coating" and "recycled coating."

To be consistent with the OTC 2011 AIMs model rule and the CARB 2007 SCM, the Department proposes to substitute the phrase "labeled and formulated" for the phrase "formulated and recommended," which is used throughout N.J.A.C. 7:27-23.2, Definitions.

These amended phrases are integral to determining if a coating meets a specific definition consistent with the CARB 2007 SCM. Consistent with the substitution of this phrase, the term "recommended" is no longer needed and the Department proposes to delete it from N.J.A.C. 7:27-23.2, Definitions. The Department proposes to delete N.J.A.C. 7:27-23.5(c) which was intended as a temporary provision to incorporate this revised phrase for a coating manufactured on or after January 1, 2005, and it is no longer necessary. The Department proposes to delete definitions of "CARB SCM," "CARB survey," and "non-industrial use" because the terms no longer appear in the rules. The Department proposes to update the definition of ASTM to reflect the new name of the organization. The Department proposes to define the term "CAS registry number" because it has been added at N.J.A.C. 7:27-23.6, reporting requirements based on information on the American Chemical Society's website. Finally, the defined term "residence" is proposed to be changed to "residential" consistent with its use in the labeling provisions.

Civil Administrative Penalties for Violations, N.J.A.C. 7:27A-3.10

At N.J.A.C. 7:27A-3.10(m)23, the Department proposes to amend the civil administrative penalties for violations of N.J.A.C. 7:27-23. Existing N.J.A.C. 7:27A-3.5 authorizes the Department to impose a civil administrative penalty for a violation of any provision of N.J.A.C. 7:27, the Air Pollution Control Act (Act), or any rule promulgated, or administrative order, operating certificate, registration requirement, or permit issued pursuant to the Act, even if the violation is not otherwise included at N.J.A.C. 7:27A. The proposed amendments do not create new penalties or revise the amounts of penalties. Rather, the proposed amendments update references to subsections that were recodified as a result of the proposed amendments at N.J.A.C.

7:27-23.3. The Department is also adding existing N.J.A.C. 7:27-23.6(d) to the penalty table for a product reporting violation. N.J.A.C. 7:27-23.6(d) is not new; however, it was not previously included in the penalty table. The Department is also amending the penalty table pertaining to N.J.A.C. 7:27-23.6(h). The existing penalty table lists the "classes" of violators as "Manufacturer, Distributor, Seller, Applier for Compensation." The inclusion of "Applier for Compensation" in that list is erroneous because that class is not identified in the corresponding existing rule provision. Accordingly, the Department proposes to amend that provision to delete the reference to "Applier for Compensation."

Social Impact

The Department anticipates that the proposed amendments will have a positive social impact in New Jersey. As explained in the Summary and Environmental Impact statements, the Department expects the proposed amendments will reduce emissions of VOCs, which is a precursor of ground-level ozone and may cause adverse health effects as discussed below. By reducing emissions of this harmful air pollutant, the Department expects corresponding health benefits, resulting in a positive social impact, particularly for individuals that are more susceptible to the health impacts.

Adverse Health Impacts of Ground-Level Ozone

"High ground-level ozone concentrations have been found to have a varying degree of impact on human health, ranging from eye irritation to severe respiratory distress and can lead to chronic illness or premature death." See New Jersey Department of Environmental Protection, New Jersey Scientific Report on Climate Change, June 2020, pp. 63-64,

https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf (2020 Report on Climate Change). Ozone exposure can cause several health effects, including irritation of the lungs, which can make the lungs more vulnerable to diseases, such as pneumonia and bronchitis, increase incidents of asthma and susceptibility to respiratory infections, reduce lung function, and reduce an individual's ability to exercise and aggravate chronic lung diseases. See EPA Health Effects of Ozone Pollution (EPA ozone website), https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution. Increased ozone concentrations can severely affect the quality of life for susceptible populations (children, the elderly, and asthmatics) and present health risks for everyone. *Ibid*. Exposure to ozone for several hours at relatively low concentrations significantly reduces lung function and induces respiratory inflammation in normal, healthy people during exercise. This decrease in lung function is generally accompanied by symptoms such as chest pain, coughing, sneezing, and pulmonary congestion. Studies consistently report associations between short-term ozone exposures and total non-accidental mortality, which includes deaths from respiratory causes. Long-term exposure to ozone is linked to aggravation of asthma, and is likely to be one of many causes of asthma development. Long-term exposures to higher concentrations of ozone may also be linked to permanent lung damage, such as abnormal lung development in children.

The EPA estimates that attaining a 70 ppb health standard for ozone by 2025 will prevent the following, annually: 230,000 cases of exacerbated asthma, 960 hospital admissions and emergency room visits, and 11,000 cases of upper and lower respiratory symptoms. See Implementing EPA's 2015 Ozone Air Quality Standards dated August 16, 2018, p. 22 at https://fas.org/sgp/crs/misc/R43092.pdf. As such, the Department's proposed amendments

would not only yield greater air quality benefit, but also would save lives and money and provide better living conditions for the people of New Jersey, especially the susceptible populations.

Additionally, there is some evidence that the health impacts of increased ozone may be elevated when combined with other climate-related impacts, such as the higher temperatures that occur during heat waves. See 2020 Report on Climate Change at 66. This is particularly significant for New Jersey's urban areas where high temperatures are often accompanied by high levels of other local air pollutants. See *ibid*.

Adverse Health Impacts from VOCs, HAPs and Toxic Air Pollutants

As discussed above, high levels of ground-level ozone have been linked to negative health impacts. However, in addition to contributing to increased ozone concentrations, VOC emissions have been associated with other negative health effects. See EPA Volatile Organic Compounds' Impact on Indoor Air Quality https://www.epa.gov/indoor-air-quality-iaq/volatile-organic-compounds-impact-indoor-air-quality. VOCs are emitted as gases from certain solids or liquids. VOCs include a variety of chemicals, some of which may have short- and long-term adverse health effects. Concentrations of many VOCs are consistently higher indoors (up to 10 times higher) than outdoors. VOCs are emitted by a wide array of products numbering in the thousands. Health effects may include eye, nose, and throat irritation, headaches, loss of coordination, nausea, damage to liver, kidney, and central nervous system, and some organics are suspected or known to cause cancer in humans.

In addition, several VOCs are also classified as hazardous air pollutants (HAPs) pursuant to the Clean Air Act (42 U.S.C. § 7412(b)). HAPs are substances that cause serious health

effects, including, but not limited to cancer, birth defects, nervous system problems, and death due to massive accidental releases. See USEPA Hazardous Air Pollutants at: https://www.epa.gov/haps. Additional benefits from these amendments include reduced wastewater and hazardous waste contamination, and reduced workplace exposure.

By decreasing VOC emissions, the Department's proposed amendments will yield greater air quality benefits, resulting in a positive social impact.

Economic Impact

The Department does not anticipate a significant adverse economic impact on architectural coating manufacturers, distributors, retailers, and businesses that use architectural coatings, or consumers. The Department anticipates that the proposed rulemaking may result in increased costs to architectural coating manufacturers, and may have an economic impact on distributors, retailers, contractors, and other associated businesses if any potential increase in manufacturing costs is passed on and dampens demand. The proposed amendments may also have a positive economic impact on certain companies, such as those that supply solvents, other chemicals, and equipment for use in reformulating the products. The proposed rulemaking will result in emission reductions, which will result in reduced ozone concentrations and reduced exposure to VOCs. The Department does not anticipate any significant adverse economic impacts for manufacturers, distributors, retailers, painting contractors, or consumers.

Cost-Benefit Analysis

The cost-effectiveness of a proposed emission limit for an architectural coating is estimated using the ratio of total dollars to be spent to comply with the limit (as an annual cost)

to the mass reduction of the pollutant(s) to be achieved by complying with that limit (in annual pounds or tons). To calculate the cost-effectiveness of the proposed amendments, the Department relied, in large part, on the economic analyses performed by the CARB for its 2000 and 2007 SCMs, the OTC 2011 AIM model rule, and the OTC 2016 TSD. The CARB economic analysis for industrial maintenance coatings can be found in the CARB 2000 SCM Staff Report and the economic analysis for the remainder of the proposed amendments can be found in the CARB 2007 SCM TSD.

The Department took a conservative approach to its economic analyses by not modifying certain assumptions by CARB. A number of non-recurring costs, like reformulation, were included in CARB's economic analyses. However, many of the architectural coatings manufacturers that will be impacted by the Department's proposed amendments produce products that are distributed nationally. The costs these manufacturers incurred to reformulate products were incurred to implement California's regulations (and the regulations of other states in the Northeast region that previously adopted the OTC model rule) and will not need to be incurred again to comply with the proposed amendments. Additionally, the Department did not adjust CARB's economic assumptions to account for the proposed unlimited sell-through period in New Jersey. In its economic analysis of its SCMs, CARB assumed a three-year sell-through period, which means some manufacturers and retailers in California could suffer losses in unsold products. For these reasons, the Department believes its analysis of the cost-effectiveness ratio is conservative.

Though the Department did not adjust for non-recurring costs and an unlimited sell-through period, some adjustments were conducted. For instance, the Department included the

industrial maintenance coating category estimates from the CARB's 2000 SCM in its analysis, because the proposed amendments use CARB's VOC limit from their 2000 SCM. The Department further adjusted for other categories that were modified by OTC in the OTC 2011 AIMs Model Rule including industrial maintenance coatings, aluminum roof coatings, bituminous roof coatings, and roof coatings. Finally, the Department adjusted the estimated average annual costs of reformulation to 2022 dollars using the "annual average" from the "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month" downloaded January 2023 https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm.

As discussed above, the calculations are based on CARB's calculations, and were adjusted by population for New Jersey. The Department estimated cost effectiveness and "potential" cost increase per gallon for each of the categories or subcategories with more restrictive VOC limits. The Department estimated the cost effectiveness of the individual categories or subcategories to range from a savings of approximately $3,867 per ton of VOC reduced to a cost of approximately $38,003 per ton of VOC reduced, with an adjusted weighted average for all the categories of approximately $5,716 per ton of VOC reduced.

CARB's estimated "potential" cost increase per gallon of coating for the individual categories or subcategories ranges from a savings of approximately $6.34 per gallon to a cost increase of approximately $27.30 per gallon. The Department estimated an adjusted weighted average for all the categories of approximately $2.03 per gallon. However, as discussed previously, these cost estimates are conservative as it pertains to national manufacturers, because

all of the reformulation costs may not need to be incurred again to comply with New Jersey's proposed amendments, and manufacturers will most likely absorb most or all the costs.

The highest estimated costs are for floor coatings because many noncomplying products were sold in small volumes. The complying market share for floor coatings was 85 percent at the time of CARB's analysis and many manufacturers had already reformulated their coatings to meet the proposed VOC limit. The CARB's 2014 architectural coating survey indicated that 98 percent of sales were compliant with the limit in 2013. Therefore, CARB staff believed that it was appropriate for the remaining manufacturers to reformulate their products to meet the proposed limit. Most coatings sold to consumers are flat, non-flat, and non-flat high gloss coatings. CARB estimated "potential" cost increase per gallon of coating for these coatings range from a savings of approximately $3.39 per gallon to a cost of approximately $4.40 per gallon.

