

Revised Summary of Express Terms

6 NYCRR Part 235, Consumer Products

6 NYCRR Part 200, General Provisions

The Division of Air Resources is revising 6 NYCRR Part 235, “Consumer Products” (Part 235) to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional product consistency. The revisions will help the state attain federal National Ambient Air Quality Standards, and work toward regionally consistent regulations amongst the Ozone Transport Commission (OTC) states.

The revisions include adding nine new product categories and revising ten existing categories in order to reduce the VOC content of the products through lower VOC content limits. Part 200 will be revised to incorporate referenced materials, including American Society for Testing Materials (ASTM) testing procedures, the California Air Resources Board (CARB) provisions supporting this regulation, and to update references to Part 235. Part 235 will be revised to incorporate new definitions and revise some categories in the existing definitions. Additionally, Subpart 235-3 will be updated to add new VOC limits, conform to the revised definitions and product categories, and to remove obsolete text and references.

Changes throughout the proposal include a January 1, 2022 compliance date for the new VOC limits on new and reformulated products in the regulation. Likewise, changes were made in the definitions section to provide transitional language, where necessary, for those categories of products that were redefined or revised, to cite which emission standards apply before or after the compliance date of the regulation.

The revisions include setting VOC content limits for nine new product categories and lowering the VOC content limits for ten existing product categories. New product categories include definitions for the following terms: aromatic compound, artist’s solvent or thinner, automotive windshield cleaner, high temperature coating, industrial maintenance coating, paint thinner, sanitizer, temporary hair color, and zinc rich primer. Revised definitions include: contact adhesive, electronic cleaner, fabric protectant, floor polish or wax, general purpose cleaner, general purpose degreaser, lubricant, multi-purpose solvent, oven or grill cleaner, and rubber or vinyl protectant.

The lower VOC limits will be applied to adhesives, some automotive cleaners and solvents, disinfectants, household floor and furniture cleaners, paint thinners and some hair care products, among other product categories, as follows:

‘Product Category’	‘VOC Content Limit’ (‘percent by weight’)		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	Manufactured On or after January 1, 2022
Adhesives:			
Construction, Panel, and Floor Covering	15		7
Air Fresheners:			
Dual Purpose Air Freshener / Disinfectant			60
Anti-static Product:			
Aerosol			80

Non-aerosol		11	
Automotive Brake Cleaner[s] or Brake Cleaner	45		10
Automotive Windshield Cleaner			35
Bathroom and Tile Cleaners:			
All Other Forms	5		n/a
Non-Aerosol			1
Carburetor or Fuel-Injection Air Intake Cleaners	45		10
Disinfectant:			
Aerosols			70
Non-Aerosols			1
Engine Degreasers:			
Aerosols	35		10
Floor Polishes/Waxes:			
Products for Flexible Flooring Materials	7		1
Products for Nonresilient Flooring	10		1
Furniture Maintenance Products:			
Aerosols	17		
All Other Forms Except Solid or Paste	7		n/a

Non-Aerosol (Except Solid or Paste)			3
General Purpose Cleaners:			
Aerosols	10		8
General Purpose Degreasers:			
Aerosols	50		10
Laundry Starch Products	5		4.5
Multi-Purpose Solvent			3
Nail Polish Remover	75		1
Oven or Grill Cleaners:			
Aerosol/Pump Sprays	8		
Liquids	5		
Non-Aerosols			4
Paint Thinner			3
Sanitizer:			
Aerosol			70
Non-Aerosol			1
Shaving Gel		7	4
Temporary Hair Color:			
Aerosol			55

Revised Express Terms

6 NYCRR Part 235, Consumer Products

Section 235-1.1 Applicability

Except as provided in Subpart 235-4 of this Part, this Part shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products for use in the State of New York.

Section 235-2.1 Definitions

For the purpose of this Part, the following definitions apply:

(a) 'ACP Agreement' means the document signed by the director, Division of Air Resources, Department of Environmental Conservation which includes the conditions and requirements of the ACP, and which allows manufacturers to sell ACP products in the State of New York pursuant to the requirements of this Part.

(b) 'ACP emissions' means the sum of the VOC emissions from every ACP product subject to an ACP agreement approving an ACP, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

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

where,

$$\text{Emissions} = \frac{(\text{VOC Content}) \times (\text{Enforceable Sales})}{100}$$

(c) 'ACP limit' means the maximum allowable ACP emissions during the compliance period specified in an ACP agreement approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$\text{ACP Limit} = (\text{Limit})_1 + (\text{Limit})_2 + \dots + (\text{Limit})_N$$

where,

$$\text{Limit} = \frac{(\text{ACP Standard}) \times (\text{Enforceable Sales})}{100}$$

where,

1,2,...N = each product in an ACP up to the maximum N.

(d) 'ACP product' means any consumer product subject to the VOC content limits specified in the Table of Standards in section 235-3.1(a) of this Part, except those products that have been exempted under Subpart 235-4 of this Part, or exempted as innovative products under Subpart 235-5 of this Part.

(e) 'ACP reformulation' or 'ACP reformulated' means the process of reducing the VOC content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

(f) 'ACP standard' means either the ACP product's pre-ACP VOC content or the applicable VOC content limit as specified in the Table of Standards in section 235-3.1(a) of this Part, whichever is the lesser of the two.

(g) 'ACP VOC standard' means the maximum allowable VOC content for an ACP product, determined as follows:

(1) The applicable VOC standard specified in the Table of Standards in Section 235-3.1(a) of this Part, except for charcoal lighter material;

(2) For charcoal lighter material products only, the VOC standard for purposes of this regulation shall be calculated according to the following equation:

$$\text{VOC Standard} = (0.020 \text{ pound CH}_2 \text{ per start} \times 100) \div \text{Certified Use Rate}$$

where,

0.020 = the certification emissions level for the New York State approved product, as specified in subparagraph 235-3.1(f)(2)(i) of this Part, and

Certified Use Rate = the usage level for products approved by the director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(f) of this Part, as determined pursuant to South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (Feb. 28, 1991) (see Table 1, Section 200.9 of this Title), expressed to the nearest 0.001 pound certified product used per start.

(h) 'Adhesive' means any product that is used to bond one surface to another by attachment. 'Adhesive' does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert

substrate. For construction, panel, and floor covering adhesive and general purpose adhesive only, 'adhesive' also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. In addition, for contact adhesive only, 'adhesive' also does not include units of product, less packaging, which consist of more than one gallon. These package size limitations do not apply to aerosol adhesives.

(i) 'Adhesive remover' means a product designed to remove adhesive[,] from either a specific substrate or a variety of substrates. 'Adhesive remover' does not include products that remove adhesives intended exclusively for use on humans or animals. For purposes of this definition and the definitions in paragraphs (1) through (4) of this subdivision, the term 'adhesive' shall mean a substance used to bond one or more materials. 'Adhesive' includes, but is not limited to: caulks; sealants; glues; or similar substances used for the purpose of forming a bond.

(1) 'Floor and wall covering adhesive remover' means a product which is designed or labeled for use in removing floor or wall coverings and associated adhesive from the underlying substrate.

(2) 'Gasket or thread locking adhesive remover' means a product which is designed or labeled for use in removing gaskets or thread locking adhesives. Products labeled for dual use as a paint stripper and gasket remover or a thread locking adhesive remover, or both, are considered "gasket or thread locking adhesive remover"

(3) 'General purpose adhesive remover' means a product designed or labeled for use in removing cyanoacrylate adhesives as well as non-reactive adhesives or residue from a variety of substrates. 'General purpose adhesive remover' includes, but is not limited to: products that remove thermoplastic adhesives; pressure sensitive adhesives; dextrine or starch based adhesives; casein glues; rubber or latex-based adhesives; as well as products that remove

stickers, decals, stencils, or similar materials. 'General purpose adhesive remover' does not include floor or wall covering adhesive remover.

(4) 'Specialty adhesive remover' means a product designed to remove reactive adhesives from a variety of substrates. Reactive adhesives include adhesives that require a hardener or catalyst in order for the bond to occur. Examples of reactive adhesives include, but are not limited to: epoxies; urethanes; and silicones. 'Specialty adhesive remover' does not include 'gasket or thread locking adhesive remover' [gasket or thread locking adhesive remover].

(j) 'Aerosol adhesive' means 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. 'Aerosol adhesives' include special purpose spray adhesives, mist spray adhesives and web spray adhesives.

(k) 'Aerosol cooking spray' means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

(l) 'Aerosol product' means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's container, or by means of a mechanically induced force. 'Aerosol product' does not include 'pump spray'.

