

Regulatory Analysis Form	This space for use by IRRRC
(1) Agency Environmental Protection	<p>2008 JUL 18 AM 11:30</p> <p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
(2) I.D. Number (Governor's Office Use) 7-416	IRRC Number 2636
(3) Short Title Consumer Products and AIM Coatings	
(4) Pa. Code Cite 25 Pa. Code Chapter 130, Subchapters B and C	(5) Agency Contacts & Telephone Numbers Primary Contact: Michele Tate, 783-8727 Secondary contact: Kelly J. Heffner, 783-8727
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language.  <p>The final-form rulemaking will amend Chapter 130, Subchapter B (relating to consumer products) and § 130.602 (relating to definitions) of Subchapter C (relating to architectural and industrial maintenance coatings). The amendments revise the Table of Standards in Subchapter B to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and revise the VOC content limits for one category of consumer products currently regulated. The amendments to Subchapter B also include definitions for approximately 30 new terms, including terms that relate to the new regulated product categories, and revised definitions for approximately 75 existing terms to provide clarity.</p> <p>The definition of the term "VOC-volatile organic compound" is added to Subchapter B and revised in Subchapter C to duplicate the definition of this term in § 121.1 (relating to definitions). The definition of the term "VOC-volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the Department's rules to be updated automatically whenever the U.S. Environmental Protection Agency (EPA) revises its definition to exclude a negligibly reactive compound from the definition of VOC. Specifically, this amendment will allow for the use of tertiary butyl acetate as a VOC-exempt compound in architectural and industrial maintenance coatings, providing improved ozone air pollution reduction benefits to the citizens of this Commonwealth. The amendment to the definition in Subchapter C was not included in the proposed rulemaking, but is included in the final-form rulemaking in response to public comment on the proposed rulemaking.</p> <p>The final-form amendments revise the product dating requirements of Subchapter B to require only that the product date or date-code be displayed on each consumer product container or package before the consumer product is sold, supplied or offered for sale in this Commonwealth. Additionally, the amendments require that a manufacturer file an explanation of the code indicating the date of manufacture for a consumer product with the Department before the consumer product is sold, supplied or offered for sale in this Commonwealth. Prior to these revisions, the deadline for these requirements was no later than 12 months prior to the effective date of the applicable standard specified in the Table of Standards.</p>	

## Regulatory Analysis Form

(8) (continued)

The final-form rulemaking includes a requirement that applicants for variances under Subchapter B pay for notices in newspapers to advertise public hearings required for variances and alternative compliance plans.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

This final rulemaking is authorized under Section 5 of the Air Pollution Control Act (APCA) (35 P.S. § 4005), which grants the Environmental Quality Board (Board, EQB) the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in the Commonwealth. Section 4.2 of the APCA also authorizes the Board to adopt regulations more stringent than Federal requirements when the control measures are reasonably necessary to achieve and maintain the ambient air quality standards. (35 P.S. § 4004.2)

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes       No

The final rulemaking is not mandated by law, court order or regulation. While there are Federal VOC content limits found in 40 CFR Part 59, Subpart C, these amendments expand the Department's existing consumer products regulation which is based on more stringent control measures recommended by the Ozone Transport Commission in the 2001 Model Rule for Consumer Products. There are no Federal limits for the additional products that will be subject to regulation under this proposed rulemaking.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Ozone exposure is harmful to people including children and the elderly with asthma or other respiratory diseases. Ozone exposure can aggravate asthma, resulting in increased medication use and emergency room visits, especially for minorities, and it can increase susceptibility to respiratory infections. Certain areas of the Commonwealth continue to exceed the health-based 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The final-form regulation will result in additional volatile organic compound (VOC) emission reductions that are necessary to support achieving and maintaining the health-based 8-hour ozone NAAQS in this Commonwealth and downwind areas. The final-form amendments will also reduce ambient outdoor and indoor concentrations of a variety of pollutants, including HAPs. This regulation is reasonably necessary to achieve and maintain the ozone standards in this Commonwealth.

Additionally, on March 12, 2008, the EPA announced a revised 8-hour ozone standard of 0.075 parts per million (ppm), down from 0.08 ppm, which increases the need for the Commonwealth to secure emission reductions with its own rulemaking.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health and welfare are adversely affected. The EPA has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments, such as asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. Though such symptoms are often temporary, repeated exposure could result in permanent lung damage. High levels of ground-level ozone also cause damage to crops and vegetation, buildings and synthetic fibers, including nylon, and reduce visibility on roadways and in natural areas.

The adoption of this final-form regulation will provide additional VOC reductions to support the 8-hour ozone attainment demonstration for the Philadelphia Area and the attainment demonstration that must be developed expeditiously for the Pittsburgh-Beaver Valley Area. The final-form rulemaking will also provide additional reductions to support the maintenance plans for areas recently redesignated to attainment of the 8-hour ozone health-based standard.

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(12) continued

Further, on March 12, 2008, the EPA announced a revised primary and secondary 8-hour ozone standard from 0.08 ppm to 0.075 ppm. The EPA selected the new levels for the final standards after reviewing more than 1,700 peer-reviewed scientific studies about the effects of ozone on public health and welfare, and after considering advice from the agency's external scientific advisors and staff, along with extensive public comment. The EPA held five public hearings and received nearly 90,000 written comments. The EPA's projections indicate that without additional state or local controls, there will still be areas not meeting this more protective standard.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The final-form revisions will assure that the residents of this Commonwealth and the environment will continue to benefit from reduced emissions of VOCs and hazardous air pollutants (HAPs) in consumer products. Although the requirements are designed primarily to reduce ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The amendments will result in improved indoor and outdoor air quality for all citizens of this Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

This final-form rulemaking will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by harmonizing the definition of "VOC-Volatile organic compound" in Subchapter C with that in § 121.1 and Subchapter B. This revision will allow the Department's rules to be updated automatically when EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. This amendment will make the most currently VOC exempt compounds, such as tertiary butyl acetate, available as tools to reduce ozone and particulate matter formation.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The final-form amendments to Chapter 130, Subchapter B, Consumer Products, may slightly increase costs to purchasers of consumer products, but the cost increase is expected to be negligible because much of the reformulation of products has been completed as manufacturers developed products to meet these limits in other areas of the country.

The amendments to Chapter 130, Subchapter C, Architectural and Industrial Maintenance Coatings, are not expected to adversely affect purchasers or manufacturers of these products, since the use of tertiary butyl acetate as a solvent in these products will provide manufacturers with more options in creating cost-effective complying products.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

A person who manufactures, supplies, sells or offers for sale a consumer product in Pennsylvania after the applicable effective date will be required to comply with the requirements.

Manufacturers of AIM coatings subject to Chapter 130, Subchapter C will have an additional compliance option available to them for creating cost-effective complying coatings.

The number of affected manufacturers, suppliers and sellers is unknown.

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- (16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The staff of the Ozone Transport Commission (OTC) and member states formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association, the American Solvents Council and the Cosmetic, Toiletry and Fragrance Association (now the Personal Care Products Council), participated in several of the conference calls and are generally supportive of the initiative. The OTC workgroup collected and evaluated information regarding emission benefits, cost-effectiveness and implementation issues. Based on the analysis by the workgroup, the OTC Commissioners at the OTC Commissioners' meetings of June and November 2006, made recommendations to the OTC Member Jurisdictions to consider additional emission reductions from consumer products.

Further, section 7.4 of the APCA (35 P.S. § 4007.4) requires the Commonwealth, through its representatives on an interstate transport commission formed under the Clean Air Act, to provide public review of recommendations for additional control measures prior to final commission action consistent with the commission's public review requirements under section 184(c)(1) of the act. The Department held three public meetings regarding control measures under consideration for adoption by the OTC on May 22, 23 and 25, 2006. The control measures reviewed at these meetings included the OTC consumer products model rule. Notice of these meetings was published in the *Pennsylvania Bulletin* on April 29, 2006 (36 Pa.B. 2071).

The proposed revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at the March 29, 2007, meeting. The AQTAC voted unanimously to move the proposal forward to the EQB for consideration at its June 19, 2007 meeting. In addition, the proposed amendments were discussed with the Citizens Advisory Council (CAC) on April 17, 2007, and the Small Business Compliance Advisory Committee (SBCAC) on July 25, 2007.

The proposed Consumer Products rulemaking was published in the *Pennsylvania Bulletin* on September 15, 2007, with a 60 day public comment period. (37 Pa.B. 5117) Revised dates for the public comment period and public hearings were published in the *Pennsylvania Bulletin* on October 7 and October 27, 2007. (37 Pa.B. 5379 and 5799) Three public hearings were held on November 26, 2007, in Pittsburgh, Harrisburg and Norristown, PA. The public comment period closed on December 26, 2007.

Seven commentators commented on the proposed rulemaking representing five organizations, including the:

- Lyondell Chemical Company
- National Paint and Coatings Association
- Consumer Specialty Products Association
- Personal Care Products Council.
- Independent Regulatory Review Commission.

The final-form amendments were discussed with the CAC on March 18, 2008, the AQTAC on March 27, 2008, and the SBCAC on April 23, 2008. The AQTAC unanimously concurred with the Department's recommendation to move the final-form rulemaking forward to the EQB for consideration as final rulemaking at its June 17, 2008 meeting.

- (17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal accounting or consulting procedures which may be required.

It is estimated that the reduction of VOC content for the affected consumer products will cost approximately \$4000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tons per day (tpd) and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total cost to the users is estimated to be approximately \$3.1 million. This is an average of \$0.26 per resident per year. The final-form amendments include compliance and averaging options that will allow manufacturers to formulate products in the most efficient and effective manner.

Additionally, the amendments to Chapter 130, Subchapter C, allow for the use of tertiary butyl acetate, an exempt VOC compound, which will provide additional cost-effective compliance options in the reformulation of AIM coating products.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The final rulemaking is expected to impose no additional direct costs on local governments.

If a local government purchases affected consumer products, however, additional costs commensurate with those for the private sector may be experienced. The effect of the use of tertiary butyl acetate in AIM coatings on the costs of AIM coatings is expected to be minimal.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

To the extent that state government purchases consumer products, cost will be commensurate with those the private sector will experience. The effect of the use of tertiary butyl acetate in AIM coatings on the costs of AIM coatings is expected to be minimal.

Nominal costs will be experienced by the Commonwealth to assist in providing training, outreach and assistance to the regulated community. No new staff resources are anticipated to be necessary.

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FFY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>						
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Savings</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>COSTS:</b>						
Regulated Community	0.00	3.1M	3.1M	3.1M	3.1M	3.1M
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Costs</b>	0.00	3.1M	3.1M	3.1M	3.1M	3.1M
<b>REVENUE LOSSES:</b>						
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue Losses</b>	0.00	0.00	0.00	0.00	0.00	0.00

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(20a) Explain how the cost estimates listed in (20) were derived.

The cost projections are based on data developed by the California Air Resources Board (CARB) that indicate that emission reduction costs are approximately \$4000 per ton for the similar program in California. The Department anticipates similar costs in Pennsylvania. MACTEC Federal Programs, a consultant to the Ozone Transport Commission, indicated in its report, "Identification and Evaluation of Candidate Control Measures, Final Technical Support Document," that the addition of these categories to the consumer product regulation will reduce emissions of VOC by approximately 2.1 tons per day in Pennsylvania. The tons per day multiplied by 365 days per year equals approximately 767 tons per year. Assuming that there are approximately 12 million people in Pennsylvania, the average reduction per person is calculated to be 0.13 pound of VOC per person per year. The total costs are calculated by multiplying \$4000 per ton times the 767 tons per year, which equals approximately \$3.1 million per year. This cost approximates \$0.26 per resident in Pennsylvania annually.

The increased costs of the affected products will result in an increase in sales tax revenues for the Commonwealth of approximately \$187,000.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

No programs were affected by the regulation over the last three years.

Program	FY-3 (04/05)	FY-2 (05/06)	FY-1 (06/07)	Current FY (07/08)
233-20084 Clean Air Fund Mobile and Area Facilities	\$8,144,000	\$8,231,000	\$12,863,000	\$9,604,000
161-10382 Environmental Program Management	\$37,594,000	\$37,049,000	\$36,868,000	\$39,909,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Revision of the VOC content limits in the existing consumer products regulation is part of the Department's efforts to implement a series of ozone control measures recommended by the OTC. These additional VOC emission reductions to support achieving and maintaining the health-based 8-hour ozone National Ambient Air Quality Standard (NAAQS) in this Commonwealth and downwind areas, as is required by Federal law. Implementation of this ozone control measure is necessary so that the citizens of this Commonwealth continue to experience the improved ozone air pollution reduction benefits of low-VOC consumer products. The final-form amendments will also reduce ambient outdoor and indoor concentrations of a variety of pollutants, including HAPs.

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- (22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Non-regulatory options are not available as Federally enforceable measures. The final rulemaking is part of the Commonwealth's efforts to achieve additional emission reductions of ozone precursors necessary to achieve and maintain the health-based ozone NAAQS. In order for the emission reductions to be included in the State Implementation Plan (SIP), the reductions must be enforceable.

Additionally, on March 12, 2008, the EPA announced a revised 8-hour ozone standard of 0.075 parts per million (ppm), down from 0.08 ppm, which increases the need for the Commonwealth to secure emission reductions with its own rulemaking.

- (23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no other regulatory schemes available that will achieve the level of emission reductions necessary.

- (24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Yes       No

The final-form amendments expand upon the Department's existing consumer products regulation adopted by the Board at its meeting of July 16, 2002. See 32 Pa. B. 4824 (Oct. 5, 2002). While there are Federal VOC content limits codified at 40 CFR Part 59, Subpart C, for certain consumer products already regulated by Chapter 130, Subchapter B, there are no Federal limits for the additional products that will be regulated by this final-form rulemaking. The Commonwealth's regulation, with these amendments, will regulate 56 consumer product categories and approximately 110 different types of products, and require more stringent VOC content limits than the Federal rule.

The VOC emission reductions that will result from the final-form amendments will help reduce ambient levels of ozone precursors and protect public health and welfare. The final-form revisions are reasonably necessary as part of the Commonwealth's efforts to achieve and maintain the health-based 8-hour NAAQS for ozone. The adoption of this final-form regulation will provide additional VOC reductions to support the 8-hour ozone attainment demonstration for the Philadelphia Area and the attainment demonstration that must be developed for the Pittsburgh-Beaver Valley Area, which violated the standard during the 2007 ozone season; the redesignation request for the Pittsburgh-Beaver Valley Area is no longer approvable. The final-form rulemaking will also provide additional reductions to support the maintenance plans for areas in this Commonwealth that EPA recently redesignated to attainment of the 8-hour ozone health-based standard.

Additionally, on March 12, 2008, the EPA announced a revised primary and secondary 8-hour ozone standard of 0.075 ppm, down from the existing standard of 0.08 ppm which increases the need for the Commonwealth to secure emission reductions with its own rulemaking.

### Regulatory Analysis Form

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The final-form amendments are part of a regional strategy that Pennsylvania and other OTC member jurisdictions developed to achieve and maintain the health-based 8-hour ozone NAAQS. This regional strategy will enable manufacturers to produce a single product for the region rather than having to deal with a potential "patchwork" of programs.

- Connecticut adopted its rule on July 26, 2007, with an effective date of January 1, 2009.
- Maine adopted its rule on December 15, 2007, with an effective date of January 1, 2009.
- Maryland adopted its rule on June 18, 2007, with an effective date of January 1, 2009.
- Massachusetts adopted its rule on October 19, 2007, with an effective date of January 1, 2009.
- New Jersey published its proposed rulemaking on November 5, 2007, and the public comment period closed January 4, 2008. New Jersey proposed an effective date of January 1, 2009.
- Delaware intends to hold a public hearing in June, 2008, and intends to publish a final rule August 1, 2008, with an effective date of January 1, 2009.
- New Hampshire, New York, Rhode Island, Virginia and the District of Columbia have rules in development.

Pennsylvania industry will not be put at a disadvantage by the final-form amendments. Pennsylvania manufacturers will be able to continue to market existing noncomplying products outside of Pennsylvania, but will be subject to the same requirements as other manufacturers for products that are produced for the Pennsylvania market. In the short-term, manufacturers will be able to market noncomplying products manufactured prior to the applicable compliance date of January 1, 2009, under the amended "sell-through" provision for consumer products if the product displays on the product container or package the date on which the product was manufactured, or a code indicating the date.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes       No

The final-form rulemaking will amend the existing 25 Pa. Code Chapter 130, Subchapter B, Consumer Products and § 130.602 (relating to definitions) Subchapter C, Architectural and Industrial Maintenance Coatings.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Yes       No

Three public hearings were held.

Norristown, PA	November 26, 2007	1 p.m.
Harrisburg, PA	November 26, 2007	1 p.m.
Pittsburgh, PA	November 26, 2007	1 p.m.

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

X Yes       No

The final-form amendments revise the product dating requirements of Subchapter B to require only that the product date or date-code must be displayed on each consumer product container or package before the consumer product is sold, supplied or offered for sale in this Commonwealth. Additionally, the amendments require that a manufacturer must file an explanation of the code indicating the date of manufacture for a consumer product with the Department before the consumer product is sold, supplied or offered for sale in this Commonwealth. Prior to these revisions, the deadline for these requirements was no later than 12 months prior to the effective date of the applicable standard specified in the Table of Standards.

An applicant for an alternative control plan or variance will be required to publish notice of the time, place and purpose of the three public hearings for approval of the alternative control plan or variance in newspapers of general circulation not less than 30 days prior to the hearings.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Ozone exposure is harmful to people including children and the elderly with asthma or other respiratory diseases. Ozone exposure can aggravate asthma, resulting in increased medication use and emergency room visits, especially for minorities, and it can increase susceptibility to respiratory infections. The final-form regulation will result in additional VOC emission reductions to support achieving and maintaining the health-based 8-hour ozone NAAQS in this Commonwealth and downwind areas. The final-form amendments will also reduce ambient outdoor and indoor concentrations of a variety of pollutants, including HAPs.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

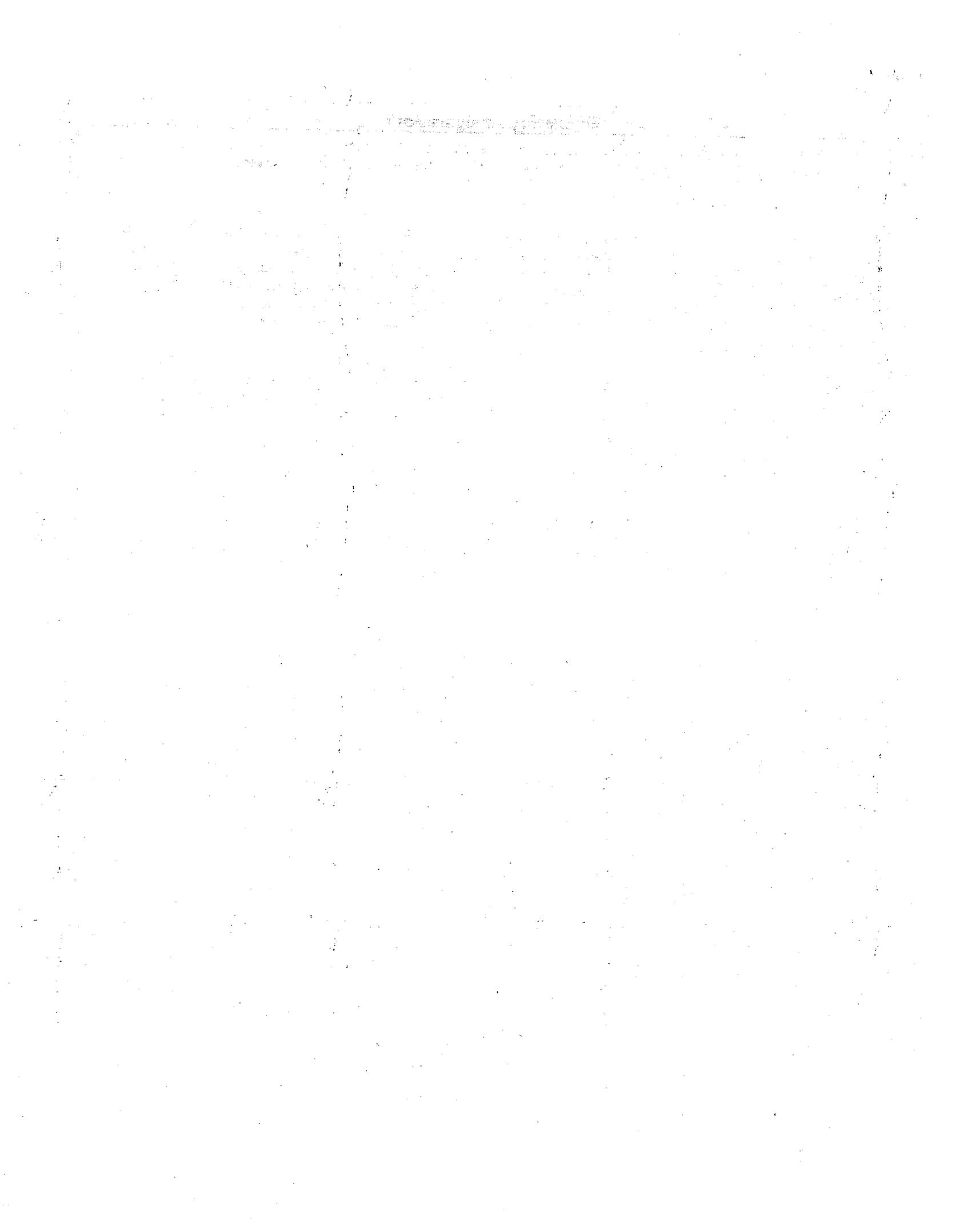
The final-form amendments will become effective on the date of publication as final rulemaking in the *Pennsylvania Bulletin*. Manufacturers must provide compliant products in this Commonwealth by January 1, 2009; the compliance date is identical to the deadline required by other jurisdictions in the Ozone Transport Region.