Impact on Regulated Parties and Government

The proposed amendments for architectural coatings primarily impact manufacturers of architectural coatings (including any person who hires another person to manufacture a coating for them). In order to comply with the amendments, manufacturers will have to produce compliant products to meet the rule requirements or refrain from selling them in New Jersey for use in New Jersey. In addition, distributors and suppliers will need to ensure proper distribution of products in New Jersey. Distributors, retailers, and painting contractors may be impacted if the "potential" increase in the cost of products dampens demand for the products. However, manufactures may absorb some or all of the costs of compliance, which would reduce the potential impact to these groups.

CARB determined that most affected manufacturers or marketers would be able to absorb the reformulation costs with no significant impact on their profitability. Consistent with the CARB analysis, the Department does not anticipate that employment in the paint and coating industry in New Jersey will change significantly as a result of the proposed emission limits.

Businesses that supply raw ingredients and equipment to these manufacturers may experience a decline in demand for their products. On the other hand, companies that supply solvents, other chemicals, and equipment for use in reformulating the products could potentially benefit from the proposed amendments, as they experience an increase in demand for their products. As the proposed amendments would not significantly alter the profitability of most businesses, the Department does not expect a noticeable change in employment; business creation, elimination, or expansion; and business competitiveness in New Jersey. The Department does not anticipate any significant adverse economic impacts for manufacturers, distributors, retailers, painting contractors, or consumers.

It is not anticipated that additional Department resources will be needed to implement the proposed amendments to the existing rules.

Environmental Impact

The Department anticipates that the proposed amendments will have a significant and positive environmental impact due to the expected reductions of VOCs, which are precursor emissions that lead to the formation of ground level ozone. The Department anticipates a co-benefit of these amendments from the expected reductions in hazardous and toxic air pollutants. In addition, by reducing emissions that contribute to increases in ground level

ozone, the amendments are expected to mitigate the impacts of climate change on air quality.

Ground-Level Ozone

As discussed more fully in the Social Impact, ground-level ozone (also referred to herein as "ozone") harms human health. With respect to the physical environment, the damaging effects "of ozone can be observed across a variety of scales, i.e., subcellular, cellular, leaf, whole plant, population and ecosystem." See EPA, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, Regulatory Impact Analysis, August 2016 (USEPA 2016 RIA), pp. 6-25, https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF. Plant-level effects, when widespread, can cause "broad changes in ecosystems, such as productivity, carbon storage, water cycling, nutrient cycling, and community composition." *Id*. Ozone damage to sensitive species includes visible injury to leaves and impaired photosynthesis, which is the process by which the plant makes carbohydrates, its source of energy and food. *Id*. By interfering with the ability of plants to produce and store food, ozone can lead to reduced crop and forest yields, including timber production, and can lessen overall plant productivity and growth. *Id*. Ground-level ozone makes plants more susceptible to harsh weather, disease, insects, and other pollutants. It also damages the foliage of trees and other plants, sometimes marring the landscape of cities, national parks and forests, and recreation areas. *Id*. at 6-25.

Climate Change and Ozone

The 2020 New Jersey Scientific Report on Climate Change is the Department's effort to compile scientific material in a comprehensive report detailing both the effects and the impacts

of climate change. See 2020 Report on Climate Change. While the report examines climate change at the global and regional level, its purpose is to explain the current and anticipated effects and impacts in New Jersey. See *id*. at 3. In fact, one of the report's findings is that New Jersey is uniquely vulnerable to climate change due to multiple factors, including its coastal location, population density, and geography. See *id*., Executive Summary.

Climate scientists worldwide agree that the substantial increase in heat-trapping greenhouse gases in the Earth's atmosphere from fossil fuel production and combustion, as well as land degradation are the principal causes of climate change. See *id*., p. vi. As the 2020 Report on Climate Change explains, the increasing CO_2 concentration was first observed over 60 years ago. *Id*. at 15. "Since then, other human-sourced greenhouse gases have been recognized as contributing to climate change, such as methane (CH_4), nitrous oxide (N_2O), ozone (O_3), many halogenated gases (especially chlorofluorocarbons [CFC-11 and CFC-12]), among others." *Id*. at 16. Although CO_2 is the most abundant greenhouse gas, scientists have recently begun to study the role of other short-lived climate pollutants/forcers, such as hydrofluorocarbons, methane, and black carbon in climate change. See *id*. at 25-26. It is now understood within the scientific community that while these pollutants and forcers tend to have shorter atmospheric lives, they also have much higher warming potentials, making them significant contributors to climate change. See *id*.

Climate change affects temperature, precipitation, sea-level rise, and ocean acidification. See 2020 Report on Climate Change at 28. And "[a]s temperature, precipitation, sea-level rise, and ocean acidification increase, so will the impacts to New Jersey's air, water, habitats, and wildlife." *Ibid*. at vii. Climate induced increases in air pollution will also further degrade the

environment, reducing visibility and damaging crops and forests. *Ibid*. Increased air pollution will lead to adverse health impacts, such as increased respiratory and cardiovascular health problems and more premature deaths. *Ibid*.

Of particular relevance is the interaction between climate change and air pollution, specifically, ground-level ozone. In the stratosphere, ozone provides protection from the sun's harmful ultraviolet rays. Ozone is harmful, however, when created in the Earth's lower atmosphere, or troposphere, by the interaction of "precursor" pollutant gases such as NO_x and VOCs with heat and sunlight.

Ozone-Climate Penalty

As the 2020 Report on Climate Change explains, "[t]he atmospheric conditions that generate high ozone levels are high temperatures, plenty of sunshine, and stagnant air masses, and often result in elevated levels of particulate matter and/or other colored gases that may appear visually as haze or smog…" *Id*. at 61. The many factors that contribute to ground-level ozone concentrations at any given time and location can be separated into two general categories. *Id*. at 62. The first category includes sources that emit ozone precursors, such as architectural coatings that emit VOCs. Precursor emissions are expected to decline generally but remain high in dense urban areas. *Id*. at 62. The second category includes meteorological conditions that are conducive to the formation of ozone, such as a warming climate. *Id*. at 61-62. Meteorological changes are expected to cause the primary climate change impacts on ozone formation. *Id*. at 62. This phenomenon, which is frequently referred to as the "ozone-climate penalty," is explained as "the deterioration of air quality due to a warming climate, in the absence of anthropogenic

(human-caused) polluting" activities. *Id*. Thus, "even as emissions are reduced, ozone formation may still increase due to the warmer climate," making it more important to continue to reduce emissions of ozone precursors, even as it may become more difficult to reduce ozone pollution. *Id*.

Emission Reductions

The Department estimates that VOC emissions from architectural coatings in New Jersey in 2017 were approximately 45 tons per day. The emission reduction benefit from the proposed amendments is estimated to be approximately 6.2 tons per day. As discussed in the Economic Impact, these estimates are based on analyses done by the CARB in their 2000 and 2007 Staff Reports for the Suggested Control Measure for Architectural Coatings, with some modifications. Additional details can be found in the OTC 2016 TSD.

Federal Standards Analysis

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Department has performed a comparison of the proposed amendments at N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings, to analogous Federal regulations, namely, 40 CFR 59.400 through 59.413, National Volatile Organic Compound Emission Standards for Architectural Coatings. These Federal regulations have been promulgated pursuant to the Federal Clean Air Act and set forth the substantive Federal

standards. After review, the Department has determined that the proposed amendments are more stringent than the Federal rules; however, the proposed amendments are needed to fulfill a requirement, imposed by the EPA pursuant to the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., that New Jersey adopt sufficient control measures to address ozone precursor emission reductions needed for New Jersey to attain the eight-hour ozone standard. Therefore, the Department's rulemaking is necessary for the State to comply with Federal requirements. See the Economic Impact above for a cost-benefit analysis of the proposed amendments.

Jobs Impact

The Department does not anticipate the proposed amendments will have an impact on job creation or retention in New Jersey. As discussed in more detail in the Economic Impact, because the proposed amendments are not expected to alter significantly the profitability of most businesses, the Department does not expect a noticeable change in employment; business creation, elimination or expansion; and business competitiveness in New Jersey for manufacturers, distributors, retailers, businesses that use the products, or consumers.

Agriculture Industry Impact

The Department has evaluated this rulemaking to determine the nature and extent of impact of the proposed amendments on the agriculture industry.

The primary environmental benefit will be a reduction in VOCs, which are precursor emissions that lead to the formation of ground-level ozone. As discussed in the Environmental Impact, VOC emissions contribute to the formation of ozone, which harms crops and vegetation.

For this reason, the proposed amendments should have a net positive impact on agriculture in the State by reducing emissions of pollutants that are harmful to crops and vegetation.

Regulatory Flexibility Analysis

As required pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed amendments would impose upon small businesses. The Regulatory Flexibility Act defines the term "small business" as "any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 fulltime employees."

The proposed amendments do require additional recordkeeping and compliance requirements upon businesses within New Jersey. No new reporting requirements are included in the proposed amendments. The Department does not anticipate the proposed amendments to the existing rules will have a significant negative impact on small business in New Jersey due to increased reporting, recordkeeping, and other compliance requirements. The Department does not know how many small businesses may be affected by these proposed amendments and will take comment on any information that can be provided to the Department. As discussed in more detail in the Economic Impact, the proposed amendments are not expected to alter significantly the profitability of most businesses, including those that would likely be defined as a small business, such as manufacturers, distributors, retailers, and painting contractors.

Additionally, there are numerous flexibility options built into the proposed amendments. The operative date for compliance with the proposed VOC limits gives manufacturers one year

to comply with the proposed amendments. The operative date of the VOC limits in the proposed amendments is more than 10 years after the operative date in the CARB 2007 AIMs SCM. Therefore, manufacturers that sell products nationally will have already reformulated to be compliant in California. The proposed amendments do not apply to any architectural coating that is sold in a container with a volume of one liter or less. To reduce burdensome labeling requirements, the proposed amendments do not require the inclusion of the products manufacture date on the product label. Rather, a date code, which is generally used by industry is proposed as acceptable.

The OTC rule development workgroup, of which New Jersey was a part, added flexibility to the CARB SCMs to ease the burden on businesses. Specifically, six specialty categories that are included in the Federal rule, that are not included in the CARB SCMs, were added to the OTC 2001 AIMs model rule and the New Jersey 2004 rule amendments and have been maintained in the OTC 2011 AIMs model rule and these proposed New Jersey amendments. These categories allow a higher VOC limit for coatings that meet a specialty coating category definition. Two additional specialty categories have been added to these proposed amendments based on the OTC 2011 AIMs model rule, that are not in the CARB SCMs. In addition, three categories have been proposed with either a higher VOC limit or no change as compared to the CARB 2007 SCM.