(m) 'Agricultural use' means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant

crop. 'Agricultural use' does not include the sale or use of pesticides in properly labeled packages or containers which are intended for:

- (1) home use;
- (2) use in structural pest control;
- (3) industrial; (or)
- (4) institutional use. For the purposes of this definition only:

(i) 'home use' means use in a household or its immediate environment;

(ii) 'structural pest control' means a use requiring a license under Part 325 of this Title; (iii) 'industrial use' means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites; and

(iv) 'institutional use' means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

(n) 'Air freshener' means any consumer product including, but not limited to, sprays, wicks, powders, and crystals designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. 'Air freshener' does not include products that are used on the human body, products that function primarily as cleaning products as indicated on a product label, 'toilet/urinal care products', disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. 'Air freshener' does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a

product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

(o) 'All other carbon-containing compounds' means all other compounds which contain at least one carbon atom and are not a Table B compound or a LVP-VOC.

(p) 'All other forms' means all consumer product forms for which no form-specific VOC content limit is specified. Unless specified otherwise by the applicable VOC content limit, 'all other forms' include, but are not limited to, solids, liquids (which include the liquid containing or liquid impregnated portion of the cloth or paper wipes (towelettes)), wicks, powders, crystals, and cloth or paper wipes.

(q) 'Alternative control plan or ACP' means any emissions averaging program approved by the director, Division of Air Resources, Department of Environmental Conservation pursuant to the provisions of this Part.

(r) 'Antimicrobial hand or body cleaner or soap' means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. 'Antimicrobial hand or body cleaner or soap' includes, but is not limited to:

- (1) antimicrobial hand or body washes/cleaners;
- (2) foodhandler hand washes;
- (3) healthcare personnel hand washes;
- (4) pre-operative skin preparations; and

(5) surgical scrubs.

'Antimicrobial hand or body cleaner or soap' does not include prescription drug products, antiperspirants, astringent/toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

(s) 'Antiperspirant' means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

(t) 'Anti-static product' means a product that is labeled for use in eliminating, preventing, or inhibiting the accumulation of static electricity. 'Anti-static product' does not include electronic cleaner, floor polish or wax, floor coating, and products that meet the definition of aerosol coating product or architectural coating.

(u) 'Architectural coating' means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

(v) 'Aromatic compound' means, for products manufactured on or after January 1, 2022, a carbon containing compound that contains one or more benzene or equivalent heterocyclic rings and has an initial boiling point less than or equal to 280 degrees Celsius. 'Aromatic compound' does not include compounds excluded from the definition of VOC in this section.

(w) 'Artist's Solvent/Thinner' means, for products manufactured on or after January 1, 2022, any liquid product, labeled to meet ASTM D4236 – 94 (March 1, 2005) Standard Practice for Labeling Art Materials for Chronic Health Hazards (see Table 1, Section 200.9 of this Title), packaged in a container equal to or less than 34 fluid ounces, and labeled to reduce the viscosity of, and or remove, art coating compositions or components.

[(v)] (x) 'ASTM' means ASTM International, formerly known as the American Society for Testing and Materials.

[(w)] (y) 'Astringent/toner' means any product not regulated as a drug by the United States Food and Drug Administration (FDA) which 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 any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

[(x)] (z) 'Automotive brake cleaner' means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms. 'Automotive brake cleaner' is also known as brake cleaner.

[(y)] (aa) 'Automotive hard paste wax' means an automotive wax or polish which is:

- (1) designed to protect and improve the appearance of automotive paint surfaces;
- (2) a solid at room temperature; and
- (3) contains zero percent water by formulation.

[(z)] (ab) 'Automotive instant detailer' means a product designed 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.

[(aa)] (ac) 'Automotive rubbing or polishing compound' means a product designed 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.

[(ab)] (ad) 'Automotive wax, polish, sealant or glaze' means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. 'Automotive wax, polish, sealant or glaze' includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. 'Automotive wax, polish, sealant or glaze' does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

(ae) 'Automotive windshield cleaner' means, for products manufactured on or after January 1, 2022, a product labeled and packaged as an automotive windshield cleaner in the form of a moistened towelette and designed to be used on automotive windshields, automotive mirrors, and automotive headlights. The product must be labeled "for automotive use only." 'Automotive windshield cleaner' does not include 'automotive windshield washer fluid.'

[(ac)] (af) 'Automotive windshield washer fluid' means any liquid designed for use in a motor vehicle windshield washer system either as an anti-freeze or for the purpose of cleaning, washing, or

wetting the windshield. 'Automotive windshield washer fluid' does not include fluids placed by the manufacturer in a new vehicle.

[(ad)] (ag) 'Bathroom and tile cleaner' means a product designed or labeled to clean tile or surfaces in bathrooms. 'Bathroom and tile cleaner' does not include products primarily designed to clean toilet bowls, toilet tanks or urinals.

[(ae)] (ah) 'Bug and tar remover' means a product labeled for use in the removal of one or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (1) biological-type residues such as insect carcasses and tree sap; and
- (2) road grime, such as road tar, roadway paint markings, and asphalt.

[(af)] (ai) 'CARB' means the California Air Resources Board.

[(ag)] (aj) 'Carburetor or fuel-injection air intake cleaners' means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. 'Carburetor or fuel-injection air intake cleaners' does not include products designed or labeled exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors, or products designed or labeled exclusively to be introduced during engine operation directly into air vacuum lines by using a pressurized sprayer wand.

[(ah)] (ak) 'Carpet and upholstery cleaner' means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles and/or on

household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics. 'Carpet and upholstery cleaner' includes, but is not limited to, products that make fabric protectant claims. 'Carpet and upholstery cleaner' does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

[(ai)] (al) 'Charcoal lighter material' means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. 'Charcoal lighter material' does not include any of the following:

- (1) electrical starters and probes;
- (2) metallic cylinders using paper tinder;
- (3) natural gas;
- (4) propane; and
- (5) fat wood.

[(aj)] (am) 'Colorant' means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

[(ak)] (an) 'Compliance period' means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

[(al)] (ao) 'Construction, panel, and floor covering adhesive' means any non-aerosol one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

(1) structural and building components that include, but are not limited to, beam, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.), [a] ceiling and acoustical tile, molding, fixtures, counter tops or counter top laminates, cove or wall bases, and flooring or sub flooring; or

(2) floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass. 'Construction, panel, and floor covering adhesive' does not include floor seam sealer.

[(am)] (ap) 'Consumer' means any person who purchases, or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not 'consumers' for that product.

[(an)] (aq) 'Consumer product' means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings. 'Consumer product[s]' shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial or commercial uses.

[(ao)] (ar) 'Contact adhesive' means [an] a non-aerosol adhesive that:

- (1) is designed for application to both surfaces to be bonded together; and
- (2) is allowed to dry before the two surfaces are placed in contact with each other; and
- (3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and
- (4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. 'Contact adhesive' does not include rubber cements that are primarily intended for use on paper substrates. 'Contact adhesive' also does not include vulcanizing fluids that are designed and labeled for use for tire repair only.

[(ap)] (as) 'Contact adhesive[s] – general purpose' means any contact adhesive that is not a [contact adhesive – special purpose] 'contact adhesive – special purpose'.

[(aq)] (at) 'Contact adhesive – special purpose' means a contact adhesive that:

- (1) is used 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 any porous or nonporous surface, and is sold in units of product, less packaging, that contain more than eight fluid ounces, or
- (2) is used in automotive applications that are:
 - (i) automotive under the hood applications requiring heat, oil or gasoline resistance, or
 - (ii) body-side molding, automotive weatherstrip or decorative trim.

[(ar)] (au) 'Container/packaging' means the part or 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 or intended. 'Container/packaging' includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

[(as)] (av) 'Contact person' means a representative(s) that has been designated by the responsible ACP party for the purpose of reporting or maintaining any information specified in the ACP agreement approving an ACP.

[(at)] (aw) 'Crawling bug insecticide' means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. 'Crawling bug insecticide' does not include products designed to be used exclusively on humans or animals, or any house dust mite product. For the purposes of this definition only:

(1) 'House dust mite product' means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods; and

(2) 'House dust mite' means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

[(au)] (ax) 'Date-code' means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

[(av)] (ay) 'Deodorant' means [:

(1) For products manufactured before January 1, 2010: any product including, but not limited to, 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.

(2) For products manufactured on or after January 1, 2010:] any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can be used on or applied to the human axilla to provide a scent and/or minimize odor. A deodorant body spray product that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used or applied to the human axilla, is a 'deodorant.'

[(aw)] (az) 'Deodorant body spray' means a personal fragrance product with 20 percent or less fragrance, that is designed for application all over the human body to provide a scent. A 'deodorant body spray' product that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla, is a "deodorant."

[(ax)] (ba) 'Device' means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacterium, virus, or another microorganism on or in living man or

other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

[(ay)] (bb) 'Disinfectant' means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et. seq.) (see Table 1, Section 200.9 of this Title). [Disinfectant] 'Disinfectant' does not include any of the following:

(1) products designed solely for use on human or animals;

(2) products designed for agricultural use;

(3) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs;

[and]

(4) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes[.] ;

(5) products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent, or veterinary establishments;

(6) products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

(7) products which are labeled as bathroom and tile cleaner, general purpose cleaner, glass cleaner, toilet/urinal care product, metal polish/cleanser, carpet and upholstery cleaner, or fabric refresher that may also make disinfecting or anti-microbial claims on the label.