Consumer products sold, supplied, offered for sale or manufactured for sale in Pennsylvania are required to comply with the applicable VOC limit in the Table of Standards in § 130.211 on or after the applicable effective date for the product, which date is also specified in the Table of Standards in § 130.211.

No special permits or licenses are required.

(31) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.



FACE SHEET  
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(Pursuant to Commonwealth Documents Law)

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2008 JUL 18 AM 11:30

INDEPENDENT REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

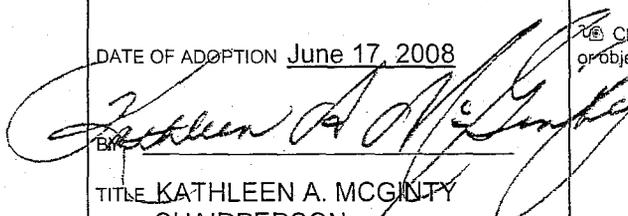
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DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

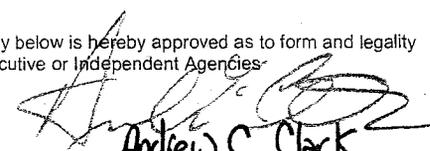
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-416

DATE OF ADOPTION June 17, 2008

  
BY \_\_\_\_\_  
TITLE KATHLEEN A. MCGINTY  
CHAIRPERSON  
EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY   
Andrew C. Clark

DATE OF APPROVAL JUL 10 2008

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Consumer Products; and Architectural and Industrial Maintenance Coatings

25 Pa. Code, Chapter 130, Subchapter B and C



**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**(25 Pa. Code, Chapter 130, Subchapters B and C)**  
**Consumer Products; and Architectural and Industrial Maintenance Coatings**

**Order**

The Environmental Quality Board (Board, EQB) by this order amends 25 Pa. Code Chapter 130, Subchapter B (relating to consumer products) and Subchapter C (relating to architectural and industrial maintenance coatings), to read as set forth in Annex A. The amendments to Subchapter B will amend the Table of Standards to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and revise the VOC content limits for one category of consumer products currently regulated. The amendments to Subchapter B also include definitions for approximately 30 new terms, including terms that relate to the new regulated product categories, and revised definitions for approximately 75 existing terms to provide clarity. The amendments add the term "VOC-volatile organic compound" to Subchapter B and revise the definition of the term in Subchapter C to mirror the definition of the term in 25 Pa. Code § 121.1 (relating to definitions). The definition of the term "VOC-volatile organic compound" in § 121.1 refers to the Federal definition of VOC.

This order was adopted by the Board at its meeting of June 17, 2008.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information contact Susan Hoyle, Division of Air Resource Management, P.O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 772-2329; or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

**C. Statutory Authority**

This final rulemaking is authorized under Section 5 of the Air Pollution Control Act (APCA) (35 P.S. § 4005), which grants the Environmental Quality Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in the Commonwealth.

#### **D. Background of the Amendments**

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health and welfare are adversely affected. The U.S. Environmental Protection Agency (EPA) has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments, such as asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. Though such symptoms are often temporary, repeated exposure could result in permanent lung damage. High levels of ground-level ozone also cause damage to crops and vegetation, buildings and synthetic fibers, including nylon, and reduce visibility on roadways and in natural areas.

On March 12, 2008, the EPA announced a revised primary and secondary 8-hour ozone standard from 0.08 ppm to 0.075 ppm. The EPA selected the new levels for the final standards after reviewing more than 1,700 peer-reviewed scientific studies about the effects of ozone on public health and welfare, and after considering advice from the agency's external scientific advisors and staff, along with extensive public comment. The EPA held five public hearings and received nearly 90,000 written comments. The EPA's projections indicate that without additional state or local controls, there will still be areas not meeting this more protective standard.

The purpose of the amendments is to reduce the VOCs emitted from consumer products. Ozone is not directly emitted by consumer products, but is created as a result of the chemical reaction of oxides of nitrogen and VOCs in the presence of light and heat. The amendments are part of the Commonwealth's strategy to achieve and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) throughout this Commonwealth. The amendments expand upon the consumer products regulation adopted by the Board at its meeting of July 16, 2002. *See 32 Pa. B. 4824 (Oct. 5, 2002).*

The amendments also revise the definition of the term "VOC-volatile organic compound" in Subchapter C to mirror the definition of the term in *25 Pa. Code § 121.1* (relating to definitions). The definition of the term "VOC-volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This revision will harmonize the VOC definitions in chapters 121 and 130 and in subchapters B and C of chapter 130, and will make the most currently VOC exempt compounds available as tools to reduce ozone and particulate matter (PM) formation.

While there are Federal VOC content limits codified at 40 CFR Part 59, Subpart C, for certain consumer products already regulated by Chapter 130, Subchapter B, there are no Federal limits for the additional products that will be regulated by this final rulemaking.

These amendments are consistent with regulatory initiatives that are being undertaken by other jurisdictions in the Ozone Transport Region (OTR) to address regional transport of ozone precursor emissions. The Ozone Transport Commission (OTC) Member States and the District of Columbia and OTC staff formed a workgroup to discuss additional control measures for

consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association (CSPA), the American Solvents Council and the Cosmetic, Toiletry and Fragrance Association (now the Personal Care Products Council or PCPC), participated in several of the conference calls or meetings and are generally supportive of the initiative. The OTC workgroup collected and evaluated information regarding emission reduction benefits, cost-effectiveness and implementation issues.

Consistent with section 7.4 of the APCA (35 P.S. § 4007.4), the Department held three public meetings regarding control measures under consideration for adoption by the OTC on May 22, 23 and 25, 2006. The control measures reviewed at these meetings included the OTC Consumer Products Model Rule. Notice of these meetings was published in the Pennsylvania Bulletin on April 29, 2006 (36 Pa.B. 2071).

Based on the analysis performed by the OTC workgroup, the OTC Commissioners at the OTC Commissioners' meetings of June and November, 2006, made recommendations to the OTC Member Jurisdictions to consider additional emission reductions from consumer products. The resulting 2006 OTC Model Rule for Consumer Products is similar to the California Air Resources Board (CARB) consumer products regulation amended in September 2005. The Department used the OTC Model Rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth.

Because the Commonwealth, in conjunction with other OTC Member Jurisdictions, has had discussions with representatives of the various National consumer product manufacturers in related industries, and gathered their support for the amendments at the proposed rulemaking stage, it is important that the amendments of the consumer product regulation be implemented consistently and uniformly in the OTR.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final-form rulemaking on March 27, 2008. The AQTAC concurred unanimously with the Department's recommendation to present the final-form rulemaking to the EQB for consideration as final rulemaking at the EQB's June 17, 2008, meeting. The Department discussed the final-form rulemaking with the Citizens Advisory Council on March 18, 2008, and the SBCAC on April 23, 2008. The CAC and SBCAC had no comments or concerns with the final-form rulemaking.

#### **E. Summary of Regulatory Requirements and Major Changes to the Proposed Rulemaking**

This final-form rulemaking amends the definitions in § 130.202 (relating to definitions) of the following terms, for clarity, style and format: "ACP emissions," "ACP limit," "ACP product," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol product," "agricultural use," "air freshener," "all other forms," "astringent/toner," "automotive wax, polish, sealant or glaze," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "compliance

period," "construction, panel and floor covering adhesive," "consumer product," "contact adhesive," "deodorant," "device," "dry cleaning fluid," "dusting aid," "electronic cleaner," "enforceable sales record," "fabric protectant," "facial cleaner or soap," "floor polish or wax," "floor wax stripper," "flying bug insecticide," "fragrance," "furniture coating," "furniture maintenance product," "general purpose adhesive," "general purpose cleaner," "general purpose degreaser," "general-use hand or body cleaner or soap," "hair shine," "hair spray," "hair styling gel," "heavy-duty hand cleaner or soap," "institutional product or industrial and institutional (I&I) product," "LVP content or lower vapor pressure content," "LVP-VOC or lower vapor pressure-VOC," "lawn and garden insecticide," "liquid," "lubricant," "medicated astringent/medicated toner," "multipurpose lubricant," "multipurpose solvent," "nonresilient flooring," "paint remover or stripper," "penetrant," "Pennsylvania sales," "plasticizer," "pre-ACP VOC content," "principal display panel or panels," "product category," "sealant and caulking compound," "shaving cream," "shortfall," "solid," "special purpose spray adhesive," "spot remover," "structural waterproof adhesive," "surplus reduction," "TMHE-Total maximum historical emissions," "type B propellant," "type C propellant," "undercoating," "VOC content," "waterproofing" and "wax."

Thirty-five of the definitions that were revised in the proposed rulemaking have been returned to their original language in the final-form rulemaking, in response to public comment expressing concern that replacement of the term "designed" with "formulated or labeled" would be inconsistent with the OTC Model Rule. (See Section F, below). The defined terms that have been returned to their existing regulatory language are the following: "aerosol cooking spray," "antimicrobial hand or body cleaner or soap," "automotive brake cleaner," "automotive hard paste wax," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive windshield washer fluid," "charcoal lighter material," "container/packaging," "crawling bug insecticide," "disinfectant," "engine degreaser," "flea and tick insecticide," "floor seam sealer," "glass cleaner," "hair mousse," "herbicide," "household product," "insecticide," "insecticide fogger," "laundry prewash," "laundry starch product," "metal polish/cleanser," "multipurpose dry lubricant," "nail polish," "nail polish remover," "oven cleaner," "paint," "pesticide," "rubber and vinyl protectant," "silicone-based multipurpose lubricant," "spray buff product," "tire sealant and inflation," "wasp and hornet insecticide" and "wood floor wax."

This final-form rulemaking adds definitions in § 130.202 for the following terms to improve clarity or explain new product categories: "aerosol coating product," "antistatic product," "certified emissions," "certified use rate," "contact adhesive-general purpose," "contact adhesive-special purpose," "deodorant body spray," "electrical cleaner," "energized electrical cleaner," "existing product," "fabric refresher," "floor and wall covering adhesive remover," "floor coating," "footwear or leather care product," "gasket adhesive or thread locking adhesive remover," "general purpose adhesive remover," "graffiti remover," "hair styling product," "high pressure laminate," "highest sales," "highest VOC content," "personal fragrance product," "pressurized gas duster," "product form," "shaving gel," "specialty adhesive remover," "toilet/urinal care product," "vinyl/fabric/leather/polycarbonate coating" and "wood cleaner."

This final-form rulemaking also adds a definition in § 130.202 for the term "VOC-volatile organic compound," to mirror the definition of this term in § 121.1 (relating to definitions). This term in Subchapter C was not included in the proposed rulemaking and is

amended in the final-form rulemaking in response to public comment. (See Section F, below.) The definition of the term "VOC-volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the "VOC-volatile organic compound" definition in the Department's rules to be updated automatically whenever the EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC.

The final-form rulemaking amends § 130.211 (relating to table of standards) by adding VOC content limits for 11 new categories of consumer products and revising the VOC content limits for one category of product currently regulated (contact adhesive). This section sets forth the percentage of VOC by weight that cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. The 11 new categories are: adhesive remover (floor and wall covering, gasket or thread locking, general purpose and specialty); antistatic product; electrical cleaner; electronic cleaner; fabric refresher; footwear or leather care product; graffiti remover; hair styling product; shaving gel; toilet/urinal care product; and wood cleaner.

The final-form rulemaking amends §§ 130.213 - 130.215 (relating to products registered under FIFRA; requirements for charcoal lighter material products; and requirements for aerosol adhesives) for clarity and format. In addition, the final-form rulemaking amends § 130.214 to incorporate future changes in test procedures and deletes from § 130.215(a) an unnecessary reference to a California regulatory provision.

The final-form rulemaking adds § 130.217 (relating to sell-through of products) to allow for sell-through of product manufactured prior to applicable effective dates.

The final-form rulemaking amends §§ 130.331, 130.332, 130.334, 130.335 and 130.338 (relating to exemptions) for clarity and format. The proposed rulemaking had proposed deleting "air fresheners" from the exemption in § 130.335(b) for consistency with the OTC Model Rule, because these air fresheners will be regulated in the new category "toilet/urinal care product." That left an exemption for insecticides containing at least 98% paradichlorobenzene in § 130.335(b), which in the final-form rulemaking has been moved to new § 130.334(b). Section 130.335(b) is deleted in the final-form rulemaking.

The final-form rulemaking amends § 130.371 (relating to product dating) by updating the product dating requirements and explaining the format and location for the date code. The final-form rulemaking also requires that a manufacturer submit an explanation of its modified codes to the Department before products displaying the modified code can be sold. The proposed rulemaking had required that the product date or code be displayed on each consumer product container or package, and an explanation of it filed with the Department, no later than 12 months prior to the effective date of the applicable standard. The final-form rulemaking amends this section to require that the date or date-code be displayed, and an explanation of it filed with the Department, before the consumer product is sold, supplied or offered for sale in this Commonwealth.

The final-form rulemaking amends § 130.372 (relating to most restrictive limit) to add new subsections (a) and (b). Subsection 130.372(a) establishes the lowest applicable VOC limit

requirements for products manufactured before January 1, 2009, and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registered insecticides manufactured before January 1, 2010. Subsection 130.372(b) establishes the lowest applicable VOC limit requirements for products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.

The final-form rulemaking requires additional information on product containers for products in § 130.373 (relating to additional labeling requirements for aerosol adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products).

The final-form rulemaking amends §§ 130.411, 130.412 and 130.414 (relating to application for variance; variance orders; and modification of variance) for format.

The final-form rulemaking amends § 130.431 (relating to testing for compliance) to update the reference date for several test protocols and standards and to incorporate future amendments of test protocols and standards.

The final-form rulemaking amends §§ 130.452 - 130.455, 130.457, 130.458, 130.460, 130.462 and 130.465 (relating to ACP for consumer products) for clarity.

The final-form rulemaking amends § 130.471 (relating to public hearings) to require the applicant for a variance or alternative control plan to publish the notice for the three public hearings in newspapers of general circulation not less than 30 days prior to the hearings. The Department will publish notice in the *Pennsylvania Bulletin*.

The final-form rulemaking amends the definition of the term "VOC-volatile organic compound" in the definitions pertaining to architectural and industrial maintenance coatings in Subchapter C, to mirror the definition of this term in § 121.1 (relating to definitions). The definition of the term "VOC-volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the Department's rules to be updated automatically whenever EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. Specifically, this will allow for the use of tertiary butyl acetate as a VOC-exempt compound in architectural and industrial maintenance coatings, providing improved ozone air pollution reduction benefits to the citizens of this Commonwealth. Amendments to Subchapter C were not included in the proposed rulemaking, but this amendment is included in the final-form rulemaking in response to public comment on the proposed rulemaking. (See Section F, below.) The requested revision is within the scope of this rulemaking. It will harmonize the VOC definitions in Chapters 121 and 130 and in Subchapters B and C of Chapter 130, and will make the most currently VOC exempt compounds available as tools to reduce ozone and particulate matter formation.

The final-form rulemaking will be submitted to the EPA as an amendment to the State Implementation Plan.

**F. Summary of Major Comments and Responses on the Proposed Rulemaking**

The Board approved publication of the proposed rulemaking at its meeting of June 19, 2007. The proposed rulemaking was published at 37 *Pa.B.* 5117 (September 15, 2007), with a 60-day public comment period. Revised dates for the public comment period and public hearings were published in the *Pennsylvania Bulletin* on October 7 and October 27, 2007. (37 *Pa.B.* 5379 and 5799.) Three public hearings were held on November 26, 2007, in Pittsburgh, Harrisburg and Norristown, PA. The public comment period closed on December 26, 2007.

***General Support; Promulgation of Uniform Consumer Products Regulations Throughout the OTR***

The CSPA supports the Department's proposed amendments. Despite noting that some of the standards may pose challenges for some CSPA members, especially small businesses, CSPA commented that adoption of uniform regional regulations is a practical necessity for small businesses and that CSPA's members support the promulgation of uniform.

The members of the Personal Care Products Council (Council, PCPC) commended DEP on substantially adhering to the revised OTC Model Rule in the proposed regulation. The Council worked closely with the OTC on the adoption of both its original regulation and the 2006 updated version. The Council's support for these efforts stems from what it described as the critical need of Council members to have state regulations that are both technologically and commercially feasible for compliance and that permit the sale of uniform products across state lines.

The Department thanks the CSPA, the PCPC and their members for their efforts in promoting regulatory standards needed by this Commonwealth and other member jurisdictions of the OTR to achieve and maintain the 8-hour ozone NAAQS throughout the region. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The final-form rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursors throughout the OTR. The measures recommended by the OTC are reasonably necessary to achieve and maintain the health-based 8-hour ozone NAAQS in this Commonwealth. Additionally, on March 12, 2008, EPA issued a revised 8-hour ozone standard that could require additional emission reductions.

The Independent Regulatory Review Commission (IRRC) commended the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the OTR, but noted that the EQB is not in control of the actions taken in the other OTR jurisdictions. The IRRC requested that the Board explain the status of the implementation in other OTR jurisdictions, saying that if other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged.

In response, the Department has prepared a summary of the status of the adoption of consumer product amendments consistent with the OTC Model Rule. Connecticut adopted its

rule on July 26, 2007, with an effective date of January 1, 2009. Maine adopted its rule on December 15, 2007, with an effective date of January 1, 2009. Maryland adopted its rule on June 18, 2007, with an effective date of January 1, 2009. Massachusetts adopted its rule on October 19, 2007, with an effective date of January 1, 2009. New Jersey published its proposed rulemaking on November 5, 2007, and the public comment period closed January 4, 2008. New Jersey proposed an effective date of January 1, 2009. Delaware intends to hold a public hearing in June, 2008, and intends to publish a final rule August 1, 2008, with an effective date of January 1, 2009. New Hampshire, New York, Rhode Island, Virginia and the District of Columbia have rules in development.

The IRRC also requested that the EQB provide a comparison of the content of the regulations promulgated by other OTR jurisdictions with Pennsylvania's final-form regulation.

The Department responds that each jurisdiction, with the exception of Vermont, has adopted or intends to adopt the OTC Model Rule, some with changes based on their need, discretion or regulatory procedure and formatting conventions. However, the VOC content limits of the products and the basic provisions of the rules are consistent across the jurisdictions. The minor differences between the rules are not sufficient to interfere with the development of a regional control strategy or regional market.

The IRRC requested that the EQB explain how Pennsylvania's final-form regulation minimizes the economic impact on Pennsylvania businesses and consumers.

The Department responds that the final-form amendments are uniform and consistent with the OTC Model Rule and the consumer product regulations promulgated by the other member jurisdictions of the OTR. Manufacturers will not need to develop a Pennsylvania-specific product to comply with the final-form rulemaking. The amendments may slightly increase costs to purchasers of consumer products, but the cost increase is expected to be negligible because much of the reformulation of products has been completed as manufacturers developed products to meet these limits in other areas of the country. CARB estimated the cost effectiveness of VOC limits with an effective date (in California) of December 31, 2006, to be about \$4000 per ton of VOC reduced. CARB further estimated the average increase in cost per unit to the manufacturer to be about \$0.16 per unit. Assuming CARB's estimates for the OTR provides a conservative estimate, because some of the one-time research and reformulation costs incurred for products sold in California will not have to be incurred again for products sold in the OTR.