The Department is maintaining its existing sell-through provision so that any product manufactured before the operative date of the proposed limits can be sold, with no deadline for sell through, which is a deviation from the OTC 2011 AIMs model rule and the CARB 2007 SCM, which require such products to be sold within three years. To reduce the burden of

reporting requirements, reporting is not required on a periodic basis; rather, reporting is required only upon request by the Department.

In New Jersey's 2004 adoption, the Department added a provision that helps protect retailers, which is not in the OTC model rules or the CARB SCMs. A retailer who sells or offers for sale in New Jersey an architectural coating that violates the VOC content limits at N.J.A.C. 7:27-23.3(a) may provide to the Department documentation with respect to its purchase of the coating product in question in order to demonstrate compliance with this subchapter. Similarly, the Department in the 2004 adoption added a State-specific provision that helps protect painting contractors from violation of the rules without their knowledge, as long as the coating is purchased within or delivered to the State of New Jersey. Pursuant to this provision, a person should not be the responsible party if the person unknowingly purchases a non-compliant paint.

In proposing these amendments, the Department has balanced the need to protect the environment and the public health against the potential economic impacts of the rule upon businesses.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated the proposed amendments to determine the impact, if any, on the affordability of housing. The proposed amendments relate to the regulation of VOC emissions from architectural coatings. Many of the VOC emissions categories regulated in these amendments include products that can be purchased for use inside and outside of the home. As discussed above in more detail in the Economic Impact, the Department does not anticipate a significant adverse economic impact on consumers or businesses that use the products. Therefore, the Department does not anticipate these proposed

amendments will have a significant negative impact on housing affordability or on the costs of housing in the State.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed amendments to determine the impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

The proposed amendments for architectural and industrial coatings are to be implemented evenly Statewide and, therefore, do not relate to the State's official land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Development and Redevelopment Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth. As the proposed amendments are intended to reduce the emissions of VOCs in the State, thereby helping to protect air quality, the proposed amendments support the State Development and Redevelopment Plan's goal of protecting the environment and preventing air pollution by implementing a strategy of reducing air pollution at the source.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

In accordance with N.J.S.A. 52:14B-4(a)(2) and 2C:48B-2, the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 27

AIR POLLUTION CONTROL

SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS

7:27-23.1 Applicability

(a)-(c) (No change.)

(d) The provisions of this subchapter shall not apply to:

1. An architectural coating that is **supplied,** sold**, offered for sale,** or manufactured for use outside of the State of New Jersey or for shipment to other manufacturers for reformulation or repackaging[,]**;** provided that documentation indicating the final destination of such architectural coating shall be made available to representatives of the Department upon request;

2. (No change.)

3. An architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

i. This exemption includes:

(1) Products sold in individual containers;

(2) Kits containing coatings of different colors, types, or categories;

(3) Two-component products;

(4) Multiple coating containers of one liter or less shipped together in packaging with no intention or requirement that the containers be ultimately sold as one unit; and

(5) Multiple coating containers of one liter or less in packaging from which the coating cannot be applied, such as cardboard.

ii. This exemption does not include:

(1) Multiple coating containers of one liter or less that are sold together as a unit, such as multiple individual containers sold together with a bucket or other vessel from which the coating may be applied; or

(2) Any coating that is marketed to imply that multiple containers of one liter or less can be combined into one container.

(e) The provisions [of] **at** N.J.A.C. 7:27-23.3(a) shall not apply to any person who applies an architectural coating for compensation within the State of New Jersey provided that [either (e)1 or 2 below is met:

1. The] the architectural coating was purchased from a location within the State of New Jersey[or within a state that has an architectural coating rule with maximum allowable VOC content limits identical with or more stringent than New Jersey; or]**.**

[2. The coating was purchased and delivered by the manufacturer or distributor to a location in the State of New Jersey or to a state that has an architectural coating rule with maximum allowable VOC content limits identical with or more stringent than New Jersey. For a

coating sold in this manner, it is the responsibility of the seller to ensure compliance with these rules.

(f) The Department shall publish in the New Jersey Register a notice of administrative change revising the list of states below when any state promulgates maximum allowable VOC content limits for architectural coatings that are identical with or more stringent than the VOC content limits set forth in this subchapter. This list is for informational purposes only. The most current list of states can be obtained from the Department's Office of Air Quality Management at 401 East State Street, 7th floor, Mail Code 401-07H, PO Box 420, Trenton, New Jersey 08625-0420.

1. Delaware;
2. Pennsylvania;
3. New York; and
4. Maryland.]

7:27-23.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

…

"Aluminum roof coating" means for products manufactured on or after (one year after the effective date of this rulemaking), a coating labeled and formulated exclusively for application to roofs and containing at least 84 grams of elemental aluminum pigment per

liter of coating (at least 0.7 pounds per gallon). Pigment content shall be determined in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)4.

"Antenna coating" means **for products manufactured before (one year after the effective date of this rulemaking),** a coating **labeled and** formulated [and recommended] exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

"Antifouling coating" means **for products manufactured before (one year after the effective date of this rulemaking),** a coating **labeled and** formulated [and recommended] for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating must be registered as an antifouling coating [under] **pursuant to** the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

….

"Architectural coating" means a coating to be applied **to a stationary structure or their appurtenances** at the site of installation, to [the following: stationary structures or their appurtenances,] portable buildings **at the site of installation,** pavements, or curbs. [This term does not include adhesives and coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles.] **Coatings applied in shop applications or to non-stationary structures, such as airplanes, ships, boats, railcars, and automobiles, as well as adhesives, are not considered architectural coatings for the purpose of this definition.**

"ASTM" means **ASTM International, formerly known as** the American Society for Testing and Materials**, which was formed in 1898**.

…

"Basement specialty coating" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a hydrostatic seal for basements and other low-grade surfaces. Basement specialty coatings shall meet the following criteria:

1. **The coating must be capable of withstanding at least 10 psi of hydrostatic pressure, as determined in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)10; and**
2. **The coating must be resistant to mold and mildew growth and must achieve a microbial growth rating of eight or more, as determined by the methods prescribed at N.J.A.C. 7:27-23.4(e)16.**

….

"Bituminous coating" or "bituminous sealer" means **for products manufactured before (one year after the effective date of this rulemaking),** a coating material, consisting mainly of hydrocarbons and soluble in carbon disulfide, that is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bituminous roof coating" means a coating that incorporates bitumens and that is **labeled and** formulated [and recommended] exclusively for roofing **for the primary purpose of preventing water penetration**.

"Bituminous roof primer" means a primer that incorporates bitumens and that is **labeled and** formulated [and recommended] exclusively for roofing **and intended for the purpose of preparing a weathered or aged surface or improving the adhesion of subsequent surfaces components**.

"Bond breaker" means a coating that is **labeled and** formulated [and recommended] for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

...

["CARB SCM" means the California Air Resources Board Suggested Control Measure for Architectural Coatings, adopted June 22, 2000.

"CARB survey" means the California Air Resources Board's 1998 Architectural Coatings Survey Results Final Report, dated September 1999, or any subsequent CARB survey, which is incorporated by reference herein. A copy of this survey can be found on the CARB website at http://www.arb.ca.gov.]

"CAS registry number" means the unique and unambiguous identifier for a specific substance, as assigned by CAS, a division of the American Chemical Society, www.cas.org.

"Calcimine recoater" means a flat solvent-borne coating **labeled and** formulated [and recommended on its label] specifically for recoating calcimine painted ceilings and other calcimine painted substrates.

...

"Concrete curing compound" means a coating **labeled and** formulated [and recommended] for application to freshly poured concrete to [retard the evaporation of water.] **perform one or more of the following functions:**

1. **Retard the evaporation of water; or**
2. **Harden or dustproof the surface of freshly poured concrete.**

"Concrete/masonry sealer" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or opaque coating that is labeled and formulated primarily for application to concrete and masonry surfaces to perform one or more of the following functions:

1. **Prevent penetration of water;**
2. **Provide resistance against abrasion, alkalis, mildew, or staining;**
3. **Provide resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light; or**
4. **Harden or dustproof the surface of aged or cured concrete.**

…

"Conjugated oil varnish" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or semi-transparent wood coating, excluding lacquer or shellac, based on a natural occurring conjugated vegetable oil (tung oil) and modified with other natural or synthetic resins; a minimum of 50 percent of the resin solids consisting of conjugated oil. Supplied as a single component product, conjugated oil varnish penetrates and seals the wood. Film formation is due to

polymerization of the oil. The conjugated oil varnish may contain small amounts of pigment to control the final gloss or sheen.

…

"Driveway sealer" means for products manufactured on or after (one year after the effective date of this rulemaking), a coating labeled and formulated for application to worn asphalt driveway surfaces to perform one or more of the following functions:

1. **Fill cracks;**
2. **Seal the surface to provide protection; or**
3. **Restore or preserve the appearance.**

"Dry fog coating" means a coating **labeled and** formulated [and recommended] only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

…

"Exempt compound" means a compound [excluded under] **identified as exempt pursuant to** the definition of volatile organic compound (VOC) [within this subchapter]**. The test methods referenced at N.J.A.C. 7:27-23.4 shall be used to determine the exempt compound content of a coating.**

"Faux finishing coating" means a coating **labeled and** formulated [and recommended as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.] **to meet one or more of the following criteria:**

1. **A glaze or textured coating used to create artistic effects including, but not limited to: dirt, suede, old age, smoke damage, and simulated marble and wood grain;**

2. **A decorative coating used to create a metallic, iridescent, or pearlescent appearance that contains at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon);**
3. **A decorative coating used to create a metallic appearance that contains less than 48 grams of elemental metallic pigment per liter of coating as applied (less than 0.4 pounds per gallon), when testing in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)4;**
4. **A decorative coating used to create a metallic appearance that contains greater than 48 grams of elemental metallic pigment per liter of coating as applied (greater than 0.4 pounds per gallon) and which requires a clear topcoat to prevent the degradation of the finish under normal use conditions. The metallic pigment content shall be determined in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)4; or**
5. **A clear topcoat to seal and protect one or more of the coatings described at paragraphs 1, 2, 3, or 4 above. A clear topcoat shall be sold for use solely as part of a faux finishing coating system, and shall be labeled in accordance with N.J.A.C. 7:27-23.5(b)3.**

"Fire-resistive coating" means [an opaque] **a** coating **labeled and** formulated [and recommended] to protect the structural integrity, by increasing the fire endurance of interior or exterior steel and other structural materials[, that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing assemblies of]**. The fire resistive category includes sprayed fire resistive materials and intumescent fire resistive**

coatings that are used to bring structural materials into compliance with Federal, State, and local building code requirements. The fire-resistive coating and the testing agency must be approved by building code officials. The fire-resistive coating shall be tested in accordance with [ASTM Designation E 119-00 a, including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)2.