[(az)] (bc) 'Distributor' means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not [distributors] 'distributors'.

[(ba)] (bd) 'Double phase aerosol air freshener' means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

[(bb)] (be) 'Dry cleaning fluid' means any non-aqueous liquid product designed and labeled exclusively for use on:

- (1) fabrics which are labeled for use "for dry clean only," such as clothing or drapery; or
- (2) s-coded fabrics.

'Dry cleaning fluid' 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. 'Dry cleaning fluid' does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition 's-coded fabric' means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the joint industry fabric standards committee.

(bf) 'Dual purpose air freshener/disinfectant' means, for products manufactured on or after January 1, 2022, an aerosol product that is represented on the product container for use as both a disinfectant and an air freshener, or is so represented on any sticker, label, packaging, or literature attached to the product container.

[(bc)] (bg) 'Dusting aid' means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. 'Dusting aid' does not include pressurized gas duster.

[(bd)] (bh) 'Electrical cleaner' means a product labeled for use to remove soils such as grease, grime, or oil from electrical equipment, including, but not limited to, electric motors, armatures, relays, electric panels, or generators. 'Electrical cleaner' does not include general purpose cleaner, general purpose degreaser, dusting aid, electronic cleaner, energized electrical cleaner, pressurized gas duster, engine degreaser, anti-static product, or products designed to clean the casings or housings of electrical equipment.

[(be)] (bi) 'Electronic cleaner' means a product labeled for use for the removal of dirt, moisture, dust, flux or oxides from the internal components of electronic or precision equipment such as circuit boards, and the internal components of electronic devices, including but not limited to, radios, compact disc (CD) players, digital video disc (DVD) players, and computers. 'Electronic cleaner' does not include general purpose cleaner, general purpose degreaser, dusting aid, pressurized gas duster, engine degreaser, electrical cleaner, energized electrical cleaner, anti-static product, or products designed to clean the casings or housings of electronic equipment. 'Electronic cleaner' does not include any product that meets the following criteria:

(1) The product is labeled to clean and/or degrease electronic equipment where cleaning and / or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, and

(2) The product label clearly displays the statement "Energized Electronic Equipment use only."

[(bf)] (bj) 'Energized electrical cleaner' means a product that meets both of the following criteria:

(1) The product is labeled for use to clean and/or degrease electrical equipment, where cleaning and/or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor; and

(2) The product label clearly displays the following language: "Energized Equipment use only. Not to be used for motorized vehicle maintenance, or their parts."

'Energized electrical cleaner' does not include electronic cleaner.

[(bg)] (bk) 'Enforceable sales' means the total amount of an ACP product sold for use in the State of New York, 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 product container and packaging).

[(bh)] (bl) 'Enforceable sales record' means a written, point-of-sale record or any other system of documentation approved by the director, Division of Air Resources, Department of Environmental Conservation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the State of New York during the applicable compliance period can be accurately documented. For the purposes of this Part, 'enforceable sales records' include, but are not limited to, the following types of records:

(1) accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

(2) accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify any data comprising such summaries is submitted by the responsible ACP party and approved by the director, Division of Air Resources, Department of Environmental Conservation; and

(3) any other accurate product sales records approved by the director, Division of Air Resources, Department of Environmental Conservation as meeting the criteria specified in this Subpart.

[(bi)] (bm) 'Engine degreaser' means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

[(bj)] (bn) 'Existing product' means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale in the State of New York prior to January 1, 20[10]22, or any subsequently introduced identical formulation.

[(bk)] (bo) 'Fabric protectant' means [: a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. 'Fabric protectant' does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.] a product labeled to be applied to fabric substrates to protect the surface from soiling from dirt or other impurities or to reduce absorption of liquid into the fabric fibers. 'Fabric protectant' does not include waterproofers or products labeled for use solely on leather. 'Fabric protectant' does not include pigmented products that are designed to be used

primarily for coloring, products used for construction, reconstruction, modification, structural maintenance or repair of fabric substrates, or products that renew or restore fabric qualifying as either “clear coating” or “vinyl/fabric/leather/polycarbonate coating.”

[(bl)] (bp) ‘Fabric refresher’ means a product labeled for use to neutralize or eliminate odors on non-laundered fabric including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, clothing and/or on household furniture or objects upholstered or covered with fabrics such as, but not limited to, wool, cotton, or nylon. ‘Fabric refresher’ does not include anti-static product, carpet and upholstery cleaner, soft household surface sanitizers, footwear or leather care product, spot remover, or disinfectant, or products labeled for use for application to both fabric and human skin. For the purposes of this definition only, ‘soft household surface sanitizer’ means a product labeled for use to neutralize or eliminate odors on surfaces listed above whose label is registered as a sanitizer under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA, 7 U.S.C. 136 et seq.) (see Table 1, Section 200.9 of this Title).

[(bm)] (bq) ‘Facial cleaner or soap’ means a cleaner or soap designed primarily to clean the face. ‘Facial cleaner or soap’ includes, but is not limited to, facial cleansing creams, semisolids, liquids, lotions, and substrate-impregnated forms. ‘Facial cleaner or soap’ does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

[(bn)] (br) ‘Fat wood’ means pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. ‘Fat wood’ does not include any kindling with

substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

[(bo)] (bs) 'Flea and tick insecticide' means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. 'Flea and tick insecticide' does not include products that are designed to be used exclusively on humans or animals and their bedding.

[(bp)] (bt) 'Flexible flooring material' means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

[(bq)] (bu) 'Floor coating' means an opaque coating that is labeled for use and designed for application to flooring, including but not limited to, decks, porches, steps, and other horizontal surfaces which may be subject to foot traffic.

[(br)] (bv) 'Floor polish or wax' means [a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. 'Floor polish or wax' does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to Part 205 of this Title.] a product designed or labeled to polish, wax, condition, protect, temporarily seal, or otherwise enhance floor surfaces by leaving a protective finish that is designed or labeled to be periodically replenished. 'Floor polish or wax' does not include spray buff products, floor wax strippers, products designed or labeled for unfinished wood floors, or coatings subject to Part 205 of this Title. 'Floor polish or wax' is divided into three categories: products for

resilient flooring materials, products for nonresilient flooring materials, and wood floor wax. For the purposes of this section:

(1) 'Resilient flooring material' means flexible flooring material including, but not limited to, asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

(2) 'Nonresilient flooring material' means flooring of a mineral content which is not flexible. 'Nonresilient flooring material' includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

(3) 'Wood floor wax' means wax-based products designed for use solely on wood floors.

[(bs)] (bw) 'Floor seam sealer' means any product designed and labeled for use exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

[(bt)] (bx) 'Floor wax stripper' means a product designed 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. 'Floor wax stripper' does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

[(bu)] (by) 'Flying bug insecticide' means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. [Flying bug insecticide] 'Flying bug insecticide' does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, [:

(1)] 'moth-proofing product' means a product whose label, packaging, or accompanying literature indicates that the product is designed 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.

[(bv)] (bz) 'Footwear or leather care product' means any product designed or labeled for use to be applied to footwear or to other leather articles/components, to maintain, enhance, clean, or modify the appearance, durability, fit, or flexibility of the footwear or leather article/component. 'Footwear' includes both leather and non-leather apparel. 'Footwear or leather care product' does not include fabric protectant, general purpose adhesive, contact adhesive, vinyl/fabric/leather/polycarbonate coating, rubber and vinyl protectant, fabric refresher, products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than two millimeters thick.

[(bw)] (ca) 'Fragrance' means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two millimeters of Mercury (mm Hg) at 20[°C] degrees Celsius, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

[(bx)] (cb) 'Furniture maintenance product' means a wax, polish, conditioner, or any other product designed or labeled for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors, and other furniture surfaces including, but not limited to acrylics, ceramic, plastics, stone surfaces, metal surfaces, and fiberglass. 'Furniture maintenance product' does not include dusting aids, wood cleaners and products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

[(by)] (cc) 'Furniture coating' means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

[(bz)] (cd) 'Gel' means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

[(ca)] (ce) 'General purpose adhesive' means any non-aerosol adhesive designed for use on a variety of substrates. [General purpose adhesive] 'General purpose adhesive' does not include:

(1) contact adhesives;

(2) construction, panel, and floor covering adhesives;

(3) adhesives designed exclusively for application on one specific category of substrates ('i.e.', substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

(4) adhesives designed exclusively for use on one specific category of articles ('i.e.', articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

[(cb)] (cf) 'General purpose cleaner' means a product designed or labeled for general all-purpose cleaning on a variety of hard surfaces, including small appliances., in contrast to cleaning products designed to clean specific substrates in certain situations.] 'General purpose cleaner' includes, but is not limited to, products designed or labeled for general floor cleaning, [kitchen or kitchen, countertop, or sink cleaning, and cleaners designed or labeled to be used on a variety of hard surfaces such as stovetops, cooktops, or microwaves, and does not include general purpose degreasers and electronic cleaners.