Using the OTR's conservative estimate, it is estimated that for Pennsylvania, if none of the reformulation had yet been completed, the reduction of VOC content for the affected consumer products would cost approximately \$4000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tons per day (tpd) and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total cost to the users is estimated to be approximately \$3.1 million. This is an average of \$0.26 per resident per year.

The production of low-VOC consumer products for these additional categories may require some new product development, but much of this work has already been done because of similar regulatory efforts in California.

### *Definitions – Reasonableness and Clarity*

The IRRC noted that the definition of "Construction, panel and floor covering adhesive" exempts products that "weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging." IRRC noted that there are similar exemptions in the definitions of "Contact adhesive" and "General purpose adhesive." IRRC asked why the EQB placed no limit on the VOC content of large containers of these products, but placed the limits in Section 130.211 on the identical product in a smaller container? IRRC requested that the EQB explain why these exemptions are reasonable and will not adversely affect the stated goal to reduce VOCs emitted from consumer products.

The Department responds that the Department anticipates the larger containers of construction, panel and floor covering adhesives, contact adhesives and general purpose adhesives to be regulated by the Department's proposed Chapter 130, Subchapter D amendment, relating to adhesives, sealants and primers. The Subchapter D amendment will be consistent with the requirements of the OTC 2006 Adhesives, Sealants and Primers Model Rule and is scheduled to be proposed to the EQB in the summer of 2008.

The IRRC noted that paragraphs (i) and (ii) of the definition of "deodorant body spray" refer to a "product with 20% or less fragrance." It is not clear how to apply the 20% figure. For example, the "Table of Standards" in Section 130.211 uses "percent VOC **by weight**." (Emphasis added.) IRRC recommended that the regulation specify what the 20% figure is related to, such as weight or volume.

The Department agrees and has revised the definition of the term "deodorant body spray" in the final-form rulemaking to clarify that the 20% fragrance is by weight.

### *Reasonable Effective Date (§ 130.211)*

The CSPA commented that the proposed effective date of January 1, 2009, for the new VOC limits and related administrative and enforcement provisions would allow sufficient time for companies to comply with the technology-forcing VOC limits. IRRC requested that the EQB explain how the January 1, 2009 effective date, which requires compliance in less than a year, is reasonable and feasible for businesses and consumers.

The Department responds that the staff of the OTC and member states formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the CSPA, the American Solvents Council and the PCPC, participated in several of the conference calls with the OTC Workgroup and worked with the group to set the date of January 1, 2009, as the effective date. Hence, the members of these industry groups have been familiar with the OTC

2006 final Consumer Products Model Rule, are supportive of the initiative, and are aware that rulemaking is in development with a January 1, 2009 compliance date.

Additionally, the majority of currently marketed products have already been reformulated to meet the California VOC limits which were adopted in July 2005. Most of these limits were effective in California by December 31, 2006. The standards in the final-form rulemaking are identical to the California standards, thus the manufacturers of the regulated products have had over two years to develop compliant products.

***Sell-through of Products Manufactured Before the Applicable Effective Date  
(§ 130.217)***

The CSPA supports the Board's proposal for dealing with products manufactured before the applicable effective date for the VOC limits. This provision is entirely consistent with the parallel provision in the OTC Model Rule that imposes a sell-through limitation only on products that do not display either the date of manufacture or an appropriate date code. The practical realities of industry-wide competition and prevailing retailer practices result in the overwhelming number of products being sold within the 12-18 months after the date of manufacture.

The Department appreciates the commentators' support.

***Alternative Control Plan Provision (§ 130.452)***

The CSPA urged the Board to consider adopting a narrowly-tailored amendment to the Commonwealth's current Alternative Control Plan (ACP) provision, explaining that the amendment would have the effect of producing a measurable net environmental benefit for Pennsylvania. The CSPA explained that the Commonwealth's current regulation recognizes an ACP agreement approved by CARB, but that it is possible that there may be a very limited number of instances in which some products used in CARB's ACP compliance calculations may not be subject to the VOC limits set forth in the proposed rulemaking, thereby leading to the denial of a CARB-approved ACP that is still producing a net environmental benefit. The CSPA offered a technical revision, which it asserted would make Pennsylvania's ACP provision consistent with the corresponding provision in the Ohio EPA's recently promulgated final regulation and the Illinois EPA's final draft regulation.

The Department responds that the amendments to the Consumer Products regulation are designed to reduce emissions within this Commonwealth's borders and in downwind areas in the OTR. The promulgation and implementation of the regulation in this Commonwealth will allow the Department to make progress in achieving and maintaining the NAAQS. The Alternative Control Plan approach outlined in the final-form regulation preserves this Commonwealth's right and obligation to determine on a case-by-case basis if an ACP will be environmentally beneficial, prior to granting approval of a plan. Adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold elsewhere in the OTR. Therefore, the requested exception has not been included in the final-form rulemaking.

The IRRC noted that the CSPA believes that, as written, the regulation may have the unintended effect of limiting the environmental benefits of the regulation. IRRC suggested adding the phrase "used for emission credits" to section 130.452 so that the first sentence of this section in the final regulation would end: "...provided that all ACP products **used for emission credits** within the CARB ACP agreement are contained in § 130.211." (Emphasis added.) The IRRC recommended that the EQB consider including this phrase in the final-form regulation.

While the Department appreciates the point that the IRRC and the CSPA make, the amendments to the consumer products regulation are consistent with the OTC's Model Rule strategy, which is designed to reduce ozone precursors in this Commonwealth and in downwind areas. The addition of the CSPA suggested language would create inconsistency among the OTR member jurisdictions. Moreover, adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold in the other OTR states. The Department does not see a need to create such an exception.

### *Is Proposal Needed to Meet SIP Commitments?*

The PCPC asked whether it is necessary to proceed with the proposal for the state of Pennsylvania to meet its SIP commitments. On May 30, 2007, the Director of the U.S. EPA's Office of Air Quality Planning Standards issued a memorandum to U.S. EPA Regional Offices and to all states preparing ozone State Implementation Plans. The memorandum establishes the VOC Emission Reduction Credits that states can claim due to the U.S. EPA commercial and consumer product rules to be proposed imminently, with new limits to take effect January 1, 2009. The commentator urged DEP to seriously consider suspending action on its current proposal. The commentator stated that avoiding an additional state rulemaking proceeding would substantially simplify compliance and enforcement, reduce the costs of regulation, and dispel any chance of unintended but significant differences between the regulations.

The Department responds that emission reductions from this consumer product rulemaking are necessary as they are identified in the contingency measure plan in the Commonwealth's attainment demonstration for the 8-hour ozone NAAQS for the Philadelphia area. Additionally, emission reductions from this rulemaking will support the 8-hour ozone NAAQS attainment demonstration for the Pittsburgh-Beaver Valley Area; the original redesignation request and maintenance plan submitted to EPA for the Pittsburgh region is no longer approvable because of a violation of the standard during the 2007 ozone season. The VOC emission reductions resulting from the adoption and implementation of the final-form regulation are reasonably necessary to achieve and maintain the 8-hour standard. The May 30, 2007, EPA memorandum stated that EPA's consumer product rule revision would be proposed in June 2007 and finalized in December 2007, with compliance being required by January 1, 2009. The EPA now expects to propose the rule in May of 2008, with compliance required by May 1, 2009. Additionally, the EPA notes on page 4 of its May 30, 2007, memorandum that, "... if the EPA rule does not provide the reduction anticipated for a particular area, any State claiming credit from the Federal rule will be responsible for developing measures to make up the shortfall." In light of that and the fact that on March 12, 2008, the EPA announced a revised 8-hour ozone standard of 0.075 parts per million, it is important for the Commonwealth to develop and implement emission reduction strategies to reduce ozone precursor emissions within its

borders. Based on 2004-2006 data, at least 23 counties are monitoring nonattainment of the March 12, 2008, 8-hour ozone standard.

***Proposed Language: Use of the Term 'Designed'***

The PCPC noted one deviation from the OTC Model Rule that was problematic. Throughout the proposal, the term "designed" was replaced with "formulated or labeled" and the commentator believed the proposal should revert to the use of the term "designed" to promote consistency with the OTC Model Rule. PCPC noted that the term "designed" is largely in alignment with the Federal Food and Drug Administration's intended use doctrine. The language of the proposal — "formulated or labeled" — suggested that a product could be defined solely on the basis of either 1) its claims, or 2) what may be in the product. This would be a fundamental policy shift and would be impracticable. Therefore, the proposal should be revised to use the term "designed" wherever it originally appeared in the definitional sections of the rule, or, alternatively, "formulated and labeled" — but not "formulated or labeled."

The Department agrees with the recommendation and has reverted to the wording used by the OTC Model Rule for all of the definitions.

***Definition of VOC and Exempt Solvent in Subchapters B and C***

The National Paint and Coatings Association (NPCA) and Lyondell Chemical Company (Lyondell) commented that they were pleased to see that the proposed amendments were silent on the definition of a VOC or an Exempt Solvent, which means that the general definitions in Chapter 121.1 will apply to the amended consumer products rule. Both definitions make reference to the Federal definition of a VOC, which was last amended in 2004 to exclude tertiary butyl acetate (TBAC) based on its negligible ozone-forming potential. This reference to the Federal definition was a key reason Pennsylvania was one of the first states to be able to use TBAC as a tool to reduce ozone formation from a variety of product and point source emissions. They note that this Commonwealth's VOC rules are, therefore, automatically updated when the US EPA excludes a compound from the VOC definition. This saves DEP resources and allows the quick use of negligibly reactive compounds instead of reactive ones, which helps to reduce ozone levels.

The Department appreciates the commentators' support and agrees that the general definitions of the terms "VOC-volatile organic compound" and "exempt solvent" found in § 121.1 (relating to definitions) apply to the consumer products subchapter. Additionally, the Department has added, at final, the term "VOC-volatile organic compound" to Chapter 130, Subchapter B, with the definition: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity."

The NPCA and Lyondell also commented that Subchapter C (relating to architectural and industrial maintenance coatings) includes definitions for the terms "VOC" and "exempt compounds" that are inconsistent with the Federal definitions, Pennsylvania's general

definitions, Pennsylvania's consumer products definitions and those of all other OTC states. The commentators noted that these outdated definitions were left over from the OTC Model Rule and recommended that they be deleted from Subchapter C as part of this rulemaking. They explained that this would harmonize the Pennsylvania VOC definitions and make the latest VOC exempt compounds available as tools to reduce ozone and PM formation from architectural coating emissions statewide. They stated that this would also eliminate the need to revise Subchapter C each time the Federal VOC definition is amended, thus saving DEP resources.

The Department agrees. The requested revision is within the scope of this rulemaking. It will harmonize the VOC definitions in chapters 121 and 130 and in subchapters B and C of chapter 130, and will make the most current VOC exempt compounds available as tools to reduce ozone and particulate matter formation. The Department has revised the definition of the term "VOC-volatile organic compound" in Chapter 130, Subchapter C as part of this final-form consumer products rulemaking; the definition will read: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity." The term "exempt compound" and its definition in Subchapter C did not need revision.

## **G. Benefits, Costs and Compliance**

### **Benefits**

The final-form rulemaking will assure that the residents of this Commonwealth and the environment will continue to benefit from reduced emissions of VOCs and hazardous air pollutants (HAPs) in consumer products. Although the consumer product requirements are designed primarily to reduce ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The amendments will result in improved indoor and outdoor air quality for all citizens of this Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

This final-form rulemaking will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by harmonizing the definition of "VOC-Volatile organic compound" in Subchapter C with that in § 121.1 and Subchapter B. This revision will allow the Department's rules to be updated automatically when EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. This will make the most currently VOC exempt compounds, such as TBAC, available as tools to reduce ozone and particulate matter formation.

### **Compliance Costs**

It is estimated that the reduction of VOC content for the affected consumer products will cost approximately \$4000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tpd and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total

cost to the users is estimated to be approximately \$3.1 million. This is an average of \$0.26 per resident per year. The final-form rulemaking includes compliance and averaging options that will allow manufacturers to formulate products in the most efficient and effective manner.

Additionally, the amendments to Chapter 130, Subchapter C, allow for the use of TBAC, an exempt VOC compound, which will provide additional cost-effective compliance options in the reformulation of architectural and industrial maintenance coating products.

### **Compliance Assistance Plan**

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

### **Paperwork Requirements**

The final-form amendments revise the product dating requirements of Subchapter B to require only that the product date or date-code must be displayed on each consumer product container or package before the consumer product is sold, supplied or offered for sale in this Commonwealth. Additionally, the amendments require that a manufacturer must file an explanation of the code indicating the date of manufacture for a consumer product with the Department before the consumer product is sold, supplied or offered for sale in this Commonwealth. Prior to these revisions, the deadline for these requirements was no later than 12 months prior to the effective date of the applicable standard specified in the Table of Standards.

An applicant for an alternative control plan or variance will be required to publish notice of the time, place and purpose of the three public hearings for approval of the alternative control plan or variance in newspapers of general circulation not less than 30 days prior to the hearings.

### **H. Pollution Prevention (if applicable)**

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

These amendments will assure that the citizens and the environment of this Commonwealth will continue to experience the benefits of reduced emissions of VOCs and HAPs from low-VOC consumer products. Although the requirements are intended to address ozone air quality by reducing emissions of ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The final

regulation will result in improved indoor and outdoor air quality for all citizens of the Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

These amendments will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by making the most currently VOC exempt compounds, such as tertiary butyl acetate, available under Subchapter C as tools to reduce ozone and particulate matter formation.

#### **I. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

#### **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 29, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 *Pa.B.* 5117, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on (blank), the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form rulemaking.

#### **K. Findings of the Board**

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 *Pennsylvania Code* §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 37 *Pennsylvania Bulletin* 5117 (Sep. 15, 2007).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

(5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards.

**L. Order of the Board**

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 130, are amended by amending §§ 130.201, 130.202, 130.211, 130.213 -- 130.215, 130.331, 130.332, 130.334, 130.335, 130.371 – 130.373, 130.411, 130.412, 130.414, 130.431, 130.452 – 130.455, 130.457, 130.458, 130.460, 130.462, 130.465, 130.471 and 130.602; and by adding §§ 130.217 and 130.338 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOSEPH R. POWERS,  
Chairperson

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter B. CONSUMER PRODUCTS

GENERAL PROVISIONS

§ 130.201. Applicability.

Except as provided in §§ 130.331--~~[130.337]~~ 130.338 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale[, ] or manufactures a consumer ~~[products]~~ product on or after ~~[January 1, 2005]~~ the applicable effective date in § 130.211 (relating to table of standards), for use in this Commonwealth.

§ 130.202. Definitions.

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

\* \* \* \* \*

*ACP emissions*--

**[(i)]** The sum of the VOC emissions from every ACP product subject to an ACP **[Agreement approving an ACP]** agreement, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

where,

$$(\text{VOC [Content] content}) \times (\text{Enforceable [Sales] sales})$$

$$(i) \text{ Emissions} = \frac{\text{---}}{100}$$

[where,

(ii) For all products except charcoal lighter material products:

$$((B-C) \times 100)$$

$$\text{VOC Content (Percent)} = \frac{\text{---}}{A}$$

A = net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit, as defined in this section

C = total weight of all exempted VOCs per unit, as specified in this section

(iii) For charcoal lighter material products only:

$$(\text{Certified Emissions} \times 100)$$

$$\text{VOC Content} = \frac{\text{---}}{\text{Certified Use Rate}}$$

**Certified Emissions** = the emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter materials), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified Use Rate** = the usage level for products approved by the Department under § 130.214, as determined under "South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991)," expressed to the nearest 0.001 pound certified product used per start.]

**(ii) 1,2, . . . N = each product in an ACP up to the maximum N.**

*ACP limit*--The maximum allowable ACP [Emissions] emissions during the compliance period specified in an ACP [Agreement approving an ACP] agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP \text{ [Limit] } \underline{\text{limit}} = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

where,

$$(ACP \text{ [Standard] } \underline{\text{standard}}) \times (Enforceable \text{ [Sales] } \underline{\text{sales}})$$

$$(i) \text{ Limit} = \frac{\dots}{\dots}$$

100

**[Enforceable Sales = the total amount of an ACP product sold for use in this Commonwealth, during the applicable compliance period specified in the ACP Agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding container and packaging).**

**ACP Standard = either the ACP product's Pre-ACP VOC Content, or the applicable VOC standard specified in § 130.211 (relating to table of standards), whichever is less.**

**Pre-ACP VOC Content = the lowest VOC content which the ACP product had between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Commonwealth, based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey, or other accurate records available to the Department, whichever yields the lowest VOC content for the product (expressed as a percentage).]**

**(ii) 1,2, . . . N = each product in an ACP up to the maximum N.**

*ACP product*--A consumer product subject to the VOC standards specified in § 130.211 **(relating to table of standards)**, except those products that have been exempted under §§ 130.331--~~[130.337]~~ **130.338** (relating to exemptions), or exempted as innovative products under §§ 130.351 and 130.352 (relating to innovative products).

\* \* \* \* \*

*ACP VOC standard*--The maximum allowable VOC content for an ACP product, determined as follows:

(i) The applicable VOC **[Standard] standard** specified in § 130.211[,], for all ACP products except **[for] charcoal lighter material products**.

(ii) For charcoal lighter material products only, the VOC **[Standard] standard** for the purposes of this **[section] subchapter** shall be calculated according to the following equation:

$$\text{VOC [Standard] standard} = \frac{(0.020 \text{ pound CH}_2 \text{ per start} \times 100)}{\text{Certified [Use Rate] use rate}}$$

where,

0.020 = the certification emissions level for the Department-approved product, as specified in § 130.214.

**[Certified Use Rate = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start.]**

*ASTM*--[The] **ASTM International, formerly the** American Society for Testing and Materials.

*Adhesive*--A product that is **formulated or labeled to be** used to bond one surface to another by attachment.

**(i) The term includes caulks, sealants, glues and similar substances used for the purpose of forming a bond.**

**(ii)** The term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners[, ] or other products with an adhesive incorporated onto or in an inert substrate.

**(ii)** For contact adhesives, the term does not include aerosol adhesives or units of product, less packaging, which consist of more than 1 gallon.

**(iii)** For construction, panel and floor covering adhesive and general purpose adhesive, the term does not include aerosol adhesives or units of product which consist of more than 1 pound or 16 fluid ounces, less packaging.]

*Adhesive remover*--

**(i)** A product **{designed} [exclusively for the removal of adhesives, caulk and other bonding materials] {formulated or labeled} to remove adhesive** from either a specific substrate or a variety of substrates.

**(ii) The term does not include products that remove adhesives intended exclusively for use on humans or animals.**

*Aerosol adhesive*--An aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. The term includes the following:

(i) Special purpose spray adhesive.

(ii) Mist spray adhesive.

(iii) Web spray adhesive.

*Aerosol coating product*--A pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant and is packaged in a disposable can designed for hand-held application or for use in specialized equipment for ground traffic marking applications.

*Aerosol cooking spray*--An aerosol product ~~{designed}~~ ~~[formulated or labeled]~~ either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

*Aerosol product*--A pressurized spray system that dispenses product ingredients by means of a propellant contained in the product or the product's container or by means of a mechanically induced force. The term does not include pump sprays.

*Agricultural use*--The use of a pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of an animal or plant crop. The term does not include the sale or use of pesticides in properly labeled packages or containers which are intended for the following uses:

\* \* \* \* \*

(iii) *Industrial use.* Use for or in a manufacturing, mining or chemical process or use in the operation of factories, processing plants and similar sites.

\* \* \* \* \*

*Air freshener*--A consumer product, including sprays, wicks, powders and crystals, ~~{designed}~~ ~~[formulated or labeled]~~ for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air.

(i) The term does not include the following:

\* \* \* \* \*

(B) Products that function primarily as cleaning products, as indicated on a product label.

\* \* \* \* \*

**(E) Toilet/urinal care products.**

\* \* \* \* \*

*All other forms*--Consumer product forms for which no form-specific VOC standard is specified in §§ 130.211--~~[130.216]~~ **130.217** (relating to standards). Unless specified otherwise by the applicable VOC standard, the term includes solids, liquids, wicks, powders, crystals and cloth or paper wipes (towelettes).