"Fire retardant coating" means **for products manufactured before (one year after the effective date of this rulemaking),** a coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing building and construction materials into compliance with [federal, state] **Federal, State**, and local building code requirements. The fire-retardant coating and the testing agency must be approved by building code officials. The fire-retardant coating shall be tested in accordance with [ASTM Designation E 84-01, including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)1.

"Flat coating" means a coating that is not defined [under] **in** any other definition in this subchapter and that registers a gloss of 15 or less on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, according to [ASTM Designation D 523-89 (1999), including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)3.

"Floor coating" means an opaque coating that is **labeled and** formulated [and recommended] for application to flooring, including, but not limited to, decks, porches, steps, **garage floors,** and other horizontal surfaces, that may be subjected to foot traffic.

"Flow coating" means **for products manufactured before (one year after the effective date of this rulemaking),** a coating that is used by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

"Form-release compound" means a coating **labeled and** formulated [and recommended] for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

...

"Graphic arts coating or sign paint" means a coating labeled and formulated for hand-application by artists, using brush, airbrush, or roller techniques, to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

…

"High temperature coating" means a [high performance] **high-performance** coating **labeled and** formulated [and recommended] for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Centigrade (400 degrees Fahrenheit).

"Impacted immersion coating" means a [high performance] **high-performance** maintenance coating **labeled and** formulated [and recommended] for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high energy impact damage caused by floating ice or debris.

"Industrial maintenance coating" means a [high performance] **high-performance** architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates**, including floors,** exposed to one or more of the

following extreme environmental conditions and labeled as specified [in] **at** N.J.A.C. 7:27-[23.5(b)3]**23.5(b)4**:

1.-2. (No change.)

3. [Repeated] **Frequent** exposure to temperatures above 121 degrees Centigrade (250 degrees Fahrenheit);

4. [Repeated (frequent)] **Frequent** heavy abrasion, including mechanical wear and [repeated (frequent)] **frequent** scrubbing with industrial solvents, cleansers, or scouring agents; and/or

5. (No change.)

…

"Lacquer" means **for products manufactured before (one year after the effective date of this rulemaking),** a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

"Lacquer, clear brushing" means **for products manufactured before (one year after the effective date of this rulemaking),** a clear wood finish, excluding clear lacquer sanding sealers, that is formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film; intended exclusively for application by brush; and labeled as specified [in] **at** N.J.A.C. 7:27-[23.5(b)4]**23.4(b)5**.

"Low solids coating" means a coating containing 0.12 kilogram or less of solids per liter (one pound or less of solids per gallon) of coating material **as recommended for application by**

the manufacturer and as calculated according to the procedures for VOC, as specified at N.J.A.C. 7:27-23.4.

"Magnesite cement coating" means a coating **labeled and** formulated [and recommended] for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

…

"Manufacturer**'**s maximum **thinning** recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

"Mastic texture coating" means**, for products manufactured on or after January 1, 2005,** a coating[, except waterproof mastic coatings,] that is **labeled and** formulated [and recommended] to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (**at least** 0.010 inch) dry film thickness.

"Medium density fiberboard" or "MDF" means a composite wood product, panel, molding, or other building material composed of cellulosic fibers (usually wood) made by dry forming and pressing of resonated fiber mat.

"Metallic pigmented coating" means a coating [containing] **that is labeled and formulated to provide a metallic appearance. Metallic pigmented coatings shall contain** at least 48 grams per liter (0.4 pounds per gallon) as applied of elemental metallic pigment **(excluding zinc)**, mica particles**,** or any combination of metallic pigments and mica particles, when tested in accordance with [SCAQMD Method 318-95, including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-[23.4(d)4]**23.4(e)4**. **For products manufactured on or after (one year after the effective date of this**

rulemaking), "metallic pigmented coating" does not include zinc-rich primer or a coating applied to roofs.

"Multicolored coating" means a coating that **is labeled and formulated to** exhibit[s] more than one color when applied in a single coat and that is packaged in a single container.

"Non-flat coating" means a coating that is not defined [under] **in** any other definition in this subchapter that registers a gloss of 15 or greater on a glossmeter held at an 85 degree angle to the coated surface or five or greater on a glossmeter held at a 60 degree angle, according to [ASTM Designation D 523-89 (1999), including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)3.

"Non-flat high gloss coating" means a non-flat coating that registers a gloss of 70 or [above] **greater** on a 60 degree meter according to [ASTM Designation D 523-89 (1999), including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-24.4(e)3. **Non-flat high gloss coatings shall be labeled in accordance with N.J.A.C. 7:27-23.5(b)9.**

["Non-industrial use" means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; and utilities infrastructure, including power generation and distribution systems, and water treatment and distribution systems.]

"Nuclear coating" means a protective coating **labeled and** formulated [and recommended] to seal porous surfaces**,** such as steel (or concrete) that otherwise would be

subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure**,** [(ASTM Method D 4082 02, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)8[)]; relatively easy to decontaminate; and resistant to various chemicals to which the coatings are likely to be exposed [(ASTM Method D 3912 95 (2001)], Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)9[)].

"Particleboard" means a composite wood product panel, molding, or other building material composed of cellulosic material (usually wood) in the form of discrete particles, as distinguished from fibers, flakes, or strands, which are pressed together with resin.

"Pearlescent" means exhibiting various colors depending on the angles of illumination and viewing, as observed in mother-of-pearl.

…

"Plywood" means a panel product consisting of layers of wood veneers or composite core pressed together with resin. Plywood includes panel products made by either hot or cold pressing (with resin) veneers to a platform.

["Post-consumer coating" means a finished coating that would have been disposed of, having completed its usefulness to a consumer, and does not include manufacturing wastes.]

"Post-consumer coating" means a finished coating generated by a business or consumer that has served its intended end use, and is recovered from or otherwise diverted from the waste stream for the purpose of recycling.

"Pre-treatment wash primer" means a primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with [ASTM Designation D 1613-02, including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)5, that is **labeled and** formulated [and recommended] for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

"Primer" means **for products manufactured before (one year after the effective date of this rulemaking)**, a coating **labeled and** formulated [and recommended] for application to a substrate to provide a firm bond between the substrate and subsequent coats.

"Primer, sealer, and undercoater" means, for products manufactured on or after (one year after the effective date of this rulemaking), a coating labeled and formulated for one or more of the following purposes:

1. **To provide a firm bond between the substrate and the subsequent coatings;**
2. **To prevent subsequent coatings from being absorbed by the substrate;**
3. **To prevent harm to subsequent coatings by materials in the substrate;**
4. **To provide a smooth surface for the subsequent application of coatings;**
5. **To provide a clear finish coat to seal the substrate; or**
6. **To block materials from penetrating into or leaching out of a substrate.**

"Quick-dry enamel" means **for products manufactured before (one year after the effective date of this rulemaking),** a non-flat coating that is labeled as specified [in] **at** N.J.A.C. 7:27-[23.5(b)7]**23.5(b)8** and that is formulated to have the following characteristics:

1. (No change.)

2. When tested in accordance with [ASTM Designation D 1640-95 (1999), including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)6, it sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

3. Has a dried film gloss of 70 or above on a 60 degree meter, in accordance with [ASTM Designation D 523-89(1999), including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)3.

"Quick-dry primer, sealer, and undercoater" means **for products manufactured before (one year after the effective date of this rulemaking)**, a primer, sealer, or undercoater that is dry to the touch in 30 minutes and can be re-coated in two hours when tested in accordance with [ASTM Designation D 1640-95 (1999), including any subsequent revisions, which is incorporated by reference] **the method prescribed** at N.J.A.C. 7:27-23.4(e)6.

"Reactive penetrating carbonate stone sealer" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or pigmented coating that is labeled and formulated for application to above-grade carbonate stone structures to provide protection from water and waterborne contaminants, including, but not limited to, alkalis, acid, and salts. Reactive penetrating carbonate stone sealers must penetrate into carbonate stone substrates and chemically react to form covalent bonds with naturally

occurring minerals in the substrate. Reactive penetrating carbonate stone sealers line the pores of carbonate stone substrates with a hydrophobic coating, but do not form a surface film. Reactive penetrating carbonate stone sealers shall meet all of the following criteria:

1. **The reactive penetrating carbonate stone sealer must improve water repellency at least 80 percent after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens, in accordance with one or more of the following standards prescribed at N.J.A.C. 7:27-23.4(e)17;**
2. **The reactive penetrating carbonate stone sealer must not reduce the water vapor transmission rate by more than 10 percent after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens, in accordance the method prescribed at N.J.A.C. 7:27-23.4(e)18; and**
3. **Reactive penetrating carbonate stone sealers shall be labeled as such, in accordance with the labeling requirements at N.J.A.C. 7:27-23.5(b)11.**

"Reactive penetrating sealer" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or pigmented coating that is labeled and formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants, including, but not limited to, alkalis, acids, and salts. Reactive penetrating sealers must penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate. Reactive penetrating sealers line the pores of concrete and masonry substrates with a hydrophobic coating, but do not form a surface film. Reactive penetrating sealers shall meet all the following criteria:

1. **The reactive penetrating sealer must improve water repellency at least 80 percent after application on a concrete or masonry substrate. This performance shall be verified on standardized test specimens, in accordance with one or more of the following standards prescribed at N.J.A.C. 7:27-23.4(e)17;**
2. **The reactive penetrating sealer must not reduce the water vapor transmission rate by more than two percent after application on a concrete or masonry substrate. This performance shall be verified on standardized test specimens, in accordance the method prescribed at N.J.A.C. 7:27-23.4(e)18;**
3. **Products labeled and formulated for vehicular traffic surface chloride screening applications shall meet the performance criteria specified in the publication listed at N.J.A.C. 7:27-23.4(e)19; and**
4. **Reactive penetrating sealers shall be labeled in accordance with the labeling requirements at N.J.A.C. 7:27-23.5(b)10.**

[“Recommended” means, for coatings manufactured before January 1, 2005, recommended by the manufacturer either on the container label, in literature describing the product or on the manufacturer’s website, and for coatings manufactured on or after January 1, 2005, recommended by the manufacturer on the coating container’s label only.]

“Recycled coating” means an architectural coating formulated such that [not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.] **it contains a minimum of 50 percent by volume post-consumer coating, with a maximum of 50 percent by volume secondary industrial materials or virgin materials.**

"[Residence] **Residential**" means an area where people reside, dwell**,** or lodge, including, but not limited to, single and multiple family dwellings, condominiums, townhomes, mobile homes, apartment complexes, motels, and hotels.

…

"Roof coating" means a non-bituminous coating **labeled and** formulated [and recommended exclusively] for application to roofs for the primary purpose of preventing **water** penetration [of the substrate by water or]**,** reflecting [heat and] ultraviolet **light, or reflecting solar** radiation. [Metallic pigmented roof coatings, that meet the definition of metallic pigmented coatings, shall not be considered roof coatings, but shall be considered metallic pigmented coatings.]