[(cc)] (cg) 'General purpose degreaser' means any product labeled for use to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. 'General purpose degreaser' does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, metal polish/cleanser, oven or grill cleaner, or products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(1) [sold] exclusively sold directly or through distributors to establishments which manufacture or construct goods or commodities; and

(2) labeled [not for retail sale] exclusively for "use in the manufacturing process only."

Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

[(cd)] (ch) 'General-use hand or body cleaner or soap' means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. 'General-use hand or body cleaner or soap' includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. 'General-use hand or body cleaner or soap' does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

[(ce)] (ci) 'Glass cleaner' means a cleaning product designed primarily for cleaning surfaces made of glass. 'Glass cleaner' does not include products designed solely for the purpose of cleaning

optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

[(cf)] (cj) 'Graffiti remover' means a product labeled for use to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish, from a variety of non-cloth or non-fabric substrates. 'Graffiti remover' does not include paint remover or stripper, or spot remover. Products labeled for dual use as both a paint stripper and graffiti remover are considered [graffiti removers] 'graffiti removers'.

[(cg)] (ck) 'Gross New York State sales' means the estimated total New York State sales of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation will provide an accurate New York State sales estimate:

(1) apportionment of national or regional sales of the ACP product to New York State sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the State of New York's current population; or

(2) any other documented method which provides an accurate estimate of the total current New York State sales of the ACP product.

[(ch)] (cl) 'Hair mousse' means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

[(ci)] (cm) 'Hair shine' means any product designed for the primary purpose of creating a shine when applied to the hair. 'Hair shine' includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. 'Hair shine' does not include hair spray, hair mousse, hair styling product, hair styling gel, or products whose primary purpose is to condition or hold the hair.

[(cj)] (cn) 'Hair styling gel' means a consumer product manufactured before January 1, 2010, that is 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.

[(ck)] (co) 'Hair spray' means:

[(1) for products manufactured before January 1, 2010: a consumer product designed 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; and

(2) for products manufactured on or after January 1, 2010:] a consumer product that is applied to styled hair, and is designed or labeled for use to provide sufficient rigidity, to hold, retain and/or (finish) the style of the hair for a period of time. 'Hair spray' includes aerosol hair sprays, pump hair sprays, spray waxes; color, glitter, or sparkle hairsprays that make finishing claims; and products that are both a styling and finishing product. 'Hair spray' does not include spray products that are intended to aid in styling but do[es] not provide finishing of a hairstyle. 'Finish' or 'finishing' means the maintaining and/or holding of previously styled hair for a period of time. For the purposes of this subchapter, 'styling' means the forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

[(cl)] (cp) 'Hair styling product' means a consumer product [manufactured on or after January 1, 2010,] that is designed or labeled for use for the application to wet, damp, or dry hair to aid in defining, shaping, lifting, styling and/or sculpting of the hair. 'Hair styling product' includes, but is not limited to hair balm, clay, cream, crème, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hairstyle, and leave-in volumizers, detanglers and/or conditioners that make styling claims. 'Hair styling product' does not include hair mousse, hair shine, hair spray, or shampoos and/or conditioners that are rinsed from the hair prior to styling. 'Finish' or 'finishing' means the maintaining and/or holding of previously styled hair for a period of time. 'Styling' means the forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

[(cm)] (cq) 'Heavy-duty hand cleaner or soap' means a product designed to clean or remove difficult dirt and soils such as 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. 'Heavy-duty hand cleaner or soap' does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

[(cn)] (cr) 'Herbicide' means a pesticide product designed to kill or retard a plant's growth, but excludes products that are:

- (1) for agricultural use; or
- (2) restricted materials that require a permit for use and possession.

(cs) 'High temperature coating' means, for products manufactured on or after January 1, 2022, a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Celsius (400 degrees Fahrenheit).

[(co)] (ct) 'High Volatility Organic Compound (HVOC)' means any VOC that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20[°C] degrees Celsius.

[(cp)] (cu) 'Household product' means any consumer product that is 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.

(cv) 'Industrial maintenance coating' means, for products manufactured on or after January 1, 2022, a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats formulated for application to substrates, including floors, exposed to one or more of the following extreme environmental conditions listed below and labeled "For industrial use only," "For professional use only," "Not for residential use," or "Not intended for residential use."

(1) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation; or

(2) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions; or

(3) Frequent exposure to temperatures above 121 degrees Celsius (250 degrees Fahrenheit); or

(4) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, scouring agents; or

(5) Exterior exposure of metal structures and structural components.

[(cq)] (cw) 'Insecticide' means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

(1) for agricultural use;

(2) for a use which requires a structural pest control license under Part 325 of this Title;

or

(3) restricted materials that require a permit for use and possession.

[(cr)] (cx) 'Insecticide fogger' means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

[(cs)] (cy) 'Institutional product' or 'industrial and institutional (i&i) product' means a consumer product that is designed for use in the maintenance or operation of an establishment that:

(1) manufactures, transports, or sells goods or commodities, or provides services for profit; or

(2) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. 'Institutional product' 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.

[(ct)] (cz) 'Label' means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

[(cu)] (da) 'Laundry prewash' means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

[(cv)] (db) 'Laundry starch/sizing/fabric finish product' means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. [Laundry Starch Product] 'Laundry starch /sizing/fabric finish product' includes, but is not limited to, fabric finish, sizing, and starch.

[(cw)] (dc) 'Lawn and garden insecticide' means an insecticide product labeled for use primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of section 235-6.1(c) of this Part, aerosol [lawn and garden insecticide] 'lawn and garden insecticide' may claim to kill insects or other arthropods.

[(cx)] (dd) 'Liquid' means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D 4359-90 (2000)e1 (see Table 1, Section 200.9 of this Title). [Liquid] 'Liquid' does not include powders or other materials that are composed entirely of solid particles.

[(cy)] (de) 'Lubricant' means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. 'Lubricant' does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals or products that are:

(1) [sold] exclusively sold directly or through distributors to establishments which manufacture or construct goods or commodities; and

(2) labeled [not for retail sale] exclusively for "use in the manufacturing process only".

[(cz)] (df) 'LVP content' means 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 to the nearest 0.1.

[(da)] (dg) 'LVP-VOC' means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(1) has a vapor pressure less than 0.1 mm Hg at 20[°C] degrees Celsius, as determined by CARB Method 310 (see Table 1, Section 200.9 of this Title); or

(2) 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 and boiling point are unknown; or

(3) is a chemical compound with a boiling point greater than 216[°C] degrees Celsius, as determined by CARB Method 310 (see Table 1, Section 200.9 of this Title); or

(4) is the weight percent of a chemical mixture that boils above 216[°C] degrees Celsius, as determined by CARB Method 310 (see Table 1, Section 200.9 of this Title).

For the purposes of the definition of LVP-VOC: 'chemical compound' means a molecule of definite chemical formula and isomeric structure; and 'chemical mixture' means a [substrate] substance comprised of two or more chemical compounds.

[(db)] (dh) 'Manufacturer' means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a consumer product.

[(dc)] (di) 'Medicated astringent/medicated toner' means any product regulated as a drug by the United States Food and Drug Administration (FDA) which is applied to the skin for the purpose of cleaning or tightening pores. 'Medicated astringent/medicated toner' includes, but is not limited to, clarifiers and substrate-impregnated products. 'Medicated astringent/medicated toner' does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

[(dd)] (dj) 'Medium Volatility Organic Compound (MVOC)' means any VOC that exerts a vapor pressure greater than two mm Hg and less than or equal to 80 mm Hg when measured at 20[°C] degrees Celsius.

[(de)] (dk) 'Metal polish/cleanser' means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To 'improve the appearance' means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. 'Metal polish/cleanser' includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. 'Metal

polish/cleanser' does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled for use exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

[(df)] (dl) 'Missing data days' means 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 to the director, Division of Air Resources, Department of Environmental Conservation, as specified in the ACP agreement approving an ACP.

[(dg)] (dm) 'Mist spray adhesive' means any aerosol adhesive which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

[(dh)] (dn) 'Multi-purpose dry lubricant' means any lubricant which is:

(1) designed and labeled for use to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly), or polytetrafluoroethylene or closely related fluoropolymer (teflon) on surfaces; and

(2) designed for general purpose lubrication, or for use in a wide variety of applications.