*Antimicrobial hand or body cleaner or soap*--

(i) A cleaner or soap which is ~~{designed}~~ ~~[formulated or labeled]~~ to reduce the level of microorganisms on the skin through germicidal activity. The term includes the following:

\* \* \* \* \*

**Antistatic product**--A product that is ~~[formulated or]~~ labeled to eliminate, prevent or inhibit the accumulation of static electricity. The term does not include the following:

**(i) Electronic cleaner.**

**(ii) Floor polish or wax.**

**(iii) Floor coating.**

**(iv) Aerosol coating product.**

**(v) Architectural coating.**

\* \* \* \* \*

*Astringent/toner*--A product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include **the following**:

\* \* \* \* \*

*Automotive brake cleaner*--A cleaning product ~~{designed}~~ ~~[formulated or labeled]~~ to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

*Automotive hard paste wax*--An automotive wax or polish which is:

(i) ~~{Designed}~~ ~~[Formulated or labeled]~~ to protect and improve the appearance of automotive paint surfaces.

\* \* \* \* \*

*Automotive instant detailer*--A product ~~{designed}~~ ~~[formulated or labeled]~~ for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

*Automotive rubbing or polishing compound*--A product ~~{designed}~~ ~~[formulated or labeled]~~ primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

*Automotive wax, polish, sealant or glaze*--A product ~~{designed}~~ ~~[formulated or labeled]~~ to seal out moisture, increase gloss or otherwise enhance a motor vehicle's painted surfaces.

(i) The term includes products ~~{designed}~~ ~~[formulated or labeled]~~ for:

\* \* \* \* \*

(ii) The term does not include the following:

\* \* \* \* \*

(D) Products ~~{designed}~~ ~~[formulated or labeled]~~ for use on unpainted surfaces such as bare metal, chrome, glass or plastic.

*Automotive windshield washer fluid*--A liquid ~~{designed}~~ ~~[formulated or labeled]~~ for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing or wetting the windshield. The term does not include fluids placed by the manufacturer in a new vehicle.

*Bathroom and tile cleaner*--A product ~~{designed}~~ ~~[formulated or labeled]~~ to clean tile or surfaces in bathrooms. The term does not include products ~~[specifically]~~ ~~{designed}~~ ~~[formulated or labeled]~~ PRIMARILY to clean toilet bowls [or], toilet tanks or urinals.

*Bug and tar remover*--A product ~~[designed]~~ ~~[formulated or]~~ labeled to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

\* \* \* \* \*

*Carburetor or fuel-injection air intake cleaners*--

(i) A product ~~{designed}~~ ~~[formulated or labeled]~~ to remove fuel deposits, dirt or other contaminants from a carburetor, choke, throttle body of a fuel-injection system or associated linkages.

(ii) The term does not include products ~~{designed}~~ ~~[formulated or labeled]~~ exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

*Carpet and upholstery cleaner*--A cleaning product ~~{designed}~~ ~~[formulated or labeled]~~ for the purpose of eliminating dirt and stains on rugs, carpeting and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

(i) The term includes[, but is not limited to,] products that make fabric protectant claims.

(ii) The term does not include the following:

(A) General purpose ~~[cleaners, spot removers, vinyl]~~ cleaner.

(B) Spot remover.

(C) Vinyl or leather ~~[cleaners or dry]~~ cleaner.

(D) Dry cleaning fluids.

~~[(B)]~~ (E) Products ~~{designed}~~ ~~[formulated or labeled]~~ exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

*Certified emissions*--The emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter material products), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), including subsequent amendments, expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

*Certified use rate*--The usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), including subsequent amendments, expressed to the nearest 0.001 pound certified product used per start.

*Charcoal lighter material*--A combustible material ~~{designed}~~ ~~[formulated or labeled]~~ to be applied on, incorporated in, added to or used with charcoal to enhance ignition. The term does not include the following:

\* \* \* \* \*

*Compliance period*--The period of time, not to exceed 1 year, for which the ACP [Limit] limit and ACP [Emissions] emissions are calculated and for which compliance with the ACP [Limit] limit is determined, as specified in the ACP agreement [approving an ACP].

*Construction, panel and floor covering adhesive*--

(i) A one-component adhesive that is ~~designed~~ formulated or labeled exclusively for the installation, remodeling, maintenance or repair of:

(A) Structural and building components that include[, but are not limited to,] the following:

\* \* \* \* \*

(B) Floor or wall coverings that include[, but are not limited to,] the following:

\* \* \* \* \*

(ii) The term does not include ~~floor seam sealer.~~ the following:

(A) Floor seam sealer.

(B) Units of product that weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging.

\* \* \* \* \*

*Consumer product*--

(i) A chemically formulated product used by household and institutional consumers including the following:

\* \* \* \* \*

(L) Aerosol adhesives, including aerosol adhesives used for consumer, industrial or commercial uses.

\* \* \* \* \*

*Contact adhesive*--

(i) An adhesive that:

(A) Is ~~{designed}~~ ~~[formulated or labeled]~~ for application to both surfaces to be bonded together.

\* \* \* \* \*

(ii) The term does not include ~~[rubber]~~ the following:

(A) Rubber cements that are primarily intended for use on paper substrates.

(B) Vulcanizing fluids that are ~~[formulated or]~~ DESIGNED AND labeled for tire repair only.

(C) Units of product, less packaging, that consist of more than 1 gallon.

Contact adhesive-general purpose--A contact adhesive that is not a "contact adhesive--special purpose."

Contact adhesive-special purpose--A contact adhesive that is ~~[formulated or labeled to be]~~ used for either of the following:

(i) To bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch or less in thickness to a porous or nonporous surface, and is sold in units of product, less packaging, that contain more than 8 fluid ounces.

(ii) In automotive applications that are either of the following:

(A) Automotive under-the-hood applications requiring heat, oil or gasoline resistance.

(B) Attachment of body-side molding, automotive weatherstrip or decorative trim.

Container/packaging--The parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was ~~{designed}~~ ~~[formulated]~~ or intended. The term includes an article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

\* \* \* \* \*

Crawling bug insecticide--An insecticide product that is ~~{designed}~~ ~~[formulated or labeled]~~ for use against ants, cockroaches or other household crawling arthropods, including mites, silverfish or spiders. The term does not include products ~~{designed}~~

~~[formulated or labeled]~~ to be used exclusively on humans or animals, or house dust mite product. For the purposes of this definition only:

\* \* \* \* \*

*Deodorant--*[A] **For products manufactured as follows:**

(i) Before January 1, 2009, a product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

(ii) On or after January 1, 2009, a product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that the product can be used on or applied to the human axilla to provide a scent or minimize odor. The term includes a deodorant body spray product that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla.

*Deodorant body spray--*For products manufactured as follows:

(i) Before January 1, 2009, a personal fragrance product with 20% or less fragrance BY WEIGHT.

(ii) On or after January 1, 2009, a personal fragrance product with 20% or less fragrance BY WEIGHT, that is ~~[formulated or labeled]~~ DESIGNED for application all over the human body to provide a scent. The term includes a deodorant product that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla.

*Device--*

(i) An instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling or mitigating a pest or other form of plant or animal life (other than ~~[man]~~ humans and other than bacteria, ~~[virus]~~ viruses or other ~~[microorganism]~~ microorganisms on or in living ~~[man]~~ humans or ~~[other]~~ living animals).

(ii) The term does not include equipment used for the application of pesticides when sold separately.

*Disinfectant--*

\* \* \* \* \*

(ii) The term does not include the following:

(A) Products ~~{designed}~~ ~~[formulated or labeled]~~ solely for use on humans or animals.

(B) Products ~~{designed}~~ ~~[formulated or labeled]~~ for agricultural use.

(C) Products ~~{designed}~~ ~~[formulated or labeled]~~ solely for use in swimming pools, therapeutic tubs or hot tubs.

(D) Products which, as indicated on the principal display panel or label, are ~~{designed}~~ ~~[formulated or labeled]~~ primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners or metal polishes.

\* \* \* \* \*

*Dry cleaning fluid--*

(i) A nonaqueous liquid product ~~{designed and}~~ ~~[formulated or]~~ labeled exclusively for use on:

\* \* \* \* \*

(ii) The term includes[, but is not limited to,] those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place.

\* \* \* \* \*

*Dusting aid--*A product ~~{designed}~~ ~~[formulated or labeled]~~ to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include [products that consist entirely of compressed gases for use in electronic or other specialty areas] pressurized gas duster[s].

*Electrical cleaner--*A product ~~[formulated or]~~ labeled to remove heavy soils like grease, grime or oil from electrical equipment, including electric motors, armatures, relays, electric panels and generators. The term does not include the following:

(i) General purpose cleaner.

(ii) General purpose degreaser.

(iii) Dusting aid.

(iv) Electronic cleaner.

- (v) Energized electrical cleaner.
- (vi) Pressurized gas duster.
- (vii) Engine degreaser.
- (viii) Antistatic product.
- (ix) Products designed to clean the casings or housings of electrical equipment.

*Electronic cleaner--*

(i) A product [designed specifically] [~~formulated or~~] labeled for the removal of dirt, [grease or grime] moisture, dust, flux or oxides from [electrical] the internal components of electronic or precision equipment [such as electric motors], including circuit boards[, electricity panels and generators.] and the internal components of electronic devices, including the following:

- (A) Radios.
- (B) Compact disc (CD) players.
- (C) Digital video disc (DVD) players.
- (D) Computers.

(ii) The term does not include the following:

- (A) General purpose cleaner.
- (B) General purpose degreaser.
- (C) Dusting aid.
- (D) Pressurized gas duster.
- (E) Engine degreaser.
- (F) Electrical cleaner.
- (G) Energized electrical cleaner.
- (H) Antistatic product.
- (I) Products designed to clean the casings or housings of electronic equipment.

Energized electrical cleaner--

(i) A product that meets both of the following:

(A) The product is ~~formulated or~~ labeled to clean or degrease electrical equipment, where cleaning or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor.

(B) The product label clearly states that the product is for energized equipment use only and is not to be used for motorized vehicle maintenance or maintenance of motorized vehicle parts.

(ii) The term does not include electronic cleaner[s].

\* \* \* \* \*

*Enforceable sales record--*A written, point-of-sale record or other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in this Commonwealth during the applicable compliance period can be accurately documented. For the purposes of this subchapter, the term includes[, but is not limited to,] the following types of records:

\* \* \* \* \*

*Engine degreaser--*A cleaning product ~~designed~~ ~~formulated or labeled~~ to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

*Existing product--*A formulation of the same product category and form sold, supplied, manufactured or offered for sale in this Commonwealth prior to January 1, 2005, or a subsequently introduced identical formulation.

*Fabric protectant--*A product ~~designed~~ ~~formulated or labeled~~ to be applied to fabric substrates to protect the surface from soiling by dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include [waterproofers, products] the following:

(i) Waterproofers.

(ii) Products designed for use solely on leather [or products].

(iii) Products designed for use solely on fabrics which are labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

*Fabric refresher--*

(i) A product [~~formulated or~~] labeled to neutralize or eliminate odors on nonlaundered fabric, including the following fabrics:

(A) Soft household surfaces.

(B) Rugs.

(C) Carpeting.

(D) Draperies.

(E) Bedding.

(F) Automotive interiors.

(G) Footwear.

(H) Athletic equipment.

(I) Clothing.

(J) Household furniture or objects upholstered or covered with fabrics including wool, cotton or nylon.

(ii) The term does not include the following:

(A) Antistatic product.

(B) Carpet and upholstery cleaner.

(C) Soft household surface sanitizer.

(D) Footwear or leather care product.

(E) Spot remover.

(F) Disinfectant.

(G) Products labeled for application to both fabric and human skin.

(iii) For the purposes of this definition, "soft household surface sanitizer" means a product [~~formulated or~~] labeled to neutralize or eliminate odors on surfaces listed in subparagraph (i) and the label for which is registered as a sanitizer under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136--136y).

*Facial cleaner or soap*--A cleaner or soap ~~{designed}~~ ~~[formulated or labeled]~~ primarily to clean the face.

(i) The term includes[, but is not limited to, facial] the following:

(A) Facial cleansing [creams, gels, liquids, lotions and substrate-impregnated] cream.

(B) Semisolid.

(C) Liquid.

(D) Lotion.

(E) Substrate-impregnated forms.

(ii) The term does not include the following:

[(i)] (A) Prescription drug products.

[(ii)] (B) Antimicrobial hand or body cleaner or soap.

[(iii)] (C) Astringent/toner.

[(iv)] (D) General-use hand or body cleaner or soap.

[(v)] (E) Medicated astringent/medicated toner.

[(vi)] (F) Rubbing alcohol.

\* \* \* \* \*

*Flea and tick insecticide*--An insecticide product that is ~~{designed}~~ ~~[formulated or labeled]~~ for use against fleas, ticks, their larvae or their eggs. The term does not include products that are ~~{designed}~~ ~~[formulated or labeled]~~ to be used exclusively on humans or animals and their bedding.

\* \* \* \* \*

*Floor and wall covering adhesive remover*--A product [formulated or] DESIGNED OR labeled to remove floor or wall covering and associated adhesive from the underlying substrate.

*Floor coating*--An opaque coating that is [formulated or] DESIGNED AND labeled for application to flooring, including the following:

(i) Decks.

(ii) Porches.

(iii) Steps.

(iv) Other horizontal surfaces which may be subject to foot traffic.

*Floor polish or wax*--A wax, polish or other product ~~{designed}~~ ~~[formulated or labeled]~~ to polish, protect or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include the following:

\* \* \* \* \*

(ii) Products ~~{designed}~~ ~~[formulated or labeled]~~ solely for the purpose of cleaning floors.

\* \* \* \* \*

(iv) Products ~~{designed}~~ ~~[formulated or labeled]~~ for unfinished wood floors.

\* \* \* \* \*

*Floor seam sealer*--A product ~~{designed and}~~ ~~[formulated or]~~ labeled exclusively for bonding, fusing or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

*Floor wax stripper*--A product ~~{designed}~~ ~~[formulated or labeled]~~ to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. The term does not include ~~[aerosol]~~ the following:

(i) Aerosol floor wax ~~[strippers or products designed]~~ stripper.

(ii) Products DESIGNED ~~[formulated or labeled]~~ to remove floor wax solely through abrasion.

*Flying bug insecticide*--An insecticide product that is ~~{designed}~~ ~~[formulated or labeled]~~ for use against flying insects or other flying arthropods, including mosquitoes, moths or gnats.

(i) The term does not include the following:

[(i)] (A) Wasp and hornet insecticide.

**[(ii) (B)** Products that are ~~{designed}~~ ~~[formulated or labeled]~~ to be used exclusively on humans or animals.

**[(iii) (C)** A moth-proofing product.

**(ii)** For the purposes of this definition **[only]**, "moth-proofing product" means a product whose label, packaging or accompanying literature indicates that the product is ~~{designed}~~ ~~[formulated or labeled]~~ to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

**Footwear or leather care product--**

**(i) A product [formulated] DESIGNED or labeled to be applied to footwear or to other leather articles or components, to maintain, enhance, clean, protect or modify the appearance, durability, fit or flexibility of the footwear or leather article or component. Footwear includes both leather and nonleather foot apparel.**

**(ii) The term does not include the following:**

**(A) Fabric protectant.**

**(B) General purpose adhesive.**

**(C) Contact adhesive.**

**(D) Vinyl/fabric/leather/polycarbonate coating.**

**(E) Rubber and vinyl protectant.**

**(F) Fabric refresher.**

**(G) Products [formulated or labeled] USED solely for deodorizing.**

**(H) Sealant products with adhesive properties used to create external protective layers greater than 2 millimeters thick.**

*Fragrance*--A substance or complex mixture of aroma chemicals, natural essential oils and other functional components **with a combined vapor pressure not in excess of 2 mm of Mercury at 20° C**, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

**Furniture coating--A paint [formulated or labeled] DESIGNED for application to room furnishings, including cabinets (kitchen, bath and vanity), tables, chairs, beds and sofas.**

*Furniture maintenance product--*

(i) A wax, polish, conditioner or other product ~~{designed}~~ ~~[formulated or labeled]~~ for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors.

(ii) The term does not include ~~[dusting aids, products designed]~~ the following:

(A) Dusting aid.

(B) Wood cleaner.

(C) ~~Products [formulated or labeled]~~ DESIGNED solely for the purpose of cleaning ~~[and products designed].~~

(D) ~~Products [formulated or labeled]~~ DESIGNED to leave a permanent finish ~~[such as], including~~ stains, sanding sealers and lacquers.

*[Furniture coating--A paint designed for application to room furnishings, including cabinets (kitchen, bath and vanity), tables, chairs, beds and sofas.]*

*Gasket adhesive or thread locking adhesive remover--*

(i) A product [formulated] DESIGNED or labeled to remove gasket or thread locking adhesives.

(ii) The term includes products [formulated or] labeled for dual use as a paint stripper and gasket adhesive remover or thread locking adhesive remover.

\* \* \* \* \*

*General purpose adhesive---*A nonaerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ for use on a variety of substrates. The term does not include the following:

(i) Contact ~~[adhesives]~~ adhesive.

(ii) Construction, panel and floor covering ~~[adhesives]~~ adhesive.

(iii) Adhesives ~~{designed}~~ ~~[formulated or labeled]~~ exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers or vinyls).

(iv) Adhesives ~~{designed}~~ ~~[formulated or labeled]~~ exclusively for use on one specific category of articles (that is, articles that may be composed of different materials but

perform a specific function, such as gaskets, automotive trim, weather-stripping or carpets).

(v) Units of product that weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging.

General purpose adhesive remover--A product [formulated] DESIGNED or labeled to remove cyanoacrylate adhesives as well as nonreactive adhesives or residue from a variety of substrates.

(i) The term includes products that [are formulated or labeled to] remove the following:

(A) Thermoplastic adhesives.

(B) Pressure sensitive adhesives.

(C) Dextrine or starchbased adhesives.

(D) Casein glues.

(E) Rubber or latex-based adhesives.

(F) Stickers, decals, stencils or similar materials.

(ii) The term does not include floor and wall covering adhesive remover.

*General purpose cleaner--A product [designed] [formulated or labeled] for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations.*

(i) The term includes products [designed] [formulated or labeled] for general floor cleaning[, ] or kitchen or countertop cleaning and cleaners designed to be used on a variety of hard surfaces [and].

(ii) The term does not include general purpose [degreasers] degreaser and electronic [cleaners] cleaner.

*General purpose degreaser--*

(i) A product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(ii) The term does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(A) Sold exclusively to establishments that manufacture or construct goods or commodities.

(B) Labeled "not for retail sale."

(iii) Solvent cleaning tanks or related equipment including, but is not limited to:

(A) Cold cleaners.

(B) Vapor degreasers.

(C) Conveyorized degreasers.

(D) Film cleaning machines.

(E) Products designed to clean miscellaneous metallic parts by immersion in a container.]

A product [~~formulated or~~] labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(i) The term does not include the following:

(A) Engine degreaser.

(B) General purpose cleaner.

(C) Adhesive remover.

(D) Electrical cleaner.

(E) Electronic cleaner.

(F) Energized electrical cleaner.

(G) Metal polish/cleanser.

(H) Products used exclusively in solvent cleaning tanks or related equipment.

(I) Products that are labeled "not for retail sale" and are sold exclusively to establishments that manufacture or construct goods or commodities.

(ii) For the purposes of this definition, the term "solvent cleaning tanks or related equipment" includes the following:

(A) Cold cleaners.

(B) Vapor degreasers.

(C) ConveyORIZED degreasers.

(D) Film cleaning machines.

(E) Products ~~[formulated or labeled]~~ DESIGNED to clean miscellaneous metallic parts by immersion in a container.

*General-use hand or body cleaner or soap*--A cleaner or soap ~~[designed]~~ ~~[formulated or labeled]~~ to be used routinely on the skin to clean or remove typical or common dirt and soils.

(i) The term includes[, but is not limited to, hand] the following:

(A) Hand or body washes[, dual-purpose].

(B) Dual-purpose shampoo-body cleaners[, shower].

(C) Shower or bath gels [and moisturizing].

(D) Moisturizing cleaners or soaps.

(ii) The term does not include the following:

\* \* \* \* \*

*Glass cleaner*--A cleaning product ~~[designed]~~ ~~[formulated or labeled]~~ primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

*Graffiti remover*--A product ~~[formulated or]~~ labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish or shoe polish from a variety of noncloth or nonfabric substrates.