"Rust preventive coating" means a coating formulated [exclusively for non-industrial use] to prevent the corrosion of metal surfaces [and labeled as specified in N.J.A.C. 7:27-23.5(b)5. The coating may be used for industrial use, if the coating complies with the industrial maintenance coating VOC limit specified at N.J.A.C. 7:27-23.3(i) Table 1.] **for one or more of the following applications:**

1. **Direct-to-metal coating; or**
2. **Coating intended for application over rusty, previously coated surfaces.**

The rust preventative category does not include the following:

1. **Coatings that are required to be applied as a topcoat over a primer; or**
2. **Coatings that are intended for use on wood or any other nonmetallic surface.**

Rust preventative coatings are for metal substrates only and shall be labeled as such, in accordance with the labeling requirements at N.J.A.C. 7:27-23.5(b)6.

"Sanding sealer" means **for products manufactured before (one year after the effective date of this rulemaking),** a clear or semi-transparent wood coating **labeled and** formulated [and recommended] for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer, shall not be considered a sanding sealer, but shall be considered a lacquer.

...

"Sealer" means**:**

1. **For products manufactured before (one year after the effective date of this rulemaking)**, a coating **labeled and** formulated [and recommended] for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.
2. **For products manufactured on or after (one year after the effective date of this rulemaking), the sealer coating category shall be defined at primer, sealer, and undercoater.**

["Secondary coating (rework)" means a finished coating or a fragment of a finished coating from a manufacturing process that cannot be sold for the intended purpose and would otherwise be disposed of as a manufacturing waste.]

"Secondary industrial materials" means products or by-products of the paint manufacturing process that are of known composition and have economic value but can no longer be used for their intended use.

"Semitransparent coating" means a coating that contains binders and colored pigments and is formulated to change that color of the surface, but not conceal the grain pattern or texture.

"Shellac" means a clear or **opaque** pigmented coating formulated solely with the resinous secretions of the lac beetle (laccifier lacca), [thinned with alcohol,] and [dried] **formulated to dry** by evaporation without a chemical reaction.

…

["Sign paint or graphic arts coating" means a coating formulated and recommended for hand-application by artists, using brush or roller techniques, to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.]

"Specialty primer, sealer**,** and undercoater" means**:**

1. **For products manufactured before (one year after the effective date of this rulemaking),** a coating that is formulated for application to a substrate to seal fire, smoke**,** or water damage; to condition excessively chalky surfaces; or to block stains, and is labeled as specified [in] **at** N.J.A.C. 7:27-[23.5(b)6]**23.5(b)7**. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined [by ASTM Designation D 4214-98, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(d)7] **pursuant to the method prescribed at N.J.A.C. 7:27-23.4(e)7**.
2. **For products manufactured on or after (one year after the effective date of this rulemaking), a coating that is formulated for application to a substrate to block**

water-soluble stains resulting from: fire damage, smoke damage, or water damage. Specialty primers, sealers, and undercoaters shall be labeled in accordance with N.J.A.C. 7:27-23.5(b)7.

"Stain" means a [clear,] semi-transparent[,] or opaque coating formulated to change the color of a surface, but not conceal the grain pattern or texture.

"Stone consolidant" means for products manufactured on or after (one year after the effective date of this rulemaking), a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. Stone consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material. Stone consolidants shall be specified and used in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)20. Stone consolidants are for professional use only and shall be labeled as such, in accordance with the labeling requirements at N.J.A.C. 7:27-23.5(b)12.

…

"Swimming pool coating" means a coating **labeled and** formulated [and recommended] to coat the interior of swimming pools and to resist swimming pool chemicals. **For products manufactured on or after (one year after the effective date of this rulemaking), swimming pool coatings include coatings used for swimming pool repair and maintenance.**

"Swimming pool repair and maintenance coating" means **for products manufactured before (one year after the effective date of this rulemaking)**, a rubber-based coating **labeled and** formulated [and recommended] to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

"Temperature-indicator safety coating" means **for products manufactured before (one year after the effective date of this rulemaking)**, a coating **labeled and** formulated [and recommended] as a color-changing indicator coating for the purpose of monitoring the temperature and safety of a substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Centigrade (400 degrees Fahrenheit).

"Thermoplastic rubber coating and mastic" means a coating or mastic **labeled and** formulated [and recommended] for application to roofing or other structural surfaces, and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments, and modifying resins.

"Tile-like glaze coating" means**, for products manufactured before (one year after the effective date of this rulemaking),** a coating that is formulated to provide a tough, extra durable coating system, applied as a continuous (seamless) high-build film, and that cures to a hard glaze finish.

…

"Traffic marking coating" means a coating **labeled and** formulated [and recommended] for marking and striping streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, sidewalks, airport runways**,** and parking lots.

"Tub and tile refinish coating" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or opaque coating that is labeled

and formulated exclusively for refinishing the surface of a bathtub, shower, sink, or countertop. Tub and tile refinish coatings shall meet all of the following criteria:

1. The coating must have a scratch hardness of 3H or harder and a gouge hardness of 4H or harder. This shall be determined on bonderite 1,000, in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)12;

2. The coating must have a weight loss of 20 milligrams or less after 1,000 cycles. This shall be determined with CD-17 wheels on bonderite 1,000, in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)13;

3. The coating must withstand 1,000 hours or more of exposure with few or no #8 blisters. This shall be determined on unscribed bonderite, in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)14; and

4. The coating must have an adhesion rating of 4B or better after 24 hours of recovery. This shall be determined on inscribed bonderite, in accordance with the method prescribed at N.J.A.C. 7:27-23.4(e)14.

"Undercoater" means**:**

1. **For products manufactured before (one year after the effective date of this rulemaking),** a coating **labeled and** formulated [and recommended] to provide a smooth surface for subsequent coatings.
2. **For products manufactured on or after (one year after the effective date of this rulemaking) the undercoater category shall be defined at primer, sealer, undercoater.**

"Varnish" means **for products manufactured before (one year after the effective date of this rulemaking)**, a clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry, by chemical reaction, on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

"Veneer" means thin sheets of wood peeled or slices from logs for use in the manufacture of wood products such as a plywood, laminated veneer lumbered, or other products.

"Virgin material" means a material that contains no post-consumer coatings or secondary industrial material.

"Volatile organic compound" or "VOC" means a volatile organic compound as that term is defined by the EPA at 40 CFR 51.100(s), [as supplemented or amended,] which is incorporated **herein** by reference [herein]**, as amended and supplemented**.

"VOC actual" means the weight of VOC per volume of coating calculated according to the procedures specified at N.J.A.C. 7:27-23.4.

"VOC content" means the weight of VOC per volume of coating, calculated according to the procedures specified [in] **at** N.J.A.C. 7:27-23.4[.] **and as follows:**

1. VOC content is VOC regulatory, for all coatings except those in the low solids category;

2. For coatings in the low solids category, the VOC content is VOC actual;

3. If the coating is a multi-component product, the VOC content is VOC regulatory as mixed or catalyzed;

4. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content shall include the VOCs emitted during curing; and

5. VOC content shall include the maximum amount of thinning solvent recommended by the manufacturer.

"VOC regulatory" means the weight of VOC per volume of coating, less the volume of water and exempt compounds calculated according to the procedures specified at N.J.A.C. 7:27-23.4.

"Waterproof mastic coating" means **for products manufactured before January 1, 2005,** a weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities that is applied in thicknesses of at least 15 mils.

"Waterproofing concrete/masonry sealer" means **for products manufactured before (one year after the effective date of this rulemaking)**, a clear or pigmented film-forming coating that is **labeled and** formulated [and recommended] for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, and staining.

"Waterproofing membrane" means for products manufactured on or after (one year after the effective date of this rulemaking), a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane that prevents any penetration of liquid water into the substrate. Waterproofing membranes are intended for the following waterproofing applications: below-grade surfaces, between concrete slabs, inside tunnels, inside concrete planters, and under-flooring materials. The waterproofing membrane category does not include topcoats

that are included in the concrete/masonry sealer category (for example, parking deck topcoats, pedestrian deck topcoats, etc.).

Waterproofing membranes shall meet the following criteria:

1. **The coating must be applied in a single coat of at least 25 mils (at least 0.025 inch) dry film thickness; and**
2. **The coating must meet or exceed the requirements prescribed by the standard at N.J.A.C. 7:27-23.4(e)15.**

"Waterproofing sealer" means f**or products manufactured before (one year after the effective date of this rulemaking)**, a coating **labeled and** formulated [and recommended] for application to a porous substrate for the primary purpose of preventing the penetration of water.

"Wood coating" means for products manufactured on or after (one year after the effective date of this rulemaking), coatings labeled and formulated for application to wood substrates only. The wood coating category includes the following clear and semitransparent coatings: lacquers; varnishes; sanding sealers; penetrating oils; clear stains; wood conditioners as undercoats; and wood sealers used as topcoats. The wood coatings category also includes the following opaque wood coatings; opaque lacquers; opaque sanding sealings; and opaque lacquer undercoaters. The woods coatings category does not include the following: clear sealers that are labeled and formulated for use on concrete/masonry surface; or coatings intended for substrates other than wood. Wood coatings shall be labeled "For wood substrates only," in accordance with N.J.A.C. 7:27-23.5(b)3.

"Wood preservative [coating]" means a coating **labeled and** formulated [and recommended] to protect exposed wood from decay or insect attack, that is registered [under] **pursuant to** the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

"Wood substrate" means a substrate made of wood, particleboard, plywood, medium density fiberboard, rattan, wicker, bamboo, or composite products with exposed wood grain. Wood products do not include items comprised of simulated wood.

"Zinc-rich primer" means, for products manufactured on or after (one year after the effective date of this rulemaking), a coating that meets all of the following specifications:

1. **The coating contains at least 65 percent metallic zinc powder or zinc dust by weight of total solids;**
2. **The coating is formulated for application to metal substrates to provide a firm bond between that substrates and subsequent applications of coatings; and**
3. **The coating is intended for professional use only and labeled as such, in accordance with the labeling requirements at N.J.A.C. 7:27-23.5(b)14.**

7:27-23.3 Standards

(a) Except as provided [in] **at** N.J.A.C. 7:27-23.1(b) through (e)**,** [and (h)] **(i), and (k)** below, no person shall manufacture, blend, repackage, supply**,** or distribute for sale within the State of New Jersey; sell or offer for sale within the State of New Jersey; or apply for compensation within the State of New Jersey, any architectural coating manufactured **on or** after the operative

date [in (i)] **at (j)** Table 1 below, and containing a VOC content in excess of the corresponding limit specified [in (i)] **at (j)** Table 1 below. **Limits are expressed as VOC content, thinned to the manufacturer's maximum thinning recommendation, excluding any colorant added to tint bases.**

(b) [If] **For products manufactured before (one year after the effective date of this rulemaking), if** anywhere on the container of an architectural coating, or on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed [in (i)] **at (j)** Table 1 below, then the most restrictive applicable VOC content limit shall apply. This provision does not apply to the following coating categories:

1. – 20. (No change.)