[(di)] (do) 'Multi-purpose lubricant' means any lubricant designed for general purpose lubrication, or for use in a wide variety of applications. 'Multi-purpose lubricant' does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

[(dj)] (dp) 'Multi-purpose solvent' means:

(1) For products manufactured before January 1, 2022: any organic liquid designed 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. 'Multi-purpose solvent' includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. 'Multi-purpose solvent' does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

(2) For products manufactured on or after January 1, 2022: any liquid product designed or labeled to be used for dispersing, dissolving, or removing contaminants or other organic materials. 'Multi-purpose solvent' also includes:

(i) products that do not display specific use instructions on the product container or packaging;

(ii) products that do not specify an end-use function or application on the product container or packaging;

(iii) solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories;

(iv) 'paint clean-up' products; and

(v) products labeled to prepare surfaces for painting.

(3) For the purposes of this definition only, for products manufactured on or after January 1, 2022, 'paint clean-up' means any liquid product labeled for cleaning oil-based or water-based paint, lacquer, varnish, or related coatings from, but not limited to, painting equipment or tools, plastics, or metals.

(4) For the purposes of this definition only, for products manufactured on or after January 1, 2022, 'multi-purpose solvent' does not include:

(i) solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines;

(ii) solvents labeled exclusively for the clean-up of application equipment used for polyaspartic and polyurea coatings;

(iii) solvents that are incorporated into, or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment;

(iv) products that are labeled exclusively to clean a specific contaminant, on a single substrate, in specific situations; or

(v) any product making any representation that the product may be used as, or is suitable for use as, a consumer product which qualifies under another definition in this section; such products are not 'multi-purpose solvents' and are subject to the most restrictive limit provision of subdivision 235-6.1(c).

[(dk)] (dq) 'Nail polish' means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

[(dl)] (dr) 'Nail polish remover' means a product designed to remove nail polish and coatings from fingernails or toenails.

[(dm)] (ds) 'New York State sales' means the sales (net pounds of product, less packaging and container, per year) in the State of New York for either the calendar year immediately prior to the year

that the registration is due or, if that data is not available, any consecutive 12-month period commencing no earlier than two years prior to the due date of the registration. If direct sales data for the State of New York is not available, sales may be estimated by prorating national or regional sales data by population.

[(dn)] (dt) 'Non-aerosol product' means any consumer product that is not dispensed by a pressurized spray system.

[(do)] (du) 'Non-carbon containing compound' means any compound which does not contain any carbon atoms.

[(dp)] (dv) 'Nonresilient flooring' means:

(1) for products manufactured before January 1, 2022, flooring of a mineral content which is not flexible. 'Nonresilient Flooring' includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

(2) For products manufactured on or after January 1, 2022, products formerly subject to this definition are subject to the provisions of the floor polish or wax category as defined in subdivision (bv) of this section.

[(dq)] (dw) 'Non-selective terrestrial herbicide' means a terrestrial herbicide product that is toxic to plants without regard to species.

[(dr)] (dx) 'One-product business' means a responsible ACP party which sells, supplies, offers for sale, or manufactures for use in the State of New York:

(1) only one distinct ACP product, sold under one product brand name, which is subject to the requirements of Subpart 235-3 of this Part; or

(2) only one distinct ACP product line subject to the requirements of Subpart 235-3 of this Part, in which all the ACP products belong to the same product category(ies) and the VOC contents in the products are within 98 percent and 102 percent of the arithmetic mean of the VOC contents over the entire product line.

[(ds)] (dy) 'Oven or grill cleaner' means [any cleaning] a product [designed] labeled exclusively to [clean and to] remove [dried food] baked on greases and/or deposits from [oven walls] food preparation and/or food cooking surfaces. A product that is labeled as an 'oven or grill cleaner' that makes claims that it is suitable for degreasing other hard surfaces is a general purpose degreaser. A product that is labeled as an 'oven or grill cleaner' that makes claims that it is suitable for cleaning other hard surfaces is a general purpose cleaner.

[(dt)] (dz) 'Paint' means any pigmented liquid, liquefiable, or mastic composition designed 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.

[(du)] (ea) 'Paint remover or stripper' means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. 'Paint remover or stripper' does not include multi-purpose solvents, paint brush cleaners, products

designed and labeled for use exclusively as graffiti removers, and hand cleaner products that claim to remove paints and other related coatings from skin.

(eb) 'Paint thinner' means, for products manufactured on or after January 1, 2022, any liquid product used for reducing the viscosity of coating compositions or components that prominently displays the term paint thinner, lacquer thinner, thinner, or reducer on the front panel of its packaging.

'Paint thinner' does not include any of the following products:

(1) artist's solvent/thinner;

(2) products that are sold in containers with a capacity of 5 gallons or more and labeled exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings;

(3) products labeled and used exclusively as an ingredient in a specific coating or coating brand line, whereby the coating would not be complete or useable without the specific ingredient;

(4) products that meet both of the following criteria:

(i) the 'principle display panel' of the product displays, in a font size as large as, or larger than, the font size of all other words on the panel (not including the font size used for the company name, brand name, or logo), language that the product is to be used exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings, and

(ii) no representation is made anywhere on the product container or packaging, or any label or sticker attached thereto, that the product is suitable for use or may be used for any other purpose except the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings.

[(dv)] (ec) 'Penetrant' means a lubricant designed and labeled for use primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. 'Penetrant' does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled for use primarily to loosen bonded parts.

[(dw)] (ed) 'Personal fragrance product' means any product which is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. 'Personal fragrance product' does not include:

- (1) deodorant;
- (2) medicated products designed [primary] primarily to alleviate fungal or bacteria growth on feet or other areas of the body;
- (3) mouthwashes, breath fresheners and deodorizers;
- (4) lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations;
- (5) products designed exclusively for use on human genitalia;
- (6) soaps, shampoos, and products primarily to clean the human body; and
- (7) fragrance products designed to be used exclusively on non-human animals.

[(dx)] (ee) 'Pesticide' means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term 'pesticide' will not include any substance, mixture of

substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

[(dy)] (ef) 'Pre-ACP VOC content' means 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 director, Division of Air Resources, Department of Environmental Conservation, 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 director, Division of Air Resources, Department of Environmental Conservation, whichever yields the lowest VOC content for the product.

[(dz)] (eg) 'Pressurized gas duster' means a pressurized product labeled for use to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of surfaces that cannot be cleaned with solvents. 'Pressurized gas duster' does not include dusting aid.

[(ea)] (eh) 'Principal display panel or panels' means that part, or those parts of a label that 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] 'principal display panel' shall pertain to all such [principal display panel] 'principal display panels'.

[(eb)] (ei) 'Product brand name' means the name of the product exactly as it appears on the principal display panel of the product.

[(ec)] (ej) 'Product category' means the applicable category which best describes the product as listed in this Subpart and in the Table of Standards in Subpart 235-3.1(a) of this Part.

[(ed)] (ek) 'Product form' means for the purpose of complying with Subparts 235-7.1(a)(5) and 235-7.1(d)(2)(iii) of this Part only, the applicable form which most accurately describes the product's dispensing form as follows:

- (1) A = "Aerosol product";
- (2) S = "Solid";
- (3) P = "Pump spray";
- (4) L = "Liquid";
- (5) SS = "Semisolid"; and
- (6) O = "Other".

[(ee)] (el) 'Product line' means a group of products of identical form and function belonging to the same product category(ies).

[(ef)] (em) 'Propellant' means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

[(eg)] (en) 'Pump spray' means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

[(eh)] (eo) 'Reconcile or reconciliation' means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

[(ei)] (ep) 'Reconciliation of shortfalls plan' means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the director, Division of Air resources, Department of Environmental Conservation pursuant to section 235-11.1(c)(1)(vii)(j) of this Part.

[(ej)] (eq) 'Responsible party' means the company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was manufactured for or distributed by, as noted on the label.

[(ek)] (er) 'Responsible ACP party' means the company, firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the [responsible ACP party] 'responsible ACP party' is the party which the ACP product was manufactured for or distributed by, as noted on the label.

[(el)] (es) 'Restricted materials' means pesticides established as [restricted materials] 'restricted materials' under applicable Part 325 of this Title.

[(em)] (et) 'Retailer' means any person who sells, supplies, or offers consumer products for sale directly to consumers.

[(en)] (eu) 'Retail outlet' means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

[(eo)] (ev) 'Roll-on product' means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

[(ep)] (ew) 'Rubber [and]/vinyl protectant' means

(1) For products manufactured before January 1, 2022: any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. 'Rubber [and]/vinyl protectant' does not include products 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.

(2) For products manufactured on or after January 1, 2022, any product labeled to protect, preserve or renew vinyl or rubber on vehicles, tires, luggage, furniture, and/or household products such as vinyl covers, clothing, and accessories. 'Rubber/vinyl protectant' does not include: products labeled to clean the wheel rim, such as aluminum or magnesium wheel cleaners; tire cleaners that do not leave an appearance-enhancing or protective substance on the tire; pigmented products designed or labeled to be used primarily for coloring; products used for construction, reconstruction, modification, structural maintenance or repair of rubber or vinyl substrates; or products, other than those labeled to be used on vehicle tires, qualifying as either clear coating or vinyl/fabric/leather/polycarbonate coating.