(i) The term does not include the following:

(A) Paint remover or stripper.

(B) Nail polish remover.

(C) Spot remover.

(ii) Products labeled for dual use as both a paint stripper and graffiti remover are considered "graffiti removers."

\* \* \* \* \*

*Hair mousse*--A hairstyling foam {designed} [~~formulated or labeled~~] to facilitate styling of a coiffure and provide limited holding power.

*Hair shine*--A product {designed} [~~formulated or labeled~~] for the primary purpose of creating a shine when applied to the hair.

(i) The term includes[, **but is not limited to,**] dual-use products {designed} [~~formulated or labeled~~] primarily to impart a sheen to the hair.

(ii) The term does not include the following:

[(i)] (A) Hair spray.

[(ii)] (B) Hair mousse.

(C) Hair styling product.

[(iii)] (D) Hair styling gel [or spray gel].

[(iv)] (E) Products whose primary purpose is to condition or hold the hair.

[*Hair styling gel*--A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.]

*Hair spray*--[A]

(i) For products manufactured before January 1, 2009, a consumer product {designed} [~~formulated or labeled~~] primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

(ii) For products manufactured on or after January 1, 2009, a consumer product that is applied to styled hair, and is [formulated] DESIGNED or labeled to provide sufficient rigidity, to hold, retain or finish the style of the hair for a period of time.

(iii) The term includes the following:

(A) Aerosol hair sprays.

(B) Pump hair sprays.

(C) Spray waxes.

(D) Color, glitter or sparkle hair sprays that make finishing claims.

(E) Products that are both a styling and finishing product.

(iv) The term does not include spray products that are intended to aid in styling but do not provide finishing of a hairstyle.

(v) For the purposes of this subchapter, the terms:

(A) "Finish" and "finishing" mean the maintaining or holding of previously styled hair for a period of time.

(B) "Style" and "styling" mean the forming, sculpting or manipulating of the hair to temporarily alter the hair's shape.

*Hair styling gel*--A consumer product manufactured before January 1, 2009, that is a high viscosity, often gelatinous, product that contains a resin and is [formulated or labeled] DESIGNED for the application to hair to aid in styling and sculpting of the hair coiffure.

*Hair styling product*--A consumer product manufactured on or after January 1, 2009, that is [formulated] DESIGNED or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling or sculpting of the hair.

(i) The term includes the following:

(A) Hair balm.

(B) Clay.

(C) Cream.

(D) Creme.

(E) Curl straightener.

(F) Gel.

(G) Liquid.

(H) Lotion.

(I) Paste.

(J) Pomade.

(K) Putty.

(L) Root lifter.

(M) Serum.

(N) Spray gel.

(O) Stick.

(P) Temporary hair straightener.

(Q) Wax.

(R) Spray products that aid in styling but do not provide finishing of a hairstyle.

(S) Leave-in volumizers, detanglers or conditioners that make styling claims.

(ii) The term does not include the following:

(A) Hair mousse.

(B) Hair shine.

(C) Hair spray.

(D) Shampoos or conditioners that are rinsed from the hair prior to styling.

(iii) For the purposes of this subchapter, the terms:

(A) "Finish" and "finishing" mean the maintaining or holding of previously styled hair for a period of time.

(B) "Style" and "styling" mean the forming, sculpting or manipulating of the hair to temporarily alter the hair's shape.

*Heavy-duty hand cleaner or soap*--A product {designed} ~~[formulated or labeled]~~ to clean or remove difficult dirt and soils [such as], including oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt or adhesives from the hand with or without the use of water. The term does not include the following:

\* \* \* \* \*

*Herbicide*--A pesticide product {designed} ~~[formulated or labeled]~~ to kill or retard a plant's growth, but excludes products that are:

\* \* \* \* \*

*High pressure laminate*--Sheet materials which consist of paper, fabric or other core material that have been laminated at temperatures exceeding 265° F, and at pressures between 1,000 and 1,400 psi.

*Highest sales*--The maximum 1-year gross Pennsylvania sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for a portion of the compliance period), as specified in the ACP agreement, or the current actual 1-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement.

*Highest VOC content*--The maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for a portion of the compliance period), as specified in the ACP agreement, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement, expressed as a percentage by weight.

*Household product*--A consumer product that is ~~[formulated or labeled]~~ primarily {designed} to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

*Insecticide*--A pesticide product that is {designed} ~~[formulated or labeled]~~ for use against insects or other arthropods, but excluding products that are:

\* \* \* \* \*

*Insecticide fogger*--An insecticide product ~~{designed}~~ ~~[formulated or labeled]~~ to release all or most of its content, as a fog or mist, into indoor areas during a single application.

*Institutional product or industrial and institutional (I&I) product*--

(i) A consumer product that is ~~{designed}~~ ~~[formulated or labeled]~~ for use in the maintenance or operation of an establishment that:

\* \* \* \* \*

(ii) The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

(iii) [Establishments include, but are not limited to,] For the purposes of this definition, the term "establishment" includes the following:

\* \* \* \* \*

**[(iii) The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.]**

~~[Lower] LVP content or lower vapor pressure [(LVP)] content~~--The total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed as a percentage to the nearest 0.1.

~~[Lower] LVP-VOC or lower vapor pressure [(LVP)-] VOC~~--

(i) A chemical compound or mixture that contains at least one carbon atom and meets one of the following:

\* \* \* \* \*

(B) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms **as verified by formulation data**, and the vapor pressure **[is] and boiling point are unknown**.

\* \* \* \* \*

*Laundry prewash*--A product that is ~~{designed}~~ ~~[formulated or labeled]~~ for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance, or both.

*Laundry starch product*--A product that is ~~[designed]~~ ~~[formulated or labeled]~~ for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and which may also act to help ease ironing of the fabric. The term includes[, but is not limited to,] fabric finish, sizing and starch.

*Lawn and garden insecticide*--An insecticide product ~~[designed]~~ ~~[formulated or]~~ labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of § 130.372 (relating to most restrictive limit), aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

*Liquid*--A substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90(2000)e1, including subsequent amendments. The term does not include powders or other materials that are composed entirely of solid particles.

*Lubricant*--A product ~~[designed]~~ ~~[formulated or labeled]~~ to reduce friction, heat, noise or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. The term does not include the following:

\* \* \* \* \*

(ii) Products ~~[formulated or labeled]~~ for use inside power generating motors, engines and turbines, and their associated power-transfer gearboxes.

(iii) Two cycle oils or other products ~~[designed]~~ ~~[formulated or labeled]~~ to be added to fuels.

(iv) Products ~~[formulated or labeled]~~ for use on the human body or animals.

\* \* \* \* \*

*Medicated astringent/medicated toner*--A product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores.

(i) The term includes[, but is not limited to, clarifiers and substrate-impregnated] the following:

(A) Clarifiers.

(B) Substrate-impregnated products.

(ii) The term does not include the following:

[(i)] (A) Hand, face or body cleaner or soap products.

[(ii)] (B) Astringent/toner.

[(iii)] (C) Cold cream.

[(iv)] (D) Lotion.

[(v)] (E) Antiperspirants.

[(vi)] (F) Products that must be purchased with a doctor's prescription.

*Metal polish/cleanser*--A product {designed} [~~formulated or labeled~~] primarily to improve the appearance of finished metal, metallic or metallized surfaces by physical or chemical action by removing or reducing stains, impurities or oxidation from surfaces or by making surfaces smooth and shiny.

(i) The term includes[, but is not limited to,] metal polishes used on [brass, silver, chrome, copper, stainless steel and other ornamental]:

(A) Brass.

(B) Silver.

(C) Chrome.

(D) Copper.

(E) Stainless steel.

(F) Ornamental metals.

(ii) The term does not include the following:

[(i)] (A) Automotive wax, polish, sealant or glaze.

[(ii)] (B) Wheel cleaner.

[(iii)] (C) Paint remover or stripper.

[(iv)] (D) Products {designed and} [~~formulated or~~] labeled exclusively for automotive and marine detailing.

[(v)] (E) Products {designed} [~~formulated or labeled~~] for use in degreasing tanks.

\* \* \* \* \*

*Multipurpose dry lubricant*--A lubricant which is:

(i) ~~{Designed and}~~ ~~[Formulated or]~~ labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly) or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces.

(ii) ~~{Designed}~~ ~~[Formulated or labeled]~~ for general purpose lubrication or for use in a wide variety of applications.

*Multipurpose lubricant*--A lubricant ~~{designed}~~ ~~[formulated or labeled]~~ for general purpose lubrication or for use in a wide variety of applications. The term does not include **the following**:

(i) Multipurpose dry ~~[lubricants]~~ **lubricant**.

(ii) ~~[Penetrants]~~ **Penetrant**.

(iii) Silicone-based multipurpose ~~[lubricants]~~ **lubricant**.

*Multipurpose solvent*--An organic liquid ~~{designed}~~ ~~[formulated or labeled]~~ to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials.

(i) The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories.

(ii) The term does not include ~~[solvents]~~ **the following**:

**(A) Solvents used in:**

**(i) (I)** Cold cleaners.

**(ii) (II)** Vapor degreasers.

**(iii) (III)** Conveyorized degreasers.

**(iv) (IV)** Film cleaning machines.

**(v) (B)** Solvents that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

*Nail polish*--A clear or colored coating ~~{designed}~~ ~~[formulated or labeled]~~ for application to the fingernails or toenails and including lacquers, enamels, acrylics, base coats and top coats.

*Nail polish remover*--A product ~~{designed}~~ ~~[formulated or labeled]~~ to remove nail polish and coatings from fingernails or toenails.

\* \* \* \* \*

*Nonresilient flooring*--Flooring of a mineral content that is not flexible, including the following:

\* \* \* \* \*

*Oven cleaner*--A cleaning product ~~{designed}~~ ~~[formulated or labeled]~~ to clean and to remove dried food deposits from oven walls.

*Paint*--A pigmented liquid or liquefiable or mastic composition ~~{designed}~~ ~~[formulated or labeled]~~ for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

*Paint remover or stripper*--A product ~~{designed}~~ ~~[formulated or labeled]~~ to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. The term does not include the following:

- (i) Multipurpose ~~[solvents]~~ solvent.

\* \* \* \* \*

- (iii) Products ~~{designed and}~~ ~~[formulated or]~~ labeled exclusively [to remove] as graffiti removers.

\* \* \* \* \*

*Penetrant*--A lubricant ~~{designed and}~~ ~~[formulated or]~~ labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation or other causes. The term does not include ~~[multi-purpose]~~ multipurpose lubricants that claim to have penetrating qualities, but are not ~~[formulated or]~~ labeled primarily to loosen bonded parts.

*Pennsylvania sales*--The sales (net pounds of product, less packaging and container, per year) in this Commonwealth for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, a consecutive 12-month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for this Commonwealth are not available, sales may be estimated by prorating National or regional sales data by population.

**Personal fragrance product--A product which is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor.**

**(i) The term includes the following:**

**(A) Cologne.**

**(B) Perfume.**

**(C) Aftershave.**

**(D) Toilet water.**

**(ii) The term does not include the following:**

**(A) Deodorant.**

**(B) Medicated products [~~formulated or labeled~~] DESIGNED primarily to alleviate fungal or bacterial growth on feet or other areas of the body.**

**(C) Mouthwashes, breath fresheners or deodorizers.**

**(D) Lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations.**

**(E) Products [~~formulated or labeled~~] DESIGNED exclusively for use on human genitalia.**

**(F) Soaps, shampoos and products [~~formulated or labeled~~] primarily [~~to be~~] used to clean the human body.**

**(G) Fragrance products [~~formulated or labeled~~] DESIGNED to be used exclusively on animals.**

*Pesticide*--A substance or mixture of substances [~~formulated or~~ labeled], **designed or intended**] for use in preventing, destroying, repelling or mitigating a pest, or a substance or mixture of substances [~~formulated or~~ labeled], **designed or intended**] for use as a defoliant, desiccant or plant regulator. The term does not include a substance, mixture of substances or device which the EPA does not consider to be a pesticide.

*[Pennsylvania sales*--The sales (net pounds of product, less packaging and container, per year) in this Commonwealth for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, a consecutive 12-month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for this Commonwealth is not available, sales may be estimated by prorating National or regional sales data by population.]

*Plasticizer*--A material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability or distensibility, and may be determined by using ASTM Method E260-91, **including subsequent amendments,** or from product formulation data.

*Pre-ACP VOC [Content] content*--The lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Department based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey or other accurate records available to the Department, whichever yields the lowest VOC content for the product, **expressed as a percentage.**

**Pressurized gas duster**--**A pressurized product [formulated or] labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces like photographs, photographic film negatives, computer keyboards and other types of surfaces that cannot be cleaned with solvents. The term does not include dusting aids.**

*Principal display panel or panels*--The parts of a label that **[is] are** so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all of the principal display panels.

\* \* \* \* \*

*Product category*--The applicable category that best describes the product as listed in this section **and in § 130.211.**

**Product form**--**For the purposes of complying with § 130.391 (relating to required reporting of information to the Department), the applicable form which most accurately describes the product's dispensing form, as follows:**

**(i) A = Aerosol product.**

**(ii) S = Solid.**

**(iii) P = Pump spray.**

**(iv) L = Liquid.**

**(v) SS = Semisolid.**

**(vi) O = Other.**

\* \* \* \* \*

*Rubber and vinyl protectant--*

(i) A product ~~{designed}~~ ~~[formulated or labeled]~~ to protect, preserve or renew vinyl, rubber and plastic on vehicles, tires, luggage, furniture and household products such as vinyl covers, clothing and accessories.

(ii) The term does not include products ~~[formulated or labeled]~~ primarily ~~{designed}~~ to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

\* \* \* \* \*

*Sealant and caulking compound--*A product with adhesive properties that is ~~{designed}~~ ~~[formulated or labeled]~~ to fill, seal, waterproof or weatherproof gaps or joints between two surfaces.

(i) The term does not include **the following**:

\* \* \* \* \*

(E) Floor seam ~~[sealers]~~ sealer.

(F) Products ~~{designed}~~ ~~[formulated or labeled]~~ exclusively for automotive uses.

\* \* \* \* \*

**[(ii) The term also does not include units] (H) Units** of product, less packaging, which weigh more than 1 pound and consist of more than 16 fluid ounces.

**[(iii) (ii)]** For the purposes of this definition only:

\* \* \* \* \*

*Shaving cream--*An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair. **The term does not include shaving gel.**

**Shaving gel--**An aerosol product which dispenses a post-foaming semisolid **designed to be used with a blade, cartridge razor or other shaving system in the removal of facial or other bodily hair. The term does not include shaving cream.**

*Shortfall--*The ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. The term does not include emissions occurring prior to the date that the ACP agreement **[approving an ACP]** is signed by the Department.

*Silicone-based multipurpose lubricant--*

(i) A lubricant which is:

(A) ~~{Designed and}~~ ~~[Formulated or]~~ labeled to provide lubricity primarily through the use of silicone compounds, including polydimethylsiloxane.

(B) ~~{Designed and}~~ ~~[Formulated or]~~ labeled for general purpose lubrication, or for use in a wide variety of applications.

(ii) The term does not include products ~~{designed and}~~ ~~[formulated or]~~ labeled exclusively to release manufactured products from molds.

\* \* \* \* \*

*Solid--*A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90(2000)e1, including subsequent amendments.

*Special purpose spray adhesive--*

(i) An aerosol adhesive that meets one or more of the following definitions:

(A) *Mounting adhesive.* An aerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ to permanently mount photographs, artwork and other drawn or printed media to a backing (paper, board, cloth, and the like) without causing discoloration to the artwork.

(B) *Flexible vinyl adhesive.* An aerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content.

(C) *Polystyrene foam adhesive.* An aerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ to bond polystyrene foam to substrates.

(D) *Automobile headliner adhesive.* An aerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ to bond together layers in motor vehicle headliners.

(E) *Polyolefin adhesive.* An aerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ to bond polyolefins to substrates.

(F) *Laminate repair/edgebanding adhesive.* An aerosol adhesive ~~{designed}~~ ~~[formulated or labeled]~~ for:

\* \* \* \* \*

(G) [*High pressure laminate*. Sheet materials which consist of paper, fabric or other core material that have been laminated at temperatures exceeding 265°F, and at pressures between 1,000 and 1,400 psi.

(H) [*Automotive engine compartment adhesive*. An aerosol adhesive {designed} ~~[formulated or labeled]~~ for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200--275°F.

*Specialty adhesive remover*--A product [formulated or labeled] DESIGNED to remove reactive adhesives from a variety of substrates.

(i) Reactive adhesives include adhesives that require a hardener or catalyst for the bond to occur. Reactive adhesives include the following:

(A) Epoxies.

(B) Urethanes.

(C) Silicones.

(ii) The term does not include gasket adhesive remover or thread locking adhesive remover.

*Spot remover*--A product {designed} ~~[formulated or labeled]~~ to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery and clothing, that does not require subsequent laundering to achieve stain removal. The term does not include the following:

\* \* \* \* \*

(iii) [*Carpet and upholstery cleaner*.

(iv)] Multipurpose solvent.

*Spray buff product*--A product {designed} ~~[formulated or labeled]~~ to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

\* \* \* \* \*

*Structural waterproof adhesive*--An adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A) [and MIL-A-4605 (Type A, Grade A and Grade C). This definition is as per the Federal Consumer Products Regulation in 40 CFR 59 Subpart C].

*Surplus reduction*--The ACP limit minus the ACP emissions when the ACP [**Limit**] **limit** was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in § 130.457 (relating to limited-use surplus reduction credits for early reformulations of ACP products), the term does not include emissions occurring prior to the date that the ACP agreement is signed by the Department.

\* \* \* \* \*

*TMHE--Total maximum historical emissions*--The total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

where,

(i) *MHE* =

$$\frac{(\text{Highest VOC } [\text{Content}] \text{ content} \times \text{Highest } [\text{Sales}] \text{ sales}) \times \text{Missing } [\text{Data Days}] \text{ data days}}{100 \times 365}$$

**[Highest VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement expressed as a percentage.**

**Highest Sales=the maximum 1-year gross Pennsylvania sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual 1-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.**

**Missing Data = the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.]**

(ii) 1, 2, . . . , N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement **[approving an ACP]**.

\* \* \* \* \*

*Tire sealant and inflation*--A pressurized product that is ~~{designed}~~ **[formulated or labeled]** to temporarily inflate and seal a leaking tire.

*Toilet/urinal care product*--**A product [formulated] DESIGNED or labeled to clean or to deodorize toilet bowls, toilet tanks or urinals.**

(i) The term "toilet/urinal care product" does not include the following:

(A) Bathroom and tile cleaner.

(B) General purpose cleaner.

(ii) For the purposes of this definition, the term "toilet bowls, toilet tanks or urinals" includes toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations and toilets or urinals in vehicles [such as] LIKE buses, recreational motor homes, boats, ships and aircraft.

\* \* \* \* \*

*Type B propellant*--A halocarbon which is used as a propellant, including the following:

\* \* \* \* \*

*Type C propellant*--A propellant which is not a Type A or Type B propellant, including **[propane, isobutane, n-butane and dimethyl] the following:**

(i) Propane.

(ii) Isobutane.

(iii) N-butane.

(iv) Dimethyl ether (also known as dimethyl oxide).

*Undercoating*--An aerosol product ~~{designed}~~ **[formulated or labeled]** to impart a protective, nonpaint layer to the undercarriage, trunk interior or firewall of motor vehicles to prevent the formation of rust or to deaden sound. The term includes[, but is not limited to,] rubberized, mastic or asphaltic products.

\* \* \* \* \*

Vinyl/fabric/leather/polycarbonate coating--A ~~coating formulated or~~ COATING DESIGNED AND labeled exclusively to coat vinyl, fabric, leather or polycarbonate substrates.

VOC-VOLATILE ORGANIC COMPOUND-AN ORGANIC COMPOUND WHICH PARTICIPATES IN ATMOSPHERIC PHOTOCHEMICAL REACTIONS; THAT IS, AN ORGANIC COMPOUND OTHER THAN THOSE WHICH THE ADMINISTRATOR OF THE EPA DESIGNATES IN 40 CFR 51.100 (RELATING TO DEFINITIONS) AS HAVING NEGLIGIBLE PHOTOCHEMICAL REACTIVITY.