21. Wood preservative [coating].

(c) For products manufactured on or after (one year after the effective date of this rulemaking), if a coating is recommended for use in more than one of the specialty coating categories listed at (j) Table 1 below, the most restrictive (or lowest) VOC content limit shall apply. This requirement applies to: usage recommendations that appear anywhere on the coating container, anywhere on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf. This provision does not apply to the following coating categories:

1. **Aluminum roof coating;**
2. **Bituminous roof primer;**

3. Calcimine recoater;

4. Concrete surface retarder;

5. Conjugated oil varnish;

6. Conversion varnish;

7. High temperature coating;

8. Impacted immersion coating;

9. Industrial maintenance coating;

10. Low solids coating;

11. Metallic pigmented coating;

12. Nuclear coating;

13. Pretreatment wash primer;

14. Reactive penetrating carbonate stone sealer;

15. Shellac;

16. Specialty primer, sealer, and undercoater;

17. Thermoplastic rubber coating and mastic;

18. Wood coating;

19. Wood preservatives; and

20. Zinc-rich primers.

[(c)] **(d)** With the exception of any coating that does not display on its label the date of manufacture or date code as required [by] **at** N.J.A.C. 7:27-23.5(a), any coating manufactured prior to the operative date of the VOC limit specified for that coating [in (i)] **at (j)** Table 1

below, that complied with the [VOC content limits] **standards** in effect at the time of its manufacture, may be:

1. Sold, supplied, or offered for sale before**, on,** or after that specified operative date; or
2. Applied at any time before**, on,** or after that specified operative date.

[(d)] **(e)** All containers used in the direct application of an architectural coating by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These containers shall include, but are not limited to, drums, buckets, cans, pails**,** or trays. Containers of VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

[(e)] **(f)** No person, who applies an architectural coating for compensation, shall apply an architectural coating that has been thinned to the extent that it exceeds the applicable VOC limit specified [in (i)] **at (j)** Table 1 below.

[(f)] **(g)** No person, who applies an architectural coating for compensation, shall apply **for industrial use** a rust preventive coating [for industrial use] **manufactured before (one year after the effective date of this rulemaking)**, unless such rust preventive coating complies with the industrial maintenance coating VOC limit specified [in (i)] **at (j)** Table 1 below[, regardless of the date of manufacture].

[(g)] **(h)** For any coating that [cannot be classified under any of] **does not meet any of the definitions for** the specialty coating categories listed [in (i)] **at (j)** Table 1 below, the VOC content limit shall be determined by classifying the coating as a flat coating [or a], non-flat**, or non-flat high gloss** coating, based on its gloss, as defined [in] **at** N.J.A.C. 7:27-23.2. The corresponding VOC content limit shall then apply.

[(h)] **(i)** [Notwithstanding] **For products manufactured before (one year after effective date of this rulemaking), notwithstanding** the provisions [of] **at** (a) above, a person may add up to 10 percent by volume of VOC to a lacquer and then apply that lacquer, to avoid blushing of the finish, provided that:

1. – 4. (No change.)

[(i)] **(j)** Table 1 [contains] **sets forth** the VOC content limits for architectural coatings:

TABLE 1

VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Coating Category	VOC Content [1]			
	State Limit Operative Date 2/28/90-12/31/04 [2]		State Limit Operative Date 1/1/05	**State Limit Operative Date (one year after effective date of this rulemaking)**
	Pounds VOC per gallon [3]	Grams VOC per liter	Grams VOC per liter	**Grams VOC per liter**
Aluminum roof coating				**450**
Antenna coating			530	**NA**

[Anti-fouling] **Antifouling** coating			400	**NA**
Basement specialty coating				**400**
Bituminous pavement sealer	0.8	100	100	**NA**
Bituminous roof coating			300	**270**
...				
Concrete/masonry sealer				**100**
...				
Conjugated oil varnish				**450**
...				
Driveway sealer				**50**
Dry fog coating	3.3	400	400	**150**
...				
Fire-retardant coating				
[clear] **Clear**			650	**NA**
[opaque] **Opaque**	4.2	500	350	**NA**
[all] **All** others	7.1	850	NA[1]	
Flat coating	2.1	250	100	**50**
Floor coating			250	**100**
Flow coating			420	**NA**
...				
Graphic arts coating (sign paint) [4]	**3.8**	**450**	**500**	

...				
Industrial maintenance coating	3.8	450	340	**250**
Lacquer, clear brushing [5]	5.7	680	680	**NA**
Lacquer (including lacquer sanding sealer) [5]			550	**NA**
...				
Mastic texture coating	1.7	200	300	**100**
...				
Nonflat coating[:]	3.2	380	150	**100**
Nonflat high gloss coating			250	**150**
...				
Primer, Sealer, and Undercoater	2.9	350	200	**100**
Quick-dry enamel			250	**NA**
Quick-dry Primer, Sealer, Undercoater	4.2	500	200	**NA**
Reactive penetrating sealer				**350**
Reactive penetrating carbonate stone sealer				**500**
...				
Rust preventative coating			400	**250**

Sanding sealer (other than lacquer sanding sealer)[5]			350	**NA**
Shellac				
[clear] **Clear**	6.1	730	730	
[opaque] **Opaque**	4.6	550	550	
[Sign paint (Graphic arts coating)	3.8	450	500]	
Specialty primer, sealer, and undercoater			350	**100**
Stain			250	
Semitransparent	4.6	550	NA[2]	
Opaque	2.9	350	NA[2]	
Stone consolidant				**450**
...				
Swimming pool repair and maintenance coating			340	**NA**
Temperature-indicator safety coating			550	**NA**
...				
Tile-like glaze coating	4.6	550	550	**NA**
Traffic marking coating	2.1	250	150	**100**
Tub and tile refinish coating				**420**

Varnish [5]	3.8	450	350	**NA**
Waterproofing membrane				**250**
Waterproofing sealer	5.0	600	250	**NA**
Waterproofing concrete/masonry sealer			400	**NA**
Waterproof mastic coating	2.5	300	NA[3]	
Wood coating[5]				**275**
Wood preservative [coating]	4.6	550	350	
Zinc-rich primer				**340**
All other architectural coatings	2.1	250	NA[4]	
Notes:				
1. Limits are expressed [in grams of VOC per liter or pounds of VOC per gallon of coating thinned to the manufacturer's maximum recommendation, excluding the volume of water, exempt compounds, or colorant added to tint bases. "Manufacturers maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.] **as VOC content. See N.J.A.C. 7:27-23.2 for the definition of VOC content and N.J.A.C. 7:27-23.4 for the compliance requirements.**				
2.-3. (No change.)				

[NA1. The fire retardant "all others" category shall be "not applicable" and is being replaced with the "clear" category.	
NA2. The "semi-transparent" and "opaque" stain categories shall be "not applicable" and are being replaced with one category "Stains."	
NA3. The "Waterproof mastic coating" category shall be "not applicable" and is being replaced with the "Mastic texture coating" category.	
NA4. The "All other architectural coating" category shall be "not applicable" and is being replaced with N.J.A.C. 7:27- 23.3(g).]	
4. Formerly "sign paint (graphic arts coating)."	
5. For products manufactured on and after (one year after the effective date of this rulemaking), a coating that falls within this category shall be subject to the VOC limit of the wood coatings category.	
6. "NA" means not applicable. For products manufactured on or after the applicable State limit operative date, the coating category is discontinued. The VOC limit for a coating manufactured on or after the applicable operative date shall be determined based on the definitions which are applicable on or after the operative date and any other relevant provision in this subchapter.	

[(j)] **(k)** The provisions [of] **at** (a) above shall not apply to an architectural coating if the coating and/or manufacturer has been granted a limited timeframe variance or exemption by another state or one of the California air quality management districts that has promulgated a rule substantially equivalent to, and that has product categories and VOC content limits identical to, N.J.A.C. 7:27-23. The variance or exemption shall be used in New Jersey to comply with this subchapter only if:

1. (No change.)

2. The product for which the variance or exemption is being used to comply with this subchapter meets the following:

i. The product belongs to a category that is subject to a VOC content limit set in Table 1 [in (i)] **at (j)** above; and

ii. The VOC content limit promulgated for this product by the agency that issued the variance or exemption, is equal to the most stringent applicable VOC content limit in Table 1 [in (i)] **at (j)** above;

3. Prior to relying on a variance or exemption for compliance with this subchapter, the manufacturer submits to the Department, at the address [in (k)] **at (l)** below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this subchapter [under] **pursuant to** a variance or exemption rather than meet the applicable VOC content standards in Table 1 [in (i)] **at (j)** above;

ii. The brand name of the product, and the specific category in Table 1 [in (i)] **at (j)** above to which the product belongs;

iii. - v. (No change).

4. The manufacturer includes in its electronic registration, submitted pursuant to N.J.A.C. 7:27-[24.6(c)]**23.6(c)**, an indication that, for the specified product, it is complying with this subchapter [under] **pursuant to** a variance or exemption.

[(k)] **(l)** Information required to be submitted to the Department pursuant to [(j)3] **(k)3** above shall be submitted **electronically to consumer-products@dep.nj.gov if there is no claim of confidentiality. Information required to be submitted, which is subject to a claim of confidentiality, shall be submitted in hardcopy format** to the following address:

New Jersey Department of Environmental Protection

Division of Air Quality and Radiation Protection

Bureau of [Air Quality] **Evaluation and** Planning

Attn: Architectural Coating Variance

401 East State Street

PO Box 420

Mail Code [401-07H] **401-02**

[PO Box 420]

Trenton, New Jersey 08625-0420

7:27-23.4 Compliance provisions and test methods

(a) For the purpose of determining compliance with the VOC content limits contained [in] **at** N.J.A.C. 7:27-[23.3(i)]**23.3(j)** Table 1, the VOC content of a coating shall be determined by using the following procedures[.]**:** [The VOC content of a tint base shall be determined prior to

the addition of any colorant which is added after packaging in sale units by a person other than the manufacturer.