[(ea)] (ex) ‘Rubbing alcohol’ means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

(ey) ‘Sanitizer’ means, for products manufactured on or after January 1, 2022, products that are labeled as a ‘sanitizer’, or labeled to reduce, but not necessarily eliminate, microorganisms in the air, on surfaces, or on inanimate objects, and whose label is registered as a ‘sanitizer’ under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. section 136 et seq.) (see Table 1, Section 200.9 of this Title). Products that are labeled as both a ‘sanitizer’ and a ‘disinfectant’ are considered disinfectants. ‘Sanitizer’ does not include:

_____ (1) disinfectant;

_____ (2) products labeled solely for use on humans or animals;

_____ (3) products labeled solely for agricultural use;

_____ (4) products labeled solely for use in swimming, therapeutic tubs, or hot tubs;

_____ (5) products which are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;

_____ (6) products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent or veterinary establishments;

_____ (7) products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

_____ (8) products which are labeled as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet/urinal care products, metal polishers, carpet cleaners, or fabric refreshers that may also make sanitizing or anti-microbial claims on the label.

[(er)] (ez) 'Sealant and caulking compound' means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. 'Sealant and caulking compound' does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear/paintable/water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. 'Sealant and caulking compound' also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only: 'Removable caulking compounds' means a compound which temporarily seals windows or doors for three- to six-month time intervals; and 'clear/paintable/water resistant caulking compounds' means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

[(es)] (fa) 'Semisolid' means a product that, at room temperature, will not pour, but will spread or deform easily, including, but not limited to gels, pastes, and greases.

[(et)] (fb) 'Shaving cream' means 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. 'Shaving cream' does not include shaving gel.

[(eu)] (fc) 'Shaving gel' means 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. 'Shaving gel' does not include shaving cream.

[(ev)] (fd) 'Shortfall' means 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. 'Shortfall' does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation.

[(ew)] (fe) 'Silicone-based multi-purpose lubricant' means any lubricant which is:

(1) designed and labeled for use to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

(2) designed and labeled for use for general purpose lubrication, or for use in a wide variety of applications.

'Silicone-based multi-purpose lubricant' does not include products designed and labeled for use exclusively to release manufactured products from molds.

[(ex)] (ff) 'Single phase aerosol air freshener' means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

[(ey)] (fg) 'Small business' means any business that is independently owned and operated, and employs 100 or fewer individuals.

[(ez)] (fh) 'Solid' means 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 (see Table 1, Section 200.9 of this Title).

[(fa)] (fi) 'Special purpose spray adhesive' means an aerosol adhesive that meets any of the following definitions:

(1) 'Mounting adhesive' means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(2) 'Flexible vinyl adhesive' means an aerosol adhesive designed to bond flexible vinyl to substrates. 'Flexible vinyl' means a non-rigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A 'plasticizer' is 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 using ASTM Method E 260-96 (2001) (see Table 1, Section 200.9 of this Title) or from product formulation data.

(3) 'Polystyrene foam adhesive' means an aerosol adhesive designed to bond polystyrene foam to substrates.

(4) 'Automobile headliner adhesive' means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(5) 'Polyolefin adhesive' means an aerosol adhesive designed to bond polyolefins to substrates.

(6) 'Laminate repair/edgebanding adhesive' means an aerosol adhesive designed for:

(i) the touch-up or repair of items laminated with high pressure laminates ('e.g.', lifted edges, delaminates, etc.); or

(ii) for the touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition: 'high pressure laminate' means sheet materials which consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265[°F] degrees Fahrenheit, and at pressures between 1,000 and 1,400 psi.

(7) 'Automotive engine compartment adhesive' means an aerosol adhesive designed 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] degrees Fahrenheit.

[(fb)] (fj) 'Spot remover' means any product which is labeled for use in cleaning localized areas, or removing 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. 'Spot remover' does not include dry cleaning fluid, laundry pre-wash, or multi-purpose solvent.

[(fc)] (fk) 'Spray buff product' means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

[(fd)] (fl) 'Stick product' means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

[(fe)] (fm) 'Structural waterproof adhesive' means 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) (see Table 1, Section 200.9 of this Title). This definition is as per the Federal Consumer Products Regulation 40 CFR part 59, subpart C (see Table 1, Section 200.9 of this Title).

[(ff)] (fn) 'Surplus reduction' means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in section 235-11.1(g)(3) of this Part, 'surplus reduction' does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation.

[(fg)] (fo) 'Surplus trading' means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

[(fh)] (fp) 'Table B compound' means any carbon-containing compound listed as an exception to the definition of VOC as defined in Part 200 of this Title.

(fq) 'Temporary hair color' means, for products manufactured on or after January 1, 2022, any product that applies color, glitter, or UV-active pigments to hair, wigs, or fur and is removable when washed. 'Temporary hair color' includes hair color mousses and products labeled to add texture or thickness to cover thinning/balding areas. 'Temporary hair color' does not include hair spray, hair styling product, or hair mousse.

[(fi)] (fr) 'Terrestrial' means to live on or grow from land.

[(fj)] (fs) 'Tire sealant and [inflation] inflator' means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

[(fk)] (ft) 'Toilet/Urinal care product' means any product designed or labeled for use to clean and/or deodorize toilet bowls, toilet tanks, or urinals. Toilet bowls, toilet tanks, or urinals includes, but is not limited to, 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 buses, recreational motor homes, boats, ships, and aircraft. 'Toilet/Urinal care product' does not include bathroom and tile cleaner or general purpose cleaner.

[(fl)] (fu) 'Total maximum historical emissions (TMHE)' means 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] '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] 'TMHE' shall be expressed to the nearest pound and calculated according to the following calculation:

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

where,

$$MHE = \left(\frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

where,

Highest VOC Content = the maximum VOC content which the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any 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.

Highest Sales = the maximum one-year gross New York State sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-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 Days = 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.

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.

[(fm)] (fv) 'Type A propellant' means a compressed gas such as CO₂, N₂, N₂O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

[(fn)] (fw) 'Type B propellant' means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

[(fo)] (fx) 'Type C propellant' means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

[(fp)] (fy) 'Undercoating' means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. 'Undercoating' includes, but is not limited to, rubberized, mastic, or asphaltic products.

[(fq)] (fz) 'Usage directions' means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

[(fr)] (ga) 'Vinyl/Fabric/Leather/Polycarbonate coating' means a coating designed and labeled for use exclusively to coat vinyl, fabric, leather, or polycarbonate plastic substrates.

[(fs)] (gb) 'VOC content' means, except for charcoal lighter 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 pursuant to [section] sections 235-9.1(a) and (b) of this Part, and calculated according to the following equations:

For all products except for charcoal lighter material products:

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

where,

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

B = total weight of all VOC per unit, as defined in Part 200 of this Title

C = total weight of all exempted VOCs per unit, as specified in Subpart 235-4 of this Part

For charcoal lighter material products only:

$$\text{VOC Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate}}$$

Where,

Certified Emissions = the emissions level for products approved by director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(f) of this Part, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 28, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound CH₂ per start.

and

Certified Use Rate = the usage level for products approved by the director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(f) of this Part, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method

Compliance Certification Protocol (Feb. 28, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound certified product used per start.

_____ (gc) 'Volatile Organic Compound' or 'VOC' as defined in section 200.1 of this title.

[(ft)] (gd) 'Wasp and hornet insecticide' means any insecticide product that is designed 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.

[(fu)] (ge) 'Waterproofer' means a product designed and labeled for use exclusively to repel water from fabric or leather substrates. 'Waterproofer' does not include fabric protectants.

[(fv)] (gf) 'Wax' means 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 polymers (plastics). 'Wax' includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

[(fw)] (gg) 'Web spray adhesive' means any aerosol adhesive which is not a mist spray adhesive or a special purpose spray adhesive.

[(fx)] (gh) 'Wood cleaner' means a product labeled for use to clean wooden materials including but not limited to decking, fences, flooring, logs, cabinetry, and furniture. 'Wood cleaner' does not

include dusting aid, general purpose cleaners, furniture maintenance product, floor wax stripper, floor polish or wax, or products designed and labeled for use exclusively to preserve or color wood.

[(fy)] (gi) 'Wood floor wax' means wax-based products for use solely on wood floors.

[(fz)] (gj) 'Working day' means any day, [between] Monday through Friday, inclusive, except for days that are Federal holidays.

(gk) 'Zinc rich primer' means, for products manufactured on or after January 1, 2022, a coating that:

(1) contains at least 65 percent metallic zinc powder or zinc dust by weight of total solids; and

(2) is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings; and

(3) is intended for professional use only and is labeled "For Professional Use Only," "For Industrial Use Only," "Not for residential use," or "Not intended for residential use."