VOC content--

(i) Except for charcoal lighter **material** products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined under § 130.431 (relating to testing for compliance).

(ii) For charcoal lighter material products only,

$$\text{VOC [Content] content (percent)} = \frac{(\text{Certified [Emissions] emissions} \times 100)}{\text{Certified [Use Rate] use rate}}$$

[Certified Emissions = the emissions level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

Certified Use Rate = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start.]

Wasp and hornet insecticide--An insecticide product that is ~~designed~~ formulated or labeled for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

Waterproofer--A product ~~designed~~ formulated or labeled labeled exclusively to repel water from fabric or leather substrates. The term does not include fabric protectants protectant.

*Wax*--A material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high molecular weight polymers (plastics). The term includes **the following**:

\* \* \* \* \*

(ii) Substances of a mineral origin such as ozocerite and paraffin[, **and synthetic**].

**(iii) Synthetic** polymers such as polyethylene.

\* \* \* \* \*

**Wood cleaner**--

**(i) A product labeled to clean wooden materials including the following:**

**(A) Decking.**

**(B) Fences.**

**(C) Flooring.**

**(D) Logs.**

**(E) Cabinetry.**

**(F) Furniture.**

**(ii) The term does not include the following:**

**(A) Dusting aid.**

**(B) General purpose cleaner.**

**(C) Furniture maintenance product.**

**(D) Floor wax stripper.**

**(E) Floor polish or wax.**

**(F) Products [~~formulated or~~] DESIGNED AND labeled exclusively to preserve or color wood.**

*Wood floor wax*--Wax-based products [~~formulated or labeled~~] for use solely on wood floors.

\* \* \* \* \*

## STANDARDS

### § 130.211. Table of standards.

Except as provided in §§ 130.331--~~130.337~~ 130.338, 130.351, 130.352, 130.411--130.414 and 130.451--130.464, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth a consumer product manufactured on or after **[January 1, 2005,] the applicable effective date in the following table of standards** which contains VOCs in excess of the limits specified in the following table of standards:

Table of Standards  
(percent VOC by weight)

Product Category	Effective Date 1/1/2005	<i>Effective Date</i> <u>1/1/2009</u>
<b>[Adhesives] Adhesive</b>		
Aerosol:		
Mist Spray	65	
Web Spray	55	
Special Purpose Spray <b>[Adhesives] Adhesive:</b>		
Mounting, Automotive Engine Compartment[, ] and Flexible Vinyl	70	
Polystyrene Foam and Automotive Headliner	65	
Polyolefin and Laminate Repair/Edgebanding	60	
<b><u>Construction, Panel and Floor Covering</u></b>	<b><u>15</u></b>	
Contact	80	<u>NA</u>
<b>[Construction, Panel and Floor Covering</b>	<b>15]</b>	
<b><u>Contact Adhesive-General Purpose</u></b>		<b><u>55</u></b>
<b><u>Contact Adhesive-Special Purpose</u></b>		<b><u>80</u></b>
General Purpose	10	
Structural Waterproof	15	
<b><u>Adhesive Remover</u></b>		
<b><u>Floor and Wall Covering</u></b>		<b><u>5</u></b>
<b><u>Gasket or Thread Locking</u></b>		<b><u>50</u></b>
<b><u>General Purpose</u></b>		<b><u>20</u></b>
<b><u>Specialty</u></b>		<b><u>70</u></b>
<b><u>Aerosol Cooking Spray</u></b>	<b><u>18</u></b>	

Air [ <b>Fresheners</b> ] <b>Freshener</b>		
Single-Phase [ <b>Aerosols</b> ] <b>Aerosol</b>		30
Double-Phase [ <b>Aerosols</b> ] <b>Aerosol</b>		25
[ <b>Liquids</b> ] <b>Liquid</b> /Pump [ <b>Sprays</b> ] <b>Spray</b>		18
[ <b>Solids</b> ] <b>SOLID</b> /Semisolid [ <b>Gels</b> ]		3
[ <b>Antiperspirants</b> ] <b>Antiperspirant</b>		
Aerosol		40 HVOC 10 MVOC
Nonaerosol		0 HVOC 0 MVOC
<b><u>Antistatic Product</u></b>		
<b><u>Nonaerosol</u></b>		<b>11</b>
Automotive Brake [ <b>Cleaners</b> ] <b>Cleaner</b>		45
Automotive Rubbing or Polishing Compound		17
Automotive Wax, Polish, Sealant or Glaze		
Hard Paste [ <b>Waxes</b> ] <b>Wax</b>		45
Instant [ <b>Detailers</b> ] <b>Detailer</b>		3
All Other Forms		15
Automotive Windshield Washer Fluids		35
Bathroom and Tile [ <b>Cleaners</b> ] <b>Cleaner</b>		
[ <b>Aerosols</b> ] <b>Aerosol</b>		7
All Other Forms		5
Bug and Tar Remover		40
Carburetor or Fuel-Injection Air Intake [ <b>Cleaners</b> ] <b>Cleaner</b>		45
Carpet and Upholstery [ <b>Cleaners</b> ] <b>Cleaner</b>		
[ <b>Aerosols</b> ] <b>Aerosol</b>		7
[ <b>Nonaerosols</b> ] <b>Nonaerosol</b> (Dilutables)		0.1
[ <b>Nonaerosols</b> ] <b>Nonaerosol</b> (Ready-to-Use)		3.0
Charcoal Lighter Material		See § 130.214
[ <b>Cooking Spray Aerosols</b> ]		<b>18]</b>
[ <b>Deodorants</b> ] <b>Deodorant</b>		
Aerosol		0 HVOC 10 MVOC
Nonaerosol		0 HVOC 0 MVOC
Dusting [ <b>Aids</b> ] <b>Aid</b>		

<u>[Aerosols] Aerosol</u>	25	
All Other Forms	7	
<u>Electrical Cleaner</u>		<u>45</u>
<u>Electronic Cleaner</u>		<u>75</u>
Engine <u>[Degreasers] Degreaser</u>		
Aerosol	35	
Nonaerosol	4	
Fabric <u>[Protectants] Protectant</u>	60	
<u>Fabric Refresher</u>		
<u>Aerosol</u>		<u>15</u>
<u>Nonaerosol</u>		<u>6</u>
Floor <u>[Polishes/Waxes] Polish or Wax</u>		
Products for Flexible Flooring <u>[Materials] Material</u>	7	
Products for Nonresilient Flooring	10	
Wood Floor Wax	90	
Floor Wax <u>[Strippers] Stripper</u>		
Nonaerosol	See	
	§ 130.216	
<u>Footwear or Leather Care Product</u>		
<u>Aerosol</u>		<u>75</u>
<u>All Other Forms</u>		<u>15</u>
<u>Solid</u>		<u>55</u>
Furniture Maintenance <u>[Products] Product</u>		
<u>[Aerosols] Aerosol</u>	17	
All Other Forms Except Solid or Paste	7	
General Purpose <u>[Cleaners] Cleaner</u>		
<u>[Aerosols] Aerosol</u>	10	
<u>[Nonaerosols] Nonaerosol</u>	4	
General Purpose <u>[Degreasers] Degreaser</u>		
<u>[Aerosols] Aerosol</u>	50	
<u>[Nonaerosols] Nonaerosol</u>	4	
Glass <u>[Cleaners] Cleaner</u>		
<u>[Aerosols] Aerosol</u>	12	
<u>[Nonaerosols] Nonaerosol</u>	4	
<u>Graffiti Remover</u>		
<u>Aerosol</u>		<u>50</u>
<u>Nonaerosol</u>		<u>30</u>

Hair [ <b>Mousses</b> ] <b>Mousse</b>	6	
[ <b>Hairshines</b> ] <b>Hair Shine</b>	55	
[ <b>Hairsprays</b> ] <b>Hair Spray</b>	55	
Hair Styling [ <b>Gels</b> ] <b>Gel</b>	6	
<b>Hair Styling Product</b>		
<u><b>Aerosol and Pump Spray</b></u>		<u>6</u>
<u><b>All Other Forms</b></u>		<u>2</u>
Heavy-Duty Hand Cleaner or Soap	8	
[ <b>Insecticides</b> ] <b>Insecticide</b>		
Crawling Bug (Aerosol)	15	
Crawling Bug ([ <b>all other forms</b> ] <b>All Other Forms</b> )	20	
Flea and Tick	25	
Flying Bug (Aerosol)	25	
Flying Bug ([ <b>all other forms</b> ] <b>All Other Forms</b> )	35	
[ <b>Foggers</b> ] <b>Fogger</b>	45	
Lawn and Garden ([ <b>all other forms</b> ] <b>All Other Forms</b> )	20	
Lawn and Garden (Nonaerosol)	3	
Wasp and Hornet	40	
Laundry Prewash		
[ <b>Aerosols/Solids</b> ] <b>Aerosol/Solid</b>	22	
All Other Forms	5	
Laundry Starch [ <b>Products</b> ] <b>Product</b>	5	
Metal [ <b>Polishes/Cleaners</b> ] <b>Polish/Cleanser</b>	30	
Multipurpose Lubricant (Excluding Solid or Semisolid Products)	50	
Nail Polish Remover	75	
Nonselective Terrestrial Herbicide		
[ <b>Nonaerosols</b> ] <b>Nonaerosol</b>	3	
Oven [ <b>Cleaners</b> ] <b>Cleaner</b>		
[ <b>Aerosols</b> ] <b>Aerosol/Pump</b> [ <b>Sprays</b> ] <b>Spray</b>	8	
[ <b>Liquids</b> ] <b>Liquid</b>	5	
Paint Remover or [ <b>Strippers</b> ] <b>Stripper</b>	50	
[ <b>Penetrants</b> ] <b>Penetrant</b>	50	
Rubber and Vinyl [ <b>Protectants</b> ] <b>Protectant</b>		
<u><b>Aerosol</b></u>		<u>10</u>
[ <b>Nonaerosols</b> ] <b>Nonaerosol</b>	3	

[Aerosols]	10]	
[Sealants] <u>Sealant</u> and Caulking [Compounds]	4	
<u>Compound</u>		
Shaving [Creams] <u>Cream</u>	5	
<u>Shaving Gel</u>		7
Silicone-Based Multipurpose [Lubricants] <u>Lubricant</u>	60	
(Excluding Solid or Semisolid Products)		
Spot [Removers] <u>Remover</u>		
[Aerosols] <u>Aerosol</u>	25	
[Nonaerosols] <u>Nonaerosol</u>	8	
Tire [Sealants] <u>Sealant</u> and [Inflators] <u>Inflation</u>	20	
<u>Toilet/Urinal Care</u>		
<u>Aerosol</u>		10
<u>Nonaerosol</u>		3
[Undercoatings] <u>Undercoating</u>		
[Aerosols] <u>Aerosol</u>	40	
<u>Wood Cleaner</u>		
<u>Aerosol</u>		17
<u>Nonaerosol</u>		4

**Notes: NA = Not applicable on or after January 1, 2009.**

**§ 130.213. Products registered under FIFRA.**

For those consumer products that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136--136y), the **applicable** effective date of the VOC standards specified in the Table of Standards is 1 year after the date specified in § 130.211 (relating to table of standards).

**§ 130.214. Requirements for charcoal lighter [materials] material products.**

The following requirements apply to charcoal lighter material products as defined in § 130.202 (relating to definitions).

(1) *Regulatory standards.* A person may not sell, supply or offer for sale after January 1, 2005, a charcoal lighter material product unless at the time of the transaction:

\* \* \* \* \*

(ii) The manufacturer or distributor of the charcoal lighter material **PRODUCT** has been issued a currently effective certification under paragraph (2).

(iii) The charcoal lighter material **PRODUCT** meets the formulation criteria and other conditions specified in the applicable ACP agreement issued under paragraph (2).

(iv) The product usage directions for the charcoal lighter material **PRODUCT** are the same as those provided to the Commonwealth under paragraph (2)(iii).

(2) *Certification requirements.*

(i) A charcoal lighter material **product** formulation will not be certified under this ~~[subsection]~~ **PARAGRAPH** unless the applicant for certification demonstrates to the Department's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material **product** are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (South Coast Air Quality Management District Rule 1174 Testing Protocol), **including subsequent amendments**. The provisions relating to LVP-VOC in § 130.333 (relating to LVP-VOC) do not apply to a charcoal lighter material **product** subject to the requirements of this section and § 130.211 (relating to table of standards).

\* \* \* \* \*

(iii) A manufacturer or distributor of charcoal lighter material **PRODUCTS** may apply to the Department for certification of a charcoal lighter material **PRODUCT** formulation.

(3) *Notice of modifications.* For a charcoal lighter material **PRODUCT** for which certification has been granted the applicant for certification shall notify the Department in writing within 30 days of:

\* \* \* \* \*

(4) *Revocation of certification.* If the Department determines that a certified charcoal lighter material **PRODUCT** formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol and the statistical analysis procedures contained therein, the Department will revoke or modify the certification as is necessary to assure that the charcoal lighter material **PRODUCT** will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

**§ 130.215. Requirements for aerosol adhesives.**

(a) ~~[As specified in CCR Section 41712(h)(2), the]~~ **THE** standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial and commercial uses. Except as otherwise provided in §§ 130.331--~~[130.337]~~ **130.338**, 130.351 and 130.352 and 130.411--130.414, a person may not sell, supply, offer for sale,

use or manufacture for sale in this Commonwealth an aerosol adhesive which, at the time of sale, use or manufacture, contains VOCs in excess of the specified standard.

(b) For a special purpose spray adhesive:

(1) To qualify as a special purpose spray adhesive, the product must meet **[one or more of the definitions specified] the definition of the term "special purpose spray adhesive"** in § 130.202 (relating to definitions), but if the product label indicates that the product is suitable for use on a substrate or application not listed in **[§ 130.202] the definition of the term "special purpose spray adhesive,"** the product will be classified as either a "web spray adhesive" or a "mist spray adhesive."

\* \* \* \* \*

**§ 130.217. Sell-through of products.**

**(a) Sell-through period. Notwithstanding the provisions of § 130.211 (relating to table of standards) or § 130.215 (relating to requirements for aerosol adhesives), a consumer product manufactured prior to the applicable effective date in § 130.211 may be sold, supplied or offered for sale after the applicable effective date.**

**(b) This section does not apply to a consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating the date, in accordance with § 130.371 (relating to product dating requirements).**

**EXEMPTIONS**

**§ 130.331. Products for shipment and use outside this Commonwealth.**

\* \* \* \* \*

(b) This subchapter does not apply to a **[manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a]** consumer product that does not comply with the VOC standards specified in § 130.211 (relating to table of standards), as long as the manufacturer or distributor **of the noncomplying consumer product** can demonstrate both that the **noncomplying** consumer product is intended for shipment and use outside of this Commonwealth, and that the manufacturer or distributor has taken **[reasonable] reasonably** prudent precautions to assure that the **noncomplying** consumer product is not distributed in this Commonwealth.

**§ 130.332. Antiperspirants and deodorants.**

\* \* \* \* \*

(b) The VOC limits specified in § 130.211 [do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product and] do not apply to colorants up to a combined level of 2% by weight contained in an antiperspirant or deodorant.

\* \* \* \* \*

**§ 130.334. Products registered under FIFRA.**

(A) The requirements of § 130.371 (relating to [code-dating] product dating) do not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136--136y).

**(B) THE VOC LIMITS SPECIFIED IN § 130.211 (RELATING TO TABLE OF STANDARDS) DO NOT APPLY TO INSECTICIDES CONTAINING AT LEAST 98% PARADICHLOROBENZENE.**

**§ 130.335. Air fresheners.**

~~[(a)]~~ The VOC limits specified in § 130.211 (relating to table of standards) do not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs [under § 130.202 (relating to definitions)] or exempted under [this section] § 130.333 (relating to LVP-VOC).

~~[(b) The VOC limits specified in § 130.211 do not apply to] [air fresheners and] [insecticides containing at least 98% paradichlorobenzene.]~~

**§ 130.338. Fragrances.**

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product.

**ADMINISTRATIVE REQUIREMENTS**

**§ 130.371. [Code-dating] Product dating.**

**(a) [Code-dating] Product dating requirements.**

(1) Each manufacturer of a consumer product subject to §§ 130.211--[130.216] 130.217 (relating to standards) shall clearly display on each consumer product container or package, the day, month and year on which the product was manufactured, or a code indicating that date.

(2) A manufacturer who uses the following code to indicate the date of manufacture will not be subject to the requirements of subsection (b)(1), if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where,

YY = two digits representing the year in which the product was manufactured

DDD = three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (that is, the "Julian date").

(3) The product date or DATE-code required by this section must be displayed on each consumer product container or package [no later than 12 months prior to the effective date of the applicable standard specified in § 130.211 (relating to table of standards)] BEFORE THE CONSUMER PRODUCT IS SOLD, SUPPLIED OR OFFERED FOR SALE IN THIS COMMONWEALTH.

(4) The date or date-code information [shall] must be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without irreversibly disassembling a part of the container or packaging. [This date or code shall be displayed on each consumer product container or package no later than January 1, 2004.]

(5) For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(6) The requirements of this subsection do not apply to products containing [no] either of the following:

(i) No VOCs [as defined in § 130.202 (relating to definitions), or containing].

(ii) VOCs at 0.10% by weight or less.

(b) [Explanation of code] Additional product dating requirements.

(1) If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to §§ 130.211--[130.216] 130.217, an explanation of the date portion of the code [shall] must be filed with the Department [no later than 12 months prior to the effective date of the applicable standard specified in § 130.211] BEFORE THE

**CONSUMER PRODUCT IS SOLD, SUPPLIED OR OFFERED FOR SALE IN THIS COMMONWEALTH.**

**(2) If a manufacturer changes a code indicating the date of manufacture for a consumer product subject to paragraph (1), an explanation of the modified code must be submitted to the Department before products displaying the modified code are sold, supplied or offered for sale in this Commonwealth.**

**(3) A person may not erase, alter, deface or otherwise remove or make illegible a date or code indicating the date of manufacture from a regulated product container without the express authorization of the manufacturer.**

**(4) Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.**

§ 130.372. Most restrictive limit.

**(a) Products manufactured before January 1, 2009, and FIFRA-registered insecticides manufactured before January 1, 2010.**

**(1) Notwithstanding the definition of "product category" in § 130.202 (relating to definitions), if on the principal display panel of a consumer product **manufactured before January 1, 2009, or a FIFRA-registered insecticide manufactured before January 1, 2010**, a representation is made that the product may be used [as], or is suitable for use, as a consumer product for which a lower VOC limit is specified in § 130.211 (relating to table of standards), the lowest VOC limit applies.**

**(2) [This] The requirement of paragraph (1) does not apply to general purpose cleaners [and], antiperspirant/deodorant products **or insecticide foggers**.**

**(b) Products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.**

**(1) Notwithstanding the definition of "product category" in § 130.202, if on the container or packaging of a consumer product **manufactured on or after January 1, 2009, or a FIFRA-registered insecticide manufactured on or after January 1, 2010**, or on a sticker or label affixed to the container or packaging, a representation is made that the product may be used, or is suitable for use, as a consumer product for which a lower VOC limit is specified in § 130.211, the lowest VOC limit applies.**

**(2) The requirement of paragraph (1) does not apply to general purpose cleaners, antiperspirant/deodorant products **or insecticide foggers**.**

§ 130.373. Additional labeling requirements for aerosol **[adhesives] adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products.**

(a) In addition to the requirements specified in §§ 130.371, 130.372, 130.391 and 130.392, both the manufacturer and responsible party for each aerosol adhesive, **electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive** product subject to this subchapter shall ensure that all products clearly display the following information on each product container which is manufactured on or after **[January 1, 2005] the applicable effective date for the category specified in § 130.211 (relating to table of standards):**

(1) The **[aerosol adhesive] product** category as specified in § 130.211 **[(relating to table of standards)]** or an abbreviation of the category shall be displayed.

(2) The applicable VOC standard for the product that is specified in § 130.211, **except for energized electrical cleaner products**, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Department, as provided in §§ 130.451--130.465 (relating to ACP for consumer products).

\* \* \* \* \*

(b) The information required in § 130.371(a) (relating to **[code-dating] product dating requirements**) shall be displayed on the product container so that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

## VARIANCES

### § 130.411. Application for variance.

(a) A person who cannot comply with §§ 130.211--[**130.216**] **130.217** (relating to standards), because of extraordinary reasons beyond the person's control, may apply in writing to the Department for a variance. The variance application must set forth:

\* \* \* \* \*

(b) No later than 75 days after receipt of a complete variance application containing the information required in subsection (a), the Department will hold a public hearing in accordance with § 130.471 (relating to public hearings) to determine:

(1) Whether a variance from the requirements in §§ 130.211--[**130.216**] **130.217** is necessary.