1. For all coatings, with the exception of low solids coatings, the VOC content in grams of VOC per liter of coating, thinned to the manufacturer's maximum recommendation, excluding the volume of water and exempt compounds, shall be determined as follows:

VOC Content = (Ws-Ww-Wec)/(Vm-Vw-Vec)

Where:

VOC content	= grams of VOC per liter of coating
Ws	= weight of volatiles, in grams
Ww	= weight of water, in grams
Wec	= weight of exempt compounds, in grams
Vm	= volume of coating, in liters
Vw	= volume of water, in liters
Vec	= volume of exempt compounds, in liters]

2. For low solids (LS) coatings, the VOC content in units of grams of VOC per liter of coating, thinned to the manufacturer's maximum recommendation, including the volume of water and exempt compounds, shall be determined as follows:

VOC Content (LS) = (Ws-Ww-Wec)/Vm

Where:

VOC Content (LS)	= grams of VOC per liter of low solids coating
Ws	= weight of volatile, in grams
Ww	= weight of water, in grams
Wec	= weight of exempt compounds, in grams
Vm	= volume of coating, in liters]

1. The VOC content of a tint base shall be determined prior to the addition of any colorant which is added after packaging in sale units by a person other than the manufacturer;

2. If the manufacturer does not recommend thinning, the VOC content shall be calculated for the product as supplied. If the manufacturer recommends thinning, the VOC content shall be calculated, including the maximum amount of thinning solvent recommended by the manufacturer;

3. If the coating is a multi-component product, the VOC content is VOC regulatory, as mixed or catalyzed, and the container shall display the VOC content as mixed or catalyzed;

4. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content shall include the VOCs emitted during curing;

5. VOC content is VOC regulatory for all coatings except those in the low solids category. VOC regulatory means the weight of VOC per volume of coating, less the volume of water and exempt compounds and is calculated with the following equation:

$$\text{VOC regulatory} = \frac{Ws - Ww - Wec}{Vm - Vw - Vec}$$

Where:

VOC regulatory = grams of VOC per liter of coating, less water and exempt compounds (also known as "coating VOC")

Ws = weight of volatiles, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

Vw = volume of water, in liters

Vec = volume of exempt compounds, in liters;

6. For coatings in the low solids category, the VOC content is VOC actual; and

7. VOC actual means the weight of VOC per volume of coating as is calculated with the following equation:

$$\text{VOC actual} = \frac{Ws - Ww - Wec}{Vm}$$

Where:

VOC actual= grams of VOC per liter of coating (also known as "Material VOC")

Ws	**=**	**weight of volatiles, in grams**
Ww	**=**	**weight of water, in grams**
Wec	**=**	**weight of exempt compounds, in grams**
Vm	**=**	**volume of coating, in liters.**

(b) Except as provided at (c) and (d) below, the test methods at (b)1 through 5 below and the information specified at (b)6 below, shall, as applicable, be used to determine the physical properties of a coating in order to perform the **applicable** calculations [in (a) above] **for VOC content**. **Unless specifically stated otherwise, when a code, regulation, report, or test method that originated outside of the Department, is referenced in this subsection, that code, regulation, or test method is incorporated by reference, as supplemented or amended, and includes all referenced appendices, attachments, diagrams, tables, forms, figures, publications, and cross-references. Moreover, any changes including, without limitation, repeals or stays that affect the meaning or operational status, brought about by either judicial or administrative action and adopted or otherwise noticed by the authority are incorporated by reference.**

1. The VOC content shall be determined using either:

i. The EPA Method 24, as set forth [in] **at** Appendix A of 40 Code of Federal Regulations (CFR) Part 60, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings[,]"

[including any subsequent revisions thereto, which are incorporated herein by reference]; or

ii. The SCAQMD Method 304-91 (Revised [February] 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples[,]" [including any subsequent revisions thereto, which are incorporated herein by reference]; **and**

2. The exempt compounds content shall be determined**, as applicable,** using **either:**

i. ASTM D3960-05(2018) "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings";

ii. SCAQMD Method 303-91 [(Revised August 1996) "Determination of Exempt Compounds," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples[,]" [including any subsequent revisions thereto, which are incorporated herein by reference. (see N.J.A.C. 7:27-23.2, the definition for volatile organic compound for a list of the exempt (excluded) compounds to be used in the test method)] **approved June 1991, revised 1996;**

iii. BAAQMD Method 43 "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996 (revised 2012); or

iv. BAAQMD Method 41 "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, (Revised 2012), as applicable;

3. The exempt compound content of compounds that are cyclic, branched, or linear completely methylated siloxanes shall be [determined using BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996, including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition for volatile organic compound for a list of the exempt (excluded) compounds to be used in the test method)] **analyzed as exempt compounds for compliance with this section by the methods referenced at (b)2i or 2iii above**;

4. The exempt compound content of parachlorobenzotrifluoride shall be [determined using BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, including any subsequent revisions thereto, which are incorporated herein by reference. (see N.J.A.C. 7:27-23.2, the definition for volatile organic compound for a list of the exempt compounds to be used in the test method)] **analyzed as an exempt compound for compliance with N.J.A.C. 7:27-23.4 by methods referenced at (b)2i or iv above**;

5.-6. (No change.)

(c) – (d) (No change.)

(e) The following test methods shall be used to test a coating, subject to the provisions of this subchapter[, to determine its applicable coating category pursuant to the definitions in N.J.A.C. 7:27-23.2:]**. Unless specifically stated otherwise, when a provision of a code, regulation,**

report, or test method that originated outside of the Department, is referenced in this subsection, the code, regulation, or test method is incorporated by reference, as supplemented or amended, and includes all appendices, attachments, diagrams, tables, forms, figures, publications, and cross-references. Moreover, any changes including, without limitation, repeals or stays that affect the meaning or operational status, brought about by either judicial or administrative action and adopted or otherwise noticed by the authority are incorporated by reference.

1. The flame spread index of a fire-retardant coating shall be determined using the ASTM [Designation] E [84-01] **84-23** "Standard Test Method for Surface Burning Characteristics of Building Materials[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of fire-retardant coating);

2. The fire-resistance rating of a fire-resistive coating shall be determined by ASTM [designation] E [119-00a] **119-22** "Standard Test Methods for Fire Tests of Building **and** Construction **and** Materials[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of fire-resistive coating);

3. The gloss of a coating shall be determined using ASTM [Designation] D [523-89 (1999)] **523-14(2018)**, "Standard Test Method for Specular Gloss[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of flat coating, non-flat coating, non-flat-high-gloss coating, and quick dry enamel);

4. The metallic content of a coating shall be determined using SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of metallic pigmented coating);

5. The acid content of a coating shall be determined using ASTM [Designation] D [1613-02] **1613-17**, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of pre-treatment wash primer);

6. The set-to-touch, dry-hard, dry-to-touch**,** and dry-to-recoat times of a coating shall be determined using ASTM [Designation] D [1640-95 (1999)] **1640/1640M-14(2022)**, "Standard **Test** Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature[,]" [including any subsequent revisions thereto, which are incorporated herein by reference]. The tack free time of a quick-dry enamel coating shall be determined using the Mechanical Test Method of ASTM [Designation] D [1640-95 (1999)] **1640/1640M-14(2022)** (see N.J.A.C. 7:27-23.2, the definition of quick dry enamel and quick-dry primer, sealer, and undercoater);

7. The chalkiness of a surface shall be determined using ASTM [Designation] D [4214-98] **4214-07(2015)**, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films[,]" [including any subsequent revisions thereto, which are

incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of specialty primer, sealer, and undercoater);

8. The resistance to long-term cumulative radiation exposure of a coating shall be determined using ASTM Designation [D-4082-02] **D 4082-10(2023)**, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of nuclear coating); [and]

9. The resistance to various chemicals to which the coatings are likely to be exposed in nuclear power plants shall be determined using ASTM [Method] D [3912 95 (2001)] **3912-10(2023)**, "Standard Test Method for Chemical Resistance of Coatings [Used] **and Linings for Use** in [Light-Water] Nuclear Power Plants[,]" [including any subsequent revisions thereto, which are incorporated herein by reference] (see N.J.A.C. 7:27-23.2, the definition of nuclear coating)[.]**;**

10. The hydrostatic pressure for basement specialty coatings shall be determined using ASTM D7088-17, "Standard Practice for Resistance to Hydrostatic Pressure for Coatings Used in Below Grade Applications Applied to Masonry" (see N.J.A.C. 7:27-23.2, the definition of basement specialty coating);

11. The tub and tile refinish coating adhesion shall be determined using ASTM D4585/D4585M-18, "Standard Practice for Testing Water Resistance of Coating Using Controlled Condensation" and ASTM D3359-23, "Standard Test Methods for Rating Adhesion by Tape Test" (see N.J.A.C. 7:27-23.2, the definition of tub and tile refinish coating);

12. Tub and tile refinish hardness shall be determined using ASTM D3363-22, "Standard Test Method for Film Hardness by Pencil Test" (see N.J.A.C. 7:27-23.2, the definition of tub and tile refinish coating);

13. The tub and tile refinish coating abrasion resistance shall be determined using ASTM D4060-19, "Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser" (see N.J.A.C. 7:27-23.2, the definition of tub and tile refinish coating);

14. The tub and tile refinish coating water resistance shall be determined using ASTM D4585/D4585M-18, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D714-02(2017), "Standard Test Method for Evaluating Degree of Blistering of Paints" (see N.J.A.C. 7:27-23.2, the definition of tub and tile refinish coating);

15. The waterproofing membrane shall be determined using ASTM C836/C836M-18(2022), "Standard Specification for High Solids Content, Cold Liquid-Applied Elastomeric Waterproofing Membrane for Use with Separate Wearing Course" (see N.J.A.C. 7:27-23.2, the definition of waterproofing membrane);

16. The mold and mildew growth for basement specialty coatings shall be determined by using ASTM D3273-21, "Standard Test Method for Resistance to Growth of Mold on the Surface of Interior Coatings in an Environmental Chamber" and ASTM D3274-09(2021), "Standard Testing Method for Evaluating Degree of Surface Disfiguration of Paint Films by Fungal or Algal Growth, or Soil and Dirt

Accumulation" (see N.J.A.C. 7:27-23.2, the definition of basement specialty coating);

17. The reactive penetrating sealer and reactive penetrating carbonate stone sealer water repellency shall be determined using ASTM C67/C67-21, "Standard Test Methods for Sampling and Testing Brick and Structural Clay Tile," ASTM C97/C967M-18, "Standard Test Methods for Absorption and Bulk Specific Gravity of Dimension Stone," or ASTM C140/C140M-22C, "Standard Test Methods for Sampling and Testing Concrete Masonry Units and Related Units" (see N.J.A.C. 7:27-23.2, the definition of reactive penetrating sealer and reactive penetrating carbonate stone sealer);

18. The reactive penetrating sealer and reactive penetrating carbonate stone sealer water vapor transmission shall be determined using ASTM E96/E96M-22ae1, "Standard Test Methods for Gravimetric Determination of Water Vapor Transmission Rate of Materials" (see N.J.A.C. 7:27-23.2, the definition of reactive penetrating sealer and reactive penetrating carbonate stone sealer);

19. The reactive penetrating sealer - chloride screening applications shall be determined using the National Cooperative Highway Research Report 244 (1981), "Concrete Sealers for the Protection of Bridge Structures" (see N.J.A.C. 7:27-23.2, the definition of reactive penetrating sealer and reactive penetrating carbonate stone sealer); and

20. The stone consolidants shall be determined using ASTM E2167-01(2008), "Standard Guide for Selection and Use of Stone Consolidants" (see N.J.A.C. 7:27-23.2, the definition for stone consolidants).