Section 235-3.1 Standards

(a) Except as provided in Subparts 235-4 (Exemptions), 235-5 (Innovative Products), 235-8 (Variances), and 235-11 (Alternative Control Plan) of this Part, no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any consumer product manufactured on or after the corresponding date listed below in the Table of Standards (table) which contains VOCs in excess of the VOC content limits specified in the table:

Table of Standards

'Product Category'	'VOC Content Limit' (percent by weight)		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	<u>Manufactured</u> <u>On or after</u> <u>January 1,</u> <u>2022</u>
Adhesive Removers:			
Floor or Wall covering		5	
Gasket or Thread Locking		50	
General Purpose		20	
Specialty		70	
Adhesives:			
Mist Spray	65		
Web Spray	55		
Special Purpose Spray Adhesives:			
Mounting, Automotive Engine Compartment, and Flexible Vinyl	70		
Polystyrene Foam and Automotive Headliner	65		
Polyolefin and Laminate Repair/Edgebanding	60		
Construction, Panel, and Floor Covering	15		<u>7</u>
Contact	80*		
Contact General purpose		55	
Contact Special purpose		80	
General Purpose	10		
Structural Waterproof	15		
Air Fresheners:			
Single-Phase Aerosols	30		
Double-Phase Aerosols	25		
Liquids/Pump Sprays	18		
Solids/Gels	3		
<u>Dual Purpose Air Freshener / Disinfectant</u>			<u>60</u>
Antiperspirants:			
Aerosols	40 HVOC 10 MVOC		
Non-Aerosols	0 HVOC 0 MVOC		
Anti-static Product:			
<u>Aerosol</u>			<u>80</u>
Non-aerosol		11	
Automotive Brake Cleaner[s] or Brake Cleaner	45		<u>10</u>
Automotive Rubbing or Polishing Compound	17		
Automotive Wax, Polish, Sealant or Glaze:			
Hard Paste Waxes	45		

Instant Detailers	3		
All Other Forms	15		
<u>Automotive Windshield Cleaner</u>			<u>35</u>
Automotive Windshield Washer Fluids	35		
Bathroom and Tile Cleaners:			
Aerosols	7		
All Other Forms	5		n/a
<u>Non-Aerosol</u>			<u>1</u>
Bug and Tar Remover	40		
Carburetor or Fuel-Injection Air Intake Cleaners	45		<u>10</u>
Carpet and Upholstery Cleaners:			
Aerosols	7		
Non-Aerosols (Dilutables)	0.1		
Non-Aerosols (Ready-to-Use)	3		
Charcoal Lighter Material	see subdivision (f) of this section		
Cooking Spray:			
Aerosols	18		
Deodorants:			
Aerosols	0 HVOC 10 MVOC		
Non-Aerosols	0 HVOC 0 MVOC		
<u>Disinfectant:</u>			
<u>Aerosols</u>			<u>70</u>
<u>Non-Aerosols</u>			<u>1</u>
Dusting Aids:			
Aerosols	25		
All Other Forms	7		
Electrical Cleaner		45	
Electronic Cleaner		75	
Engine Degreasers:			
Aerosols	35		<u>10</u>
Non-Aerosols	5		
Fabric Protectants	60		
Fabric Refresher:			
Aerosols		15	
Non-Aerosols		6	
Floor Polishes/Waxes:			
Products for Flexible Flooring Materials	7		<u>1</u>
Products for Nonresilient Flooring	10		<u>1</u>
Wood Floor Wax	90		
Floor Wax Strippers:			
Non-Aerosols	See subdivision		

	(h) of this section		
Footwear or Leather Care Product:			
Aerosol		75	
Solid		55	
Other forms		15	
Furniture Maintenance Products:			
Aerosols	17		
All Other Forms Except Solid or Paste	7		<u>n/a</u>
Non-Aerosol (Except Solid or Paste)			<u>3</u>
General Purpose Cleaners:			
Aerosols	10		<u>8</u>
Non-Aerosols	4		
General Purpose Degreasers:			
Aerosols	50		<u>10</u>
Non-Aerosols	4		
Glass Cleaners:			
Aerosols	12		
Non-Aerosols	4		
Graffiti Remover:			
Aerosol		50	
Non-Aerosols		30	
Hair Mousses	6		
Hairshines	55		
Hairsprays	55		
Hair Styling Gels	6		
Hair Styling Products:			
Aerosols and Pump Sprays		6	
All other forms		2	
Heavy-Duty Hand Cleaner or Soap	8		
Insecticides:			
Crawling Bug (Aerosol)	15		
Crawling Bug (All Other Forms)	20		
Flea and Tick	25		
Flying Bug (Aerosol)	25		
Flying Bug (All Other Forms)	35		
Foggers	45		
Lawn and Garden (All Other Forms)	20		
Lawn and Garden (Non-Aerosol)	3		
Wasp and Hornet	40		
Laundry Prewash:			
Aerosols/Solids	22		
All Other Forms	5		
Laundry Starch Products	5		<u>4.5</u>
Metal Polishes/Cleaners	30		
Multi-Purpose Lubricant	50		

(Excluding Solid or Semi-Solid Products)			
<u>Multi-Purpose Solvent</u>			<u>3</u>
Nail Polish Remover	75		<u>1</u>
Non-Selective Terrestrial Herbicide:			
Non-Aerosols	3		
Oven or Grill Cleaners:			
Aerosol/Pump Sprays	8		
Liquids	5		
<u>Non-Aerosols</u>			<u>4</u>
Paint Remover or Strippers	50		
<u>Paint Thinner</u>			<u>3</u>
Penetrants	50		
Rubber and Vinyl Protectants:			
Non-Aerosols	3		
Aerosols	10		
<u>Sanitizer:</u>			
<u>Aerosol</u>			<u>70</u>
<u>Non-Aerosol</u>			<u>1</u>
Sealants and Caulking Compounds	4		
Shaving Creams	5		
Shaving Gel		7	<u>4</u>
Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60		
Spot Removers:			
Aerosols	25		
Non-Aerosols	8		
<u>Temporary Hair Color:</u>			
<u>Aerosol</u>			<u>55</u>
Tire Sealants and Inflators	20		
Toilet/Urinal Care:			
Aerosol		10	
Non-Aerosol		3	
Undercoatings:			
Aerosols	40		
Wood Cleaner:			
Aerosol		17	
Non-Aerosol		4	

* VOC standard will expire on December 31, 2009 because category will be split into two categories.

“n/a” not applicable

(b) No person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any antiperspirant or deodorant which contains any compound that has been identified by the CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, section 93000 (see Table 1, section 200.9 of this Title) as a toxic air contaminant.

(c) 'Products that are diluted prior to use'.

(1) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content limits specified in the Table of Standards in this Subpart shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this Subpart, minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(2) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the VOC content limits specified in the Table of Standards in this Subpart shall apply to the product only after the maximum recommended dilution has taken place.

(d) 'Sell-through of products.' [(1)] Sell-through period. Notwithstanding the provisions of [subdivision] subdivisions (a) or (g) of this section, a consumer product manufactured prior to the effective date specified for that product in the Table of Standards may be sold, supplied, or offered for sale after each of the specified effective dates. This subdivision shall not apply to:

[(i)] (1) any consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part, or

[(ii)] (2) Solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene; these products are subject to the one-year sell-through period specified in subdivision (n) of this section.

(e) 'Products registered under FIFRA'. For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. section 136, et. seq.) (see Table 1, section 200.9 of this Title), the effective date of the VOC content limits specified in Table of Standards in this Subpart is January 1, [2011] 2023.

(f) 'Requirements for charcoal lighter materials'. The following requirements shall apply to all charcoal lighter material products as defined in section 235-2.1[(ai)] (al) of this Part:

(1) 'Regulatory standards'.

(i) No person shall sell, supply, or offer for sale after January 1, 2005 any charcoal lighter material product unless at the time of the transaction:

(a) the manufacturer can demonstrate that they have been issued a currently effective certification by the CARB under the Consumer Products

provisions under Subchapter 8.5, Article 2, section 94509(h), of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title). This certification remains in effect for the State of New York for as long as the CARB certification remains in effect. Any manufacture claiming such a certification on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the certification decision (‘i.e.’, the Executive Order), including all conditions established by CARB applicable to the certification;

(‘b’) the manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to paragraph (2) of this subdivision;

(‘c’) the charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to paragraph (2) of this subdivision; and

(‘d’) the product usage directions for the charcoal lighter material are the same as those provided to the director, Division of Air Resources, Department of Environmental Conservation pursuant to subparagraph (2)(iii) of this subdivision.

(2) ‘Certification requirements’.

(i) No charcoal lighter material formulation shall be certified under this subsection unless the applicant for certification demonstrates to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation [satisfaction] that the VOC emissions from the ignition of charcoal with the charcoal lighter material 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 28, 1991 (the South Coast Air Quality Management District Rule 1174 Testing Protocol) (see Table 1, section 200.9 of this Title). The provisions relating to LVP-VOC in sections 235-2.1[(da)](dg) and 235-4.1(f) of this Part shall not apply to any charcoal lighter material subject to the requirements of this subdivision and subdivision (a) of this section.