(2) Under what conditions a variance from the requirements in §§ 130.211--[**130.216**] **130.217** is necessary.

(3) To what extent a variance from the requirements in §§ 130.211--~~[130.216]~~ 130.217 is necessary.

(c) The Department will not grant a variance unless the applicant demonstrates in writing the following to the Department's satisfaction:

(1) That because of reasons beyond the reasonable control of the applicant, requiring compliance with §§ 130.211--~~[130.216]~~ 130.217 would result in extraordinary economic hardship.

\* \* \* \* \*

**§ 130.412. Variance orders.**

A variance order will specify a final compliance date by which the requirements of §§ 130.211--~~[130.216]~~ 130.217 (relating to standards) will be achieved. A variance order will contain a condition that specifies increments of progress necessary to assure timely compliance, and other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary.

**§ 130.414. Modification of variance.**

Upon the application of a person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 130.211--~~[130.216]~~ 130.217 (relating to standards) after holding a public hearing in accordance with § 130.471 (relating to public hearings).

**TEST METHODS**

**§ 130.431. Testing for compliance.**

(a) Testing to determine compliance with this subchapter shall be performed by one of the following:

(1) Using CARB Method 310, "*Determination of Volatile Organic Compounds (VOC) in Consumer Products*," adopted September 25, 1997, and as last amended on [September 3, 1999] May 5, 2005, including subsequent amendments.

(2) Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon written approval of the Department.

(3) Calculation of the VOC content from records of the amounts of constituents used to make the product under the following criteria:

\* \* \* \* \*

(ii) For the purposes of this section, the VOC content (expressed as a percentage) shall be calculated according to the following equation:

$$\text{VOC [Content] content} = \frac{(B - C)}{A} \times 100$$

where,

A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit.

C = total weight of VOCs exempted under §§ 130.331--~~[130.337]~~ 130.338, 130.351 and 130.352 per unit

\* \* \* \* \*

(b) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 ~~[(May 25, 1990)]~~ (2000)e1, including subsequent amendments.

(c) Testing to determine compliance with the certification requirements for charcoal lighter material products shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including subsequent amendments.

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials products shall be performed using ASTM D86-~~[90]04b~~, [(September 28, 1990)] including subsequent amendments.

\* \* \* \* \*

## ACP FOR CONSUMER PRODUCTS

### § 130.452. Exemption.

A manufacturer of consumer products which has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB ACP agreement remains in effect provided that all ACP ~~[Products]~~ products within the CARB ACP agreement are contained in § 130.211. A manufacturer claiming such an ACP agreement on this basis shall submit to the Department a copy of the CARB ACP decision (that is, the Executive Order), including the conditions established by CARB applicable to the exemption.

### § 130.453. Request for exemption.

(a) Manufacturers of consumer products that have been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, sections 94540--94555, of Title 17 of the CCR based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP agreement with the Department.

\* \* \* \* \*

**§ 130.454. Application for an ACP.**

A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, sections 94540--94555, of Title 17 of the CCR based on California specific data, or that has not been granted an exemption by the CARB may seek an ACP agreement by submitting an application. The application shall:

\* \* \* \* \*

(8) Contain an operational plan covering the products identified under this section for each compliance period that the ACP will be in effect. This plan **[shall] must**:

(i) Identify the compliance periods and dates for the responsible ACP party to report the information required by the Department in the ACP agreement **[approving an ACP]**. The length of the compliance period chosen by the responsible ACP party **[shall] may** be no longer than 365 days.

\* \* \* \* \*

**§ 130.455. Recordkeeping and availability of requested information.**

(a) Information specified in the ACP agreement **[approving an ACP]** shall be maintained by the responsible ACP party for at least 3 years after the records are generated. The records shall be clearly legible and maintained in good condition during this period.

\* \* \* \* \*

**§ 130.457. Limited-use surplus reduction credits for early reformulations of ACP products.**

\* \* \* \* \*

(c) Surplus reduction credits issued under this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

SR =

$$\frac{\text{Enforceable [Sales] sales} \times ((\text{VOC [Content] content})_{\text{initial}} - (\text{VOC [Content] content})_{\text{final}})}{100}$$

100

where,

SR = surplus reductions for the ACP product, expressed to the nearest pound

**[Enforceable Sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product,]**

VOC [Content] content<sub>initial</sub> = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in § 130.211, whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product[.,].

VOC [Content] content<sub>final</sub> = the VOC [Content] content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product.

(d) The use of surplus reduction credits issued under this section shall be subject to the following:

(1) Surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls generated during the first compliance period occurring immediately after the issuance of the ACP agreement [**approving an ACP**], and may not be used for another purpose.

\* \* \* \* \*

#### § 130.458. Reconciliation of shortfalls.

(a) At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period, as specified in the ACP agreement [**approving the ACP**]. Upon receipt of this information, the Department will determine the amount of a shortfall that has occurred during the compliance period, and notify the responsible ACP party of this determination.

(b) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement [**approving the ACP**], within 30 working days from the date of written notification of a shortfall by the Department.

(c) Shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP agreement [**approving the ACP**].

(d) The requirements specified in the ACP agreement [**approving an ACP**], including the applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

**§ 130.460. Modifications that require Department preapproval.**

The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement [**approving the ACP**]. Proposed modifications shall be fully described in writing and forwarded to the Department. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this subchapter. The responsible ACP party shall meet all applicable requirements of the existing ACP until a proposed modification is approved in writing by the Department.

**§ 130.462. Modification of an ACP by the Department.**

(a) The Department will modify the ACP as necessary to ensure that the ACP meets the requirements of this subchapter and that the ACP emissions will not exceed the ACP limit if the Department determines one of the following:

\* \* \* \* \*

(3) The ACP emissions are exceeding the ACP [**Limit**] limit specified in the ACP agreement.

\* \* \* \* \*

(c) If an applicable VOC standard specified in § 130.211 (relating to table of standards) is modified by CARB in a future rulemaking, the Department will modify the ACP limit specified in the ACP agreement [**approving an ACP**] to reflect the modified ACP VOC standards as of its effective date.

**§ 130.465. Other applicable requirements.**

A responsible ACP party may transfer an ACP to another responsible ACP party, provided that the following conditions are met:

\* \* \* \* \*

(2) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with the requirements of the ACP agreement [approving the ACP] and this subchapter.

## PUBLIC HEARING REQUIREMENTS

### § 130.471. Public hearings.

(a) Prior to issuance, extension, modification or revocation of a variance order or an ACP, the Department will hold [a hearing] three public hearings to take public comment on the application for a variance or on the proposed extension, modification or revocation of a variance order. The public hearings will be held in the eastern, central and western parts of the Commonwealth.

(b) The applicant shall publish notice of the time, place and purpose of the three public hearings in newspapers of general circulation at least 30 days prior to the hearings.

(c) The Department will publish notice of the time, place and purpose of the [hearing] three public hearings in [a local newspaper of general circulation and] the *Pennsylvania Bulletin* [not less than] at least 30 days prior to the [hearing] hearings.

[(c) ] (d) At least 30 days prior to the [hearing] hearings, the Department will make available [the] to the public the following:

(1) The application for the variance or ACP [and the] or, if the hearings are for an extension, modification or revocation, the variance or ACP order.

(2) The proposed order for issuing, extending, modifying or revoking the variance or ACP.

## CHAPTER 130. STANDARDS FOR PRODUCTS

### Subchapter C. ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

### § 130.602. Definitions.

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

\* \* \* \* \*

*VOC—Volatile organic compound*—~~[For the purposes of this subchapter, the term means any volatile compound containing at least one atom of carbon, excluding~~

~~carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate, and:~~

~~(i) Excluding the following:~~

~~(A) Methane.~~

~~(B) Methylene chloride (dichloromethane).~~

~~(C) 1,1,1-trichloroethane (methyl chloroform).~~

~~(D) Trichlorofluoromethane (CFC-11).~~

~~(E) Dichlorodifluoromethane (CFC-12).~~

~~(F) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113).~~

~~(G) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114).~~

~~(H) Chloropentafluoroethane (CFC-115).~~

~~(I) Chlorodifluoromethane (HCFC-22).~~

~~(J) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123).~~

~~(K) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124).~~

~~(L) 1,1-dichloro-1-fluoroethane (HCFC-141b).~~

~~(M) 1-chloro-1,1-difluoroethane (HCFC-142b).~~

~~(N) Trifluoromethane (HFC-23).~~

~~(O) Pentafluoroethane (HFC-125).~~

~~(P) 1,1,2,2-tetrafluoroethane (HFC-134).~~

~~(Q) 1,1,1,2-tetrafluoroethane (HFC-134a).~~

~~(R) 1,1,1-trifluoroethane (HFC-143a).~~

~~(S) 1,1-difluoroethane (HFC-152a).~~

~~(T) Cyclic, branched or linear, completely methylated siloxanes.~~

~~(ii) Excluding the following classes of perfluorocarbons:~~

- ~~— (A) Cyclic, branched or linear, completely fluorinated alkanes.~~
- ~~— (B) Cyclic, branched or linear, completely fluorinated ethers with no unsaturations.~~
- ~~— (C) Cyclic, branched or linear, completely fluorinated tertiary amines with no unsaturations.~~
- ~~— (D) Sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds only to carbon and fluorine.~~
- ~~— (iii) Excluding the following low-reactive organic compounds which have been exempted by the United States EPA:~~
  - ~~— (A) Acetone.~~
  - ~~— (B) Ethane.~~
  - ~~— (C) Parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).~~
  - ~~— (D) Perchloroethylene.~~
  - ~~— (E) Methyl acetate.] AN ORGANIC COMPOUND WHICH PARTICIPATES IN ATMOSPHERIC PHOTOCHEMICAL REACTIONS; THAT IS, AN ORGANIC COMPOUND OTHER THAN THOSE WHICH THE ADMINISTRATOR OF THE EPA DESIGNATES IN 40 CFR 51.100 (RELATING TO DEFINITIONS) AS HAVING NEGLIGIBLE PHOTOCHEMICAL REACTIVITY.~~

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PENNSYLVANIA  
CONSUMER PRODUCTS

*25 Pa. Code* Chapter 130, Subchapter B (relating to  
consumer products) and Subchapter C (relating to  
architectural and industrial maintenance coatings)

*37 Pa.B.* 5117 (September 15, 2007)

Environmental Quality Board Regulation #7-416  
(Independent Regulatory Review Commission #2636)

Comment/Response Document

## Pennsylvania Consumer Products

On September 15, 2007, the Environmental Quality Board (Board, EQB) published a notice of public hearing and comment period on a proposed rulemaking concerning revisions to 25 *Pa. Code* Chapter 130, Subchapter B to implement additional control measures for the consumer products category (37 *Pa.B.* 5117). The Board subsequently amended this notice by announcing revised dates for the public comment period and public hearings for this proposed rulemaking, first on October 6, 2007, at 37 *Pa.B.* 5379 and then on October 27, 2007, at 37 *Pa.B.* 5799. The public comment period closed on December 26, 2007.

Three public hearings were held on the proposed rulemaking as follows:

November 26, 2007 1 p.m. Department of Environmental Protection  
Rachel Carson State Office Building  
Room 105  
400 Market Street  
Harrisburg, PA 17105

November 26, 2007 1 p.m. Department of Environmental Protection  
Southeast Regional Office  
Delaware River Conference Room  
2 East Main Street  
Norristown, PA 19401

November 26, 2007 1 p.m. Department of Environmental Protection  
Southwest Regional Office  
Waterfront A & B Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222

This document summarizes the testimony received during the public hearings and the written comments received from the public during the public comment period. Each public comment is provided with the identifying commentator number for each commentator that made that comment. A list of the commentators, including name, affiliation (if any), and location, can be found at the beginning of this document. In addition, the comments received from the Independent Regulatory Review Commission (IRRC) are summarized and responses provided.

The Board invited each commentator to prepare a one-page summary of the commentator's comments. One one-page summary was submitted for this rulemaking.

**Table of Commentators for the Environmental Quality Board**  
**Consumer Products Rulemaking #7-416**  
**(IRRC #2636)**

<b>ID</b>	<b>Name/Address</b>	<b>Submitted one page Summary for distribution to EQB</b>	<b>Provided Testimony</b>	<b>Requested Copy of Final Rulemaking following EQB Action</b>
1.	Daniel B. Pourreau, Ph.D. Technical Adviser Lyondell Chemical Company Newtown Square, PA 19073		√	√
2.	David F. Darling, P.E. Director, Environmental Affairs National Paint and Coatings Association (NPCA) Washington, DC 2005			
3.	Alison Keane, Counsel Government Affairs, NPCA Washington, DC 2005			
4.	Joseph Yost Director of State Affairs Consumer Specialty Products Association (CSPA) Washington, DC 2008		√	
5.	D. Douglas Fratz Vice President, Scientific & Technical Affairs CSPA Washington, DC 2006	√		
6.	Frances K. Wu, Esq. Associate General Counsel Personal Care Products Council Washington, DC 20036			
7.	Independent Regulatory Review Commission Harrisburg, PA 17101			

## General Support

1. **Comment:** The commentator supports the Department's proposed amendments to Chapter 130, Subchapter B (Consumer products). (1)

**Response:** The Department of Environmental Protection (Department) appreciates the commentator's support of this rulemaking. The proposed rulemaking is consistent with regulatory initiatives recommended by the Ozone Transport Commission (OTC) to address transport of ozone precursor emissions throughout the Ozone Transport Region (OTR). The measures recommended by the OTC are reasonably necessary to achieve and maintain the health-based 8-hour ozone National Ambient Air Quality Standard (NAAQS) in this Commonwealth. Additionally, on March 12, 2008 EPA issued a revised 8-hour ozone standard that could require additional emission reductions.

2. **Comment:** The members of the Consumer Specialty Products Association (CSPA) appreciate the opportunity to work cooperatively with the Pennsylvania Department of Environmental Protection and other interested stakeholders in identifying regionally consistent technologically and commercially feasible regulatory standards needed by Pennsylvania (and other states) to achieve and/or maintain the eight-hour ground level ozone standard mandated by the federal Clean Air Act. (4, 5)

**Response:** The Department thanks the commentators for their efforts in promoting regulatory standards needed by this Commonwealth and other member jurisdictions of the OTR to achieve and maintain the 8-hour ozone NAAQS throughout the region.

## Promulgation of Uniform Consumer Products Regulations throughout the Ozone Transport Region

3. **Comment:**

Let the record clearly reflect the fact that the Board is proposing to incorporate stringent technology-forcing regulatory standards for 12 product categories that were adopted recently by the California Air Resources Board (CARB). These proposed volatile organic compound (VOC) standards may pose a significant challenge for some Consumer Specialty Products Association (CSPA) members. This challenge could be particularly acute for the small- and medium-sized companies that manufacture and market their products on a regional (as opposed to a nationwide) basis.

Although some CSPA member companies may have legitimate concerns about the difficulty and expense that they may incur in complying with these new VOC limits contained in the Board's proposed amendments, CSPA's members *support* the promulgation of *uniform regulations* because it is vitally important that interstate commerce is not impaired by the promulgation of different state regulations in the OTR.

Moreover, adoption of uniform regional regulations is a practical necessity for small businesses since they generally lack the staff resources to ensure that the companies'

products comply with a patchwork of different (and potentially conflicting) state-specific requirements. Therefore, CSPA strongly believes that it is critically important that Pennsylvania and other OTR States promulgate *uniform regulatory requirements* for consumer products to improve air quality without imposing unnecessary impediments to interstate commerce. (4, 5)

**Response:** The Department appreciates the commentators' efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR. The Department acknowledges that the OTC's Model Rule is based on consumer product standards recently adopted by the CARB.

**4. Comment:** CSPA supports the Board's proposed amendments to the Commonwealth's current Consumer Product Regulation since these new provisions are consistent with the OTC Model Rule. CSPA is on record as actively supporting the OTC's efforts to revise its comprehensive Model Rule that has – and will continue to – promote the adoption of *uniform* and consistent regulations throughout the Mid-Atlantic, Northeast and Midwest Regions. (4, 5)

**Response:** The Department appreciates the commentators' efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR.

**5. Comment:** Members of the Personal Care Products Council (PCPC) (formerly the Cosmetic, Toiletry and Fragrance Association) have a strong interest in maintaining the quality and safety of the products they sell throughout the United States and beyond. While the members of the PCPC have supported efforts by the U. S. Environmental Protection Agency (EPA) and environmental authorities in several states to reduce emissions from consumer products as part of their efforts to improve air quality, it is of critical importance that implementing regulations ensure the feasibility of continuing to sell such products across state lines while maintaining consistent quality and safety. In the pursuit of this goal, the members of the PCPC have worked cooperatively with the EPA, the CARB, the OTC and the growing number of jurisdictions that have taken action to adopt the OTC Model Rule to ensure the greatest degree of consistency possible among the regulations of these many jurisdictions. (6)

**Response:** The Department appreciates the commentators' efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is

consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR.

6. **Comment:** The members of the Personal Care Products Council commend DEP on substantially adhering to the revised OTC Model Rule in its development of the current proposal. The Council worked closely with the OTC on the adoption of both its original regulation and the 2006 updated version. The Council's support for these efforts stems from the critical need of Council members to have state regulations that are both technologically and commercially feasible for compliance and that permit the sale of uniform products across state lines. (6)

**Response:** The Department appreciates the Council's efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR.

7. **Comment:**

In the Preamble, the EQB states:

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken in other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions.

Commentators commend the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the Ozone Transport Region. We agree that this will minimize the impact of the regulation on businesses and competition. However, the EQB is not in control of the actions taken in the other Ozone Transport Region jurisdictions. If other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged. Therefore, in the final-form submittal of this regulation, the EQB should explain the following:

- The status of the implementation in other Ozone Transport Region jurisdictions.

The EQB's response will be used in our consideration of whether the final-form regulation is in the public interest. (7)

**Response:**

As per the request of the commentator, a summary of the status of the adoption of consumer product amendments consistent with the OTC Model Rule is provided herein.

- Connecticut adopted its rule on July 26, 2007, with an effective date of January 1, 2009.
- Maine adopted its rule on December 15, 2007, with an effective date of January 1, 2009.
- Maryland adopted its rule on June 18, 2007, with an effective date of January 1, 2009.
- Massachusetts adopted its rule on October 19, 2007, with an effective date of January 1, 2009.
- New Jersey published its proposed rulemaking on November 5, 2007, and the public comment period closed January 4, 2008. New Jersey proposed an effective date of January 1, 2009.
- Delaware intends to hold a public hearing in June, 2008, and intends to publish a final rule August 1, 2008, with an effective date of January 1, 2009.
- New Hampshire, New York, Rhode Island, Virginia and the District of Columbia have rules in development.

#### 8. **Comment:**

In the Preamble, the EQB states:

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken in other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions.

Commentators commend the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the Ozone Transport Region. We agree that this will minimize the impact of the regulation on businesses and competition. However, the EQB is not in control of the actions taken in the other Ozone Transport Region jurisdictions. If other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged. Therefore, in the final-form submittal of this regulation, the EQB should explain the following:

- A comparison of the content of the regulations promulgated by other Ozone Transport Region jurisdictions with Pennsylvania's final-form regulation.

The EQB's response will be used in our consideration of whether the final-form regulation is in the public interest. (7)

#### **Response:**

Each jurisdiction, with the exception of Vermont, has or intends to adopt the OTC Model Rule, some with changes based on their need, discretion or regulatory procedure and formatting conventions. However, the VOC content limits of the products and the basic provisions of the rules are consistent across the jurisdictions. The minor differences

between the rules are not sufficient to interfere with the development of a regional control strategy or regional market.

**9. Comment:**

In the Preamble, the EQB states:

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken in other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions.

Commentators commend the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the Ozone Transport Region. We agree that this will minimize the impact of the regulation on businesses and competition. However, the EQB is not in control of the actions taken in the other Ozone Transport Region jurisdictions. If other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged. Therefore, in the final-form submittal of this regulation, the EQB should explain the following:

- How Pennsylvania's final-form regulation minimizes the economic impact on Pennsylvania businesses and consumers.