(f) - (g) (No change.)

(h) Test methods **referenced within this subchapter** can be obtained as follows:

1. ASTM test methods can be purchased from **the following website:** [American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555 or can be purchased from the ASTM website at http://www.ASTM.org] **https://www.astm.org/**;

2. SCAQMD test methods **are available at the following website:** [can be purchased from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934, telephone (909) 396-2162] **http://www.aqmd.gov/home/research/methods-procedures**;

3. BAAQMD test methods **are available at the following website:** [described can be purchased from the Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109, telephone (415) 749-4900] **https://www.baaqmd.gov/publications/manual-of-procedures**; and

4. EPA Test Method 24, which is located [in] **at** 40 CFR, Chapter I, **Subchapter C,** Part 60, Appendix A-7 **to Part 60**, can be downloaded from the following website: [http://www.access.gpo.gov//nara/cfr/cfrhtml_00/Title_40/40cfr60a_00.html] **https://www.epa.gov/emc/method-24-surface-coatings**.

(i) (No change.)

7:27-23.5 Labeling requirements

(a) (No change.)

(b) The manufacturer of an architectural coating subject to this subchapter shall display the following information on the coating container label or lid:

1. (No change.)

2. The [maximum or the actual] VOC content of the coating in accordance with N.J.A.C. 7:27-**23.2 and** 23.4, which includes the manufacturer's maximum recommendation for thinning, shall be provided as follows:

i. For a coating manufactured prior to January 1, 2005, the **maximum or actual** VOC content shall be displayed in grams of VOC per liter of coating or pounds of VOC per gallon of coating; [and]

ii. For a coating manufactured on or after January 1, 2005**, and before (one year after the effective date of this rulemaking)**, the **maximum or actual** VOC content shall be displayed in grams of VOC per liter of coating;

iii. For a coating manufactured on or after (one year after the effective date of this rulemaking), one of the following values shall be displayed in grams of VOC per liter of coating:

(1) Maximum VOC content as determined from all potential product formulations;

(2) VOC content as determined from actual formulation data; or

(3) VOC content as determined using the test methods at N.J.A.C. 7:27-23.4(b); and

iv. The following additional requirements:

(1) If the manufacturer does not recommend thinning, the container shall display the VOC content, as supplied;

(2) If the manufacturer recommends thinning, the container shall display the VOC content including the maximum amount of thinning solvent the manufacturer recommends;

(3) If the coating is a multi-component product, the container shall display the VOC content as mixed or catalyzed; and

(4) If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs emitted during the curing process, the VOC content shall include the VOCs emitted during curing;

3. For a faux finishing coating manufactured on or after (one year after the effective date of this rulemaking), the labels of all clear topcoat faux finishing coatings shall prominently display the statement "This product can only be sold or used as part of a faux finishing coating system.";

[3.] **4.** For an industrial maintenance coating**:**

i. Manufactured before (one year after the effective date of this rulemaking), one or more of the following statements:

Recodify existing i.-ii. as **(1)-(2)** (No change in text.)

[iii.] **(3)** "Not for residential use" or "Not intended for residential use";

and

ii. Manufactured on or after (one year after the effective date of this rulemaking), one or more of the following statements shall be prominently displayed:

(1) "For industrial use only"; and/or

(2) "For professional use only";

[4.] **5.** For clear brushing lacquers manufactured [on and after January 1, 2005] **before (one year after the effective date of this rulemaking)**, the statements "For brush application only" and "This product must not be thinned or sprayed" shall be prominently displayed;

[5.] **6.** (No change in text.)

[6.] **7.** For a specialty primer, sealer, or undercoater [manufactured on and after January 1, 2005,]**:**

i. Manufactured before (one year after the effective date of this rulemaking), one or more of the following statements shall be prominently displayed:

Recodify existing i.-v. as **(1)-(5)** (No change in text.)

ii. Manufactured on and after (one year after the effective date of this rulemaking), one or more of the following statements shall be prominently displayed:

(1) "For fire-damaged substrates";

(2) "For smoke-damaged substrates"; and/or

(3) "For water-damaged substrates."

[7.] **8.** For a quick dry enamel manufactured [on or after January 1, 2005] **before (one year after the effective date of this rulemaking)**, the following:

i. (No change.)

ii. A statement of the time it takes for the enamel to dry hard; [and]

[8.] **9.** For a non-flat high gloss coating manufactured on or after January 1, 2005, the statement "High gloss" shall be prominently displayed[.]**;**

10. For a reactive penetrating sealer manufactured on or after (one year after the effective date of this rulemaking), the statement "Reactive penetrating sealer" shall be prominently displayed;

11. For a reactive penetrating carbonate stone sealer manufactured on or after (one year after the effective date of this rulemaking), the statement "Reactive penetrating carbonate stone sealer" shall be prominently displayed;

12. For a stone consolidant manufactured on or after (one year after the effective date of this rulemaking), the statement "Stone consolidant – for professional use only" shall be prominently displayed;

13. For a wood coating manufactured on or after (one year after the effective date of this rulemaking), the statement "For wood substrates only" shall be prominently displayed; and

14. For a zinc-rich primer manufactured on or after (one year after the effective date of this rulemaking), "For professional use only" shall be prominently displayed.

[(c) For a coating manufactured on or after January 1, 2005, the manufacturer of an architectural coating, that is "formulated and recommended" for a specific use as specified in the definition of the particular architectural coating in N.J.A.C. 7:27-23.2, shall display such recommended use on the coating container's label.

(d) Prior to January 1, 2005 only, the provisions of this subchapter shall not apply to any architectural coating registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq., provided that:

1. The manufacturer has filed an application for any registration amendment necessary for compliance with this subchapter with EPA;

2. A copy of this application was submitted by the manufacturer to the Assistant Director, Enforcement Element, Division of Environmental Quality, PO Box 027, Trenton, New Jersey 08625-0027 by August 31, 1990;

3. Within 30 calendar days of receipt of notice of EPA action on an amendment request, a copy of that notice was supplied to the Assistant Director, Enforcement Element, at the address specified above; and

4. Within 180 calendar days of the receipt of an approval of any necessary change, the manufacturer began use of the complying product or label.]

7:27-23.6 Administrative and reporting requirements

(a)-(b) (No change.)

(c) A manufacturer who uses a date code on the coating container, in lieu of using the date of manufacture on the container, or a manufacturer who is complying with this subchapter with the use of a limited timeframe variance or exemption in accordance with N.J.A.C. 7:27-[23.3(j)]**23.3(k)**, shall submit a registration with the Department as follows:

1. The information shall be submitted electronically[, unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department approves a request from the manufacturer to submit the information on paper pursuant to (c)7 below;

2. The registration shall be submitted to the Department] in accordance with guidance on the Department's website at http://www.state.nj.us/dep/baqp.

[3. The registration shall be submitted in accordance with the following schedule:

i. For a coating sold in New Jersey prior to January 1, 2005, the registration shall be submitted on or after July 20, 2004 and prior to January 1, 2005; and]

[ii.] **2.** (No change in text.)

[4.] **3.** (No change in text.)

[5.] **4.** The information shall include the following:

i. – iv. (No change.)

v. If the manufacturer is, for any product, complying with the requirements of this subchapter through a variance or exemption, the following:

(1) (No change.)

(2) The category [in] **at** N.J.A.C. 7:27-[23.3(i)]**23.3(j)** Table 1 to which the product belongs; and

(3) The state or California air quality management district that approved the variance or exemption and the approval date; **and**

[6.] **5.** Notwithstanding (i) below, any information submitted as part of the registration pursuant to this subsection shall not be claimed to be confidential, including [under] **pursuant to** the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29[; and]**.**

[7. A manufacturer who claims that electronic submission of its registration will impose a hardship shall submit a request to the Department to submit its registration on paper, rather than electronically, as follows:

i. The request shall include an explanation of the hardship that electronic submission would impose on the manufacturer;

ii. The Department shall not approve a manufacturer's request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer; and

iii. The manufacturer shall submit the request to the Department at the following address:

Department of Environmental Protection

Bureau of Air Quality Planning

Attn: Architectural Coating Registration

401 East State Street

Mail Code 401-07H

PO Box 420

Trenton, New Jersey 08625-0420]

(d) Upon request, a manufacturer of an architectural coating shall submit to the Department a report concerning the coatings it sold in New Jersey which are subject to this subchapter. Such report shall be submitted within 90 days of the request. The request may include any or all of the following:

1. – 10. (No change.)

11. A list of exempt compounds used in the coating; [and]

12. The following information [(as defined in the CARB 1998 Architectural Coatings Survey Results Final Report, September 1999, or subsequent CARB surveys, which is incorporated by reference herein and which can be found by accessing the CARB website)]:

i. The actual and regulatory VOC content [(as defined in the CARB survey)] in grams per liter. If products less than or equal to one liter have a different VOC content, list them separately;

ii. (No change.)

iii. The percent by volume solids[.]**;**

13. The names and CAS registry numbers of any of the VOC constituents in the product;

14. The names and CAS registry numbers of any compounds in the product specifically exempted from the definition of VOC;

15. Whether the product is marketed as solventborne, waterborne, or 100 percent solids;

16. The density of the product in pounds per gallon;

17. A description of resin or binder in the product;

18. Whether the coating is a single-component or multi-component product;

19. The percent by weight of solids, all volatile materials, water, and any compounds in the product specifically exempted from the definition of VOC as defined at N.J.A.C. 7:27-23.2; and

20. The percent by volume of solids, water, and any compounds in the products specifically exempted from the definition of VOC.

(e) - (h) (No change.)

(i) Except as provided at [(c)6] **(c)5** above, any person who is required to submit information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.29. **Information submitted to the Department with a claim of confidentiality shall be submitted in hardcopy format to the address at N.J.A.C. 7:27-23.3(l).**

(j) Variance or exemption documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27-[23.3(j)]**23.3(k) and (l**).

CHAPTER 27A

AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR

ADJUDICATORY HEARINGS

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(l) (No change.)

(m) The violations of N.J.A.C. 7:27, whether the violation is minor or non-minor in accordance with (q) through (t) below, and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter at N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

1. – 22. (No change.)

23. The violations of N.J.A.C. 7:27-23, Architectural Coatings, and the civil administrative penalty amounts for each violation are as set forth in the following table:

…

Citation	Class	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-23.3[(d)]**(e)** Painting Practices	Applier for Compensation	NM	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-23.3[(e)]**(f)** Thinning	Applier for Compensation	NM	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-23.3[(f)]**(g)** Rust Preventative Coatings	Applier for Compensation	NM	$500	$1,000	$2,500	$7,500
...						
N.J.A.C. 7:27-23.6(c) **and (d)** Product Reporting	Manufacturer	M	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-23.6(e) [&] **and** (f) Records	Manufacturer	M	$4,000	$8,000	$20,000	$50,000
...						