(ii) The director, Division of Air Resources, Department of Environmental Conservation may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title).

(iii) A manufacturer or distributor of charcoal lighter material may apply to the director, Division of Air Resources, Department of Environmental Conservation for certification of a charcoal lighter material formulation in accordance with this paragraph. The application shall be in writing and shall include, at a minimum, the following:

(‘a’) the results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see Table 1, section 200.9 of this Title).

(‘b’) the exact text and/or graphics that will appear on the charcoal lighter material’s principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) for that product, unless:

(‘1’) the charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes; or

(‘2’) the charcoal lighter material is already incorporated into the charcoal, such as certain bag light, instant light or match light products.

(‘c’) for a charcoal lighter material which meets the criteria specified in subclause (‘b’)(‘1’) of this subparagraph, the usage instructions provided to the director, Division of Air Resources, Department of Environmental Conservation shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance

Certification Protocol (see Table 1, section 200.9 of this Title) for that product;
and

(‘d’) any physical property data, formulation data, or other information required by the director, Division of Air Resources, Department of Environmental Conservation for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to this paragraph.

(iv) Within 30 days of receipt of an application, the director, Division of Air Resources, Department of Environmental Conservation shall advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the director, Division of Air Resources, Department of Environmental Conservation shall advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

(v) If the director, Division of Air Resources, Department of Environmental Conservation finds that an application meets the requirements of this paragraph, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this section are met. The director, Division of Air Resources, Department of Environmental Conservation shall act on a complete application within 90 days after the application is deemed complete.

(3) Notice of modifications. For any charcoal lighter material for which certification has been granted pursuant to paragraph (2) of this subdivision, the applicant for certification shall notify the director, Division of Air Resources, Department of Environmental Conservation in writing within 30 days of:

(i) any change in the usage directions; or

(ii) any change in product formulation, test results, or any other information submitted pursuant to paragraph (2) of this subdivision which may result in VOC emissions greater than 0.020 pound of VOC per start.

(4) 'Revocation of certification'. If the director, Division of Air Resources, Department of Environmental Conservation determines that any certified charcoal lighter material 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 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) and the statistical analysis procedures contained therein, the director, Division of Air Resources, Department of Environmental Conservation shall revoke or modify the certification in accordance with Part 621 of this Title and the procedures therein as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

(g) 'Requirements for aerosol adhesives'.

(1) As specified in California Health and Safety Code section 41712(h)(2) (see Table 1, section 200.9 of this Title) (or applicable New York State laws and regulations), the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in Subparts 235-4, 235-5, and 235-8 of this Part, no person shall sell, supply, offer for sale, use or manufacture for sale in the State of New York any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

(2) (i) In order to qualify as a special purpose spray adhesive the product must meet one or more of the definitions for special purpose spray adhesive specified in subdivision 235-2.1[(fa)](fi) of this Part, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one of the definitions for special purpose spray adhesive, then the product shall be classified as either a web spray adhesive or a mist spray adhesive.

(ii) If a product meets more than one of the definitions specified in section 235-2.1[(fa)](fi) of this Part for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive under subparagraph (i) of this paragraph, then the VOC content limit for the product shall be the lowest applicable VOC content limit specified in the Table of Standards in this Subpart.

(3) Effective January 1, 2005, no person shall sell, supply, offer for sale, or manufacture for use in the State of New York any aerosol adhesive which contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(4) All aerosol adhesives must comply with the labeling requirements specified in section 235-6.1(d) of this Part.

(h) 'Requirements for floor wax strippers'. No person shall sell, supply, offer for sale, or manufacture for use in the State of New York any floor wax stripper unless the following requirements are met:

(1) The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent by weight or less.

(2) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent by weight or less.

(3) The terms light build-up, medium build-up or heavy build-up are not specifically required, as long as comparable terminology is used.

(i) 'Products containing ozone-depleting compounds'. For any consumer product for which VOC content limits are specified in the Table of Standards under this Subpart, no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any consumer product which contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane);
CFC-12 (dichlorodifluoromethane);
CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);
CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);
CFC-115 (chloropentafluoroethane);
halon 1211 (bromochlorodifluoromethane);
halon 1301 (bromotrifluoromethane);
halon 2402 (dibromotetrafluoroethane);
HCFC-22 (chlorodifluoromethane);
HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);
HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
HCFC-141b (1,1-dichloro-1-fluoroethane);
HCFC-142b (1-chloro-1,1-difluoroethane);
1,1,1-trichloroethane; and,
carbon tetrachloride.

(j) The requirements of subdivision (i) of this section shall not apply to any existing product formulation that complies with the Table of Standards of this Subpart or any existing product formulation that is reformulated to meet the Table of Standards of this Subpart, provided the ozone depleting compound content of the reformulated product does not increase.

(k) The requirements of subdivision (i) of this section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01 percent by weight of the product.

(l) 'Requirements for contact adhesives, electronic cleaners, footwear or leather care products, and general purpose degreasers.'

(1) Except as provided below in paragraph[s] (2) [and (4)] of this subdivision, [effective January 1, 2010,] no person shall sell, supply, offer for sale, or manufacture for use in the State of New York any contact adhesive, electronic cleaner, footwear or leather care product, or general purpose degreaser that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(2) [Sell-through of products. Contact adhesives, electronic cleaners, footwear or leather care products, and general purpose degreasers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2010, may be sold, supplied, or offered for sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

(3) Notification for products sold during the sell-through period. Any person who sells or supplies a consumer product identified above in paragraph (1) of this subdivision must notify the purchaser of the product in writing that the sell-through period for that product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

(i) the product is sold or supplied to a distributor or retailer; and

(ii) the product is sold or supplied on or after June 30, 2010.

(4)] Impurities. The requirements of paragraph[s] (1) [and (3)] of this subdivision shall not apply to any 'contact adhesive,' 'electronic cleaner,' 'footwear or leather care product,' or 'general purpose degreaser' containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(m) 'Requirements for adhesive removers, electrical cleaners, and graffiti removers.'

(1) Except as provided below in paragraph[s] (2) [and (4)] of this subdivision, [effective January 1, 2010], no person shall sell, supply, offer for sale, or manufacture for use in the State of New York any adhesive remover, electrical cleaner, or graffiti remover that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(2) [Sell-through of products. Adhesive removers, electrical cleaners, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2010, may be sold, supplied, or offered for sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

(3) Notification for products sold during the sell-through period. Any person who sells or supplies a consumer product identified above in paragraph (1) of this subdivision must notify

the purchaser of the product in writing that the sell-through period for that product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

(i) the product is sold or supplied to a distributor or retailer; and

(ii) the product is sold or supplied on or after June 30, 2010.

(4) Impurities. The requirements of paragraph[s] (1) [and (3)] of this subdivision shall not apply to any adhesive remover, electrical cleaner, or graffiti remover containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(n) 'Requirements for solid air fresheners and toilet/urinal care products.'

[(1) Effective January 1, 2010, no] No person shall sell, supply, offer for sale, or manufacture for use in the State of New York any solid air fresheners or toilet/urinal care products that contain para-dichlorobenzene, except that solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene and were manufactured before January 1, 2010, may be sold, supplied, or offered for sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

[(2) Notification for products sold during the sell-through period. Any person who sells or supplies any solid air freshener or toilet/urinal care product that contains para-dichlorobenzene

must notify the purchaser of the product in writing that the sell-through period for the product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

(i) the product is sold or supplied to a distributor or retailer; and

(ii) the product is sold or supplied on or after June 30, 2010.]

(o) 'Requirements for bathroom and tile cleaners, construction, panel and floor covering adhesives, electronic cleaners labeled as "energized electronic equipment use only," general purpose cleaners, and oven or grill cleaners.'

(1) No person shall sell, supply, offer for sale, or manufacture for use in New York any bathroom and tile cleaner, construction, panel and floor covering adhesive or electronic cleaner labeled as "energized electronic equipment use only," general purpose cleaner, or oven or grill cleaner manufactured on or after January 1, 2022, that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(2) Impurities. The requirements of paragraph (o)(1) of this subdivision shall not apply to any bathroom and tile cleaner, construction, panel and floor covering adhesive, electronic cleaner labeled as "energized electronic equipment use only," general purpose cleaner, or oven or grill cleaner containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(p) 'Requirements for paint thinner and multipurpose solvents'

(1) Except as provided below, effective January 1, 2022, no person shall sell, supply, offer for sale, or manufacture for use in New York any multi-purpose solvent or paint thinner that contains any of the following:

- (i) methylene chloride, perchloroethylene, or trichloroethylene; or
- (ii) greater than 1 percent Aromatic Compound content by weight.

(2) Impurities. The requirements of paragraph (1) of this subdivision do not apply to any multi-purpose solvent or paint thinner that contain methylene chloride; perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

Section