The EQB's response will be used in our consideration of whether the final-form regulation is in the public interest. (7)

**Response:**

The final-form amendments to Chapter 130, Subchapter B, Consumer Products, are uniform and consistent with the OTC Model Rule and the consumer product regulations promulgated by the other member jurisdictions of the OTR. Manufacturers will not need to develop a Pennsylvania-specific product to comply with the final-form rulemaking.

The amendments to Chapter 130, Subchapter B, Consumer Products, may slightly increase costs to purchasers of consumer products, but the cost increase is expected to be negligible because much of the reformulation of products has been completed as manufacturers developed products to meet these limits in other areas of the country.

CARB estimated that the cost effectiveness of VOC limits with an effective date (in California) of December 31, 2006, to be about \$4000 per ton of VOC reduced. CARB further estimated that the average increase in cost per unit to the manufacturer to be about \$0.16 per unit. Assuming CARB's estimates for the OTR provides a conservative estimate, because some of the one-time research and reformulation costs incurred for products sold in California will not have to be incurred again for products sold in the OTR.

Using the OTR's conservative estimate then, it is estimated that for Pennsylvania, if none of the reformulation had yet been completed, the reduction of VOC content for the affected consumer products would cost approximately \$4000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tons per day (tpd) and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total cost to the users is estimated to be approximately \$3.1 million. This is an average of \$0.26 per resident per year.

The production of low-VOC consumer products for these additional categories may require some new product development, but much of this work has already been done because of similar regulatory efforts in California.

### **Definitions – Reasonableness and Clarity**

#### **10. Comment:** Exemptions:

The definition of "Construction, panel and floor covering adhesive" exempts products that "weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging." There are similar exemptions in the definitions of "Contact adhesive" and "General purpose adhesive." Why did the EQB place no limit on the VOC content of large containers of these products, but then place the limits in Section 130.211 on the identical product in a smaller container? The EQB should explain why these exemptions are reasonable and will not adversely affect the stated goal to reduce VOCs emitted from consumer products. (7)

**Response:** The Department anticipates that the larger containers of construction, panel and floor covering adhesives, contact adhesives and general purpose adhesives will be regulated by the Department's proposed Chapter 130, Subchapter D amendment, relating to adhesives, sealants and primers. The Subchapter D amendment will be consistent with the requirements of the OTC 2006 Adhesives, Sealants and Primers Model Rule and is scheduled to be proposed to the EQB in the summer of 2008.

#### **11. Comment:** Deodorant Body Spray:

Paragraphs (i) and (ii) of this definition refer to a "product with 20% or less fragrance." It is not clear how to apply the 20% figure. For example, the "Table of Standards" in Section 130.211 uses "percent VOC by weight." (Emphasis added.) The regulation should specify what the 20% figure is related to, such as weight or volume. (7)

**Response:** The Department agrees and has revised the definition of the term "deodorant body spray" in the final-form rulemaking to clarify that the 20% fragrance is by weight.

**Reasonable Effective Date (§ 130.211)**

12. **Comment:** As currently drafted, the proposed regulation establishes an effective date of January 1, 2009, for the new VOC limits and related administrative and enforcement provisions. CSPA believes that the proposed effective date will allow sufficient time for companies to comply with the technology-forcing VOC limits. This reasonable "lead time" is particularly important for small- and medium-sized businesses that may only sell products in Pennsylvania (or in the Mid-Atlantic Region) since these companies will likely need time to ensure that their products comply with these strict new regulatory limits. (4, 5)

**Response:** The Department appreciates the commentators' support.

13. **Comment:** As of the date of these comments, the regulation requires compliance in less than a year. The EQB should explain how the effective date of January 1, 2009, is reasonable and feasible for businesses and consumers. (7)

**Response:** The staff of the OTC and member states formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association, the American Solvents Council and the Personal Care Products Council, participated in several of the conference calls with the OTC Workgroup and worked with the group to set the date of January 1, 2009, as the effective date. The members of these industry groups are familiar with the OTC 2006 final consumer products model rule, are supportive of the initiative, and are aware that this proposed regulation is under consideration for final-form rulemaking.

Additionally, the majority of currently marketed products have already been reformulated to meet the California VOC limits which were adopted in July 2005. Most of these limits were effective in California by December 31, 2006. The proposed standards are identical to the California standards, thus the manufacturers of the regulated products have had over two years to develop compliant products.

**Sell-through of Products Manufactured Before the Applicable Effective Date (§ 130.217)**

14. **Comment:** CSPA supports the Board's proposal for dealing with products manufactured before the applicable effective date for the VOC limits. See proposed § 130.217. This provision is entirely consistent with the parallel provision in the OTC Model Rule that imposes a sell-through limitation only on products that do *not* display either the date of manufacture or an appropriate date code.

Marketing studies conducted several years ago concluded consistently that at least 90% of all consumer products are sold within one year after the date of manufacture. More than 90% of the remaining products are sold in the second and third year, thus exhausting

any remaining stock within a three-year period. This trend is increasing as “big box” stores like Wal-Mart, Target and others focus relentlessly on product sales “velocity” (*i.e.*, the time a product remains on the store shelves). Simply stated, if a particular manufacturer’s products cannot be sold quickly, the “big box” stores simply switch to a competitive manufacturer’s product.

In summary, the practical realities of industry-wide competition and prevailing retailer practices result in the overwhelming number of products being sold within the 12-18 months after the date of manufacture. (4, 5)

**Response:** The Department appreciates the commentators’ support.

**Alternative Control Plan Provision (§ 130.452)**

**15. Comment:**

CSPA urges the Board to consider adopting a narrowly-tailored amendment to the Commonwealth’s current Alternative Control Plan (ACP) provision. (§ 130.452) CSPA’s recommended amendment will have the effect of producing a measurable *net environmental benefit* for Pennsylvania.

As currently drafted, the current regulation expressly recognizes an ACP agreement approved by CARB pursuant to California Code of Regulations, Title 17, Subchapter 8.5, Article 4, §§ 94540-55. As a threshold matter, CSPA strongly supports Pennsylvania’s pragmatic approach for addressing this innovative and necessary regulatory provision. Given the fact that CARB expends a considerable amount of time and effort to review and approve an ACP, it makes little practical sense for Pennsylvania (or other states) to mechanically duplicate California’s intricate and complicated process. Moreover, the OTC Consumer Products Workgroup, in consultation with their agency lawyers, developed model language that balanced: (1) the need to preserve state sovereignty; and (2) the recognition that it is both unrealistic and unreasonable for any state agency to attempt to duplicate CARB’s comprehensive review process for approving an ACP.

**1. Before granting an ACP, CARB carefully weighs the environmental benefits against the environmental deficits.**

As part of CARB’s very thorough review process in considering a company’s request for an ACP, the agency balances the following considerations:

**Emission deficit** – one or more products that exceed the applicable VOC limit; and

**Emission credit** – one or more products with a VOC content that is lower than the applicable limit (*i.e.*, produces a net environmental benefit).

In reaching its decision to approve an ACP, CARB determines whether the aggregate emission credits exceed the aggregate emission deficits. The end result is a net positive for the environment (*i.e.*, the pluses outweigh the minuses).

2. As currently written, the Commonwealth's ACP Provision may have the unintended effect of limiting the environmental benefits.

Since 1989, CARB has continuously revised the California Consumer Products Regulation. As part of this process, CARB has promulgated new VOC limits for previously unregulated product categories. In addition, CARB continues to set new and more restrictive VOC limits for currently regulated products (some of these product categories have been regulated as many as three times). Consequently, it is possible that there may be a very limited number of instances some products used in CARB's ACP compliance calculations may not be subject to the VOC limits set forth in the Table of Standards at § 130.211.

As currently drafted, the Commonwealth's ACP provision could have the unintended effect of denying a CARB-approved ACP simply because one (or more) products in the emission deficit side of the equation may not be subject to the VOC limits in the Table of Standards. In this situation, the overall uncontrolled emissions (*i.e.*, environmental burden) in Pennsylvania would actually be *less* than the total emission deficit used by CARB to calculate the compliance average. Consequently, the Commonwealth will receive a ***positive overall increase*** in total emission credits (*i.e.*, a net environmental benefit).

To remedy this unintended problem, CSPA urges the Board to make the following technical revision to the current ACP provision set forth at *25 Pa. Code* § 130.452.

*(Italicized text = CSPA text added to the Board's proposed regulation)*

§ 130.452. Exemption.

A manufacturer of consumer products which has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB ACP agreement remains in effect provided that all ACP products ***used for emissions credits*** within the CARB ACP agreement are contained in § 130.211. A manufacturer claiming such an ACP agreement on this basis shall submit to the Department a copy of the CARB ACP decision (that is, the Executive Order), including the conditions established by CARB applicable to the exemption.

Under CSPA's proposed amendment, ***all*** emission credits used in CARB's compliance calculations would still be subject to applicable VOC limits in Pennsylvania. Thus, this technical amendment ensures that a manufacturer with an approved ACP in California that includes one or more products not regulated in Pennsylvania, but which is still

producing a *net environmental benefit* would not inadvertently be denied an ACP in Pennsylvania. Moreover, this revision would make Pennsylvania's ACP provision consistent with the corresponding provision in the Ohio EPA's recently promulgated final regulation and the Illinois EPA's final draft regulation. (4, 5)

**Response:** The amendments to the Consumer Products regulation are designed to reduce VOC emissions within our borders and downwind areas in the OTR. The promulgation and implementation of the regulation in Pennsylvania will allow the Department to make progress in achieving and maintaining the NAAQS. The Alternative Control Plan approach outlined in the final-form regulation preserves this Commonwealth's right and obligation to determine on a case-by-case basis if an ACP will be environmentally beneficial, prior to granting approval of the plan. Adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold elsewhere in the OTR. Therefore, the requested exception has not been included in the final-form regulation.

16. **Comment:** The Consumer Specialty Products Association believes that, as written, the regulation may have the unintended effect of limiting the environmental benefits of the regulation. The commentator suggests adding the phrase "used for emission credits" to this section so that the first sentence of this section in the final regulation would end: "...provided that all ACP products **used for emission credits** within the CARB ACP agreement are contained in § 130.211." (Emphasis added.) The EQB should consider including this phrase in the final-form regulation. (7)

**Response:** While the Department appreciates the point that the CSPA makes in its comment, the amendments to the consumer products regulation are consistent with the OTC's Model Rule strategy, which is designed to reduce ozone precursors in the Commonwealth and downwind areas. The addition of the CSPA suggested language would create inconsistency among the member jurisdictions of the OTR. Moreover, adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold in the other OTC states. The Department does not see a need to create such an exception.

### **Is Proposal Needed to Meet SIP Commitments?**

17. **Comment:** We raise the threshold question of whether it is necessary to proceed with the current proposal for the state of Pennsylvania to meet its SIP commitments. On May 30, 2007, the Director of the U.S. EPA's Office of Air Quality Planning Standards issued a memorandum to U.S. EPA Regional Offices and to all states preparing ozone State Implementation Plans. The memorandum establishes the VOC Emission Reduction Credits that states can claim due to the U.S. EPA commercial and consumer product rules to be proposed imminently (proposed rule scheduled for publication in early 2008), with new limits to take effect January 1, 2009. The U.S. EPA will allow a per capita Emission Reduction Credit (i.e., percent beyond existing rule) of 0.9 pounds per capita (or 29 percent) beyond that achieved by the 1998 regulation for consumer and commercial products. In addition, the memorandum states that the U.S. EPA will provide 75 percent

partial credit for those states with areas needing reduction credits in earlier years (e.g., 2008). This credit is justified by the fact that the majority of currently marketed products have already been reformulated to meet the California VOC limits. The commentator therefore urges DEP to seriously consider suspending action on its current proposal. Avoiding an additional state rulemaking proceeding would substantially simplify compliance and enforcement, reduce the costs of regulation, and dispel any chance of unintended but significant differences between the regulations. (6)

**Response:** Emission reductions from this consumer product rulemaking are necessary as they are identified in the contingency measure plan in the Commonwealth's attainment demonstration for the 8-hour ozone NAAQS for the Philadelphia area. Additionally, emission reductions from this rulemaking will support the 8-hour ozone NAAQS attainment demonstration for the Pittsburgh-Beaver Valley Area; the original redesignation request and maintenance plan submitted to EPA for the Pittsburgh region is no longer approvable because of a violation of the standard during the 2007 ozone season. The May 30, 2007, EPA memorandum referenced by the commentator stated that EPA's consumer product rule revision would be proposed in June 2007 and finalized in December 2007, with compliance being required by January 1, 2009. The EPA now expects to propose the rule in May of 2008, with compliance required by May 1, 2009. Additionally, the EPA notes on page 4 of its May 30, 2007, memorandum that, "... if the EPA rule does not provide the reduction anticipated for a particular area, any State claiming credit from the Federal rule will be responsible for developing measures to make up the shortfall." In light of that, and the fact that on March 12, 2008, the EPA announced a revised 8-hour ozone standard of 0.075 parts per million, it is important for the Commonwealth to develop and implement emission reduction strategies to reduce ozone precursor emissions within our borders. Based on 2004-2006 data, at least 23 counties are monitoring nonattainment of the March 12, 2008, 8-hour ozone standard.

#### **Proposed Language: Use of the Term 'Designed'**

18. **Comment:** The commentator notes one deviation from the OTC Model Rule that is problematic. Throughout the proposal, the term "designed" appears to have been replaced with "formulated or labeled" — e.g., a "hair mousse" is defined as a "hairstyling foam formulated or labeled [replacing 'designed'] to facilitate styling of a coiffure and provide limited holding power." The commentator believes the proposal should revert to the use of the term "designed" throughout, to promote consistency with the OTC Model Rule. "Designed" has a connotation of "intended," which is largely in alignment with the federal Food and Drug Administration's intended use doctrine. This doctrine basically holds that the intended use of the product is determined by the claims a manufacturer makes about the product, i.e., claims appearing on the label or in the labeling. By contrast, "formulated" refers to the ingredients and composition of a product, without reference to claims. As written, the current language of the proposal — "formulated or labeled" — suggests that a product can be defined solely on the basis of either 1) its claims, or 2) what may be in the product. Given the vast array of ingredients used in the personal care products industry and the fact that many ingredients are used for multiple product categories, it would be a fundamental policy shift, not to mention impracticable,

for the state to decide a product's categorization on the basis of an ingredient or ingredients. Therefore, the proposal should be revised to use the term "designed" wherever it originally appeared in the definitional sections of the rule, or, alternatively, "formulated and labeled" — but not "formulated or labeled." (6)

**Response:** The Department appreciates the commentator's concern about the change from the use of the word "designed" to the phrase "formulated or labeled." The Department has reverted to the wording used by the OTC Model Rule for all of the definitions.

#### **Definition of VOC and Exempt Solvent**

19. **Comment:** Commentators are pleased to see that the proposed amendments are silent on the definition of a VOC or an Exempt Solvent, which means that the general definitions in Chapter 121.1 will apply to the amended consumer products rule. Both definitions make reference to the federal definition of a VOC, which was last amended in 2004 to exclude tertiary butyl acetate (TBAC) based on its negligible ozone-forming potential. This reference to the federal definition was a key reason why Pennsylvania was one of the first states to be able to use TBAC as a tool to reduce ozone formation from a variety of product and point source emissions. Your VOC rules are, therefore, automatically updated when the US EPA excludes a compound from the VOC definition. This saves DEP resources and allows the quick use of negligibly reactive compounds instead of reactive ones, which helps to reduce ozone levels. (1, 2, 3)

**Response:** The Department appreciates the commentators' support, and agrees that the general definitions of the terms "VOC-volatile organic compound" and "exempt solvent" found in § 121.1 (relating to definitions) apply to the consumer products subchapter. Additionally, the Department has added, at final, the term "VOC-volatile organic compound" to Chapter 130, Subchapter B, with the definition: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity."

20. **Comment:** Commentators state that Subchapter C (relating to architectural and industrial maintenance coatings) includes definitions for the terms VOC and Exempt Compounds that are inconsistent with the federal definitions, Pennsylvania's general definitions, Pennsylvania's consumer products definitions and those of all other OTC states. These outdated definitions were left over from the OTC model rule and should be deleted.

Commentators respectfully request that the Board approve the deletion of the VOC and Exempt compound definitions in Subchapter C as part of the final consumer products rule. This will harmonize the Pennsylvania VOC definitions and make the latest VOC exempt compounds available as tools to reduce ozone and PM formation from architectural coating emissions statewide. It will also eliminate the need to revise

Subchapter C each time the federal VOC definition is amended, thus saving DEP resources. (1, 2, 3)

**Response:** The requested revision is within the scope of this rulemaking. The Department has revised the definition of the term "VOC-volatile organic compound" in Chapter 130, Subchapter C and added this term and definition to Subchapter B as part of this final-form consumer products rulemaking; the definition will read: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity." This revision will harmonize the VOC definitions in Chapters 121 and 130 and in Subchapters B and C of Chapter 130, and will make the most currently VOC exempt compounds available as tools to reduce ozone and particulate matter formation. The term "exempt compound" and its definition in Subchapter C did not need revision.



Pennsylvania Department of Environmental Protection

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**Harrisburg, PA 17105-2063**  
July 18, 2008

**Policy Office**

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17101

Re: Final-Form Rulemaking – Consumer Products; and Architectural and Industrial  
Maintenance Coatings (#7-416)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-form rulemaking for review and comment by the Independent Regulatory Review Commission. The Environmental Quality Board (EQB) approved this final-form rulemaking at its June 17, 2008, meeting.

This final rulemaking amends the existing consumer products regulations in Chapter 130, Subchapter B by adding VOC content limits for an additional 11 categories of consumer products and revising the VOC content limits for one category of consumer product currently regulated. The rulemaking also includes definitions for approximately 30 new terms, including those that relate to the new product categories that will be regulated, and includes revised definitions for approximately 110 existing terms to provide clarity. The rulemaking is a part of the Commonwealth's strategy to achieve and maintain the eight-hour ozone national ambient air quality standard (NAAQS) throughout the Commonwealth, and is based on the 2006 model rule developed by staff of the Ozone Transport Commission (OTC) and member states to assure additional reductions in VOC emissions. The proposed VOC content limits included in the proposed rulemaking are more stringent than Federal requirements, as there are Federal VOC content limits codified at 40 CFR Part 59, Subpart C, for certain consumer products already regulated by Chapter 130, Subchapter B, but there are no Federal limits for the additional products that will be regulated by this final rulemaking. Upon promulgation of the final-form regulation, it will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

The amendments contained in the final-form rulemaking will affect manufacturers, suppliers and sellers of consumer products and are expected to provide approximately 767 tons per year of additional VOC emission reductions in Pennsylvania. The proposed amendments may slightly increase costs to purchasers of consumer products, but these costs are expected to be negligible. The final-form amendments include compliance and averaging options that will allow manufacturers to formulate products in the most efficient and effective manner.



During the public comment period that concluded on December 26, 2007, seven commentators provided comments on the proposal, including the Independent Regulatory Review Commission (IRRC). In response to comments, the Department has both added and amended definitions in the final rulemaking in order to provide further clarity and consistency with the OTC Model Rule. In addition, in response to comments that the terms "VOC-volatile organic compound" and "Exempt Compounds" are inconsistent with the Federal definitions, the Department modified the rulemaking from its proposed form by revising the definition of "VOC" in Chapter 130, Subchapter C and adding the term and definition to Subchapter B to mirror the definition of the term in 25 Pa Code § 121.1, which refers to the Federal definition of VOC. The Consumer Specialty Products Association (CSPA) and the Personal Care Products Council (PCPC) also commended the Department for establishing a rulemaking that closely adheres to the OTC Model Rule.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final-form rulemaking on March 27, 2008. AQTAC concurred with the Department's recommendation to seek EQB approval of the final-form rulemaking. The Department also consulted with the Citizen's Advisory Council on March 18, 2008, and the Small Business Compliance Advisory Committee on April 23, 2008.

The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information

Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,



Michele L. Tate  
Regulatory Coordinator

Enclosures





COMMONWEALTH OF PENNSYLVANIA  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 OFFICE OF POLICY

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-416

SUBJECT: Consumer Products and Architectural and Industrial Maintenance Coatings

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

INDEPENDENT REGULATORY  
 REVIEW COMMISSION

2008 JUL 18 AM 11:30

RECEIVED

**FILING OF REGULATION**

DATE

SIGNATURE

DESIGNATION

7-18-08 [Signature]

Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY

7-18-08 [Signature]

Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY

7-18-08 [Signature]

Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY

7-18-08 [Signature]

Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY

7/18/08 [Signature]

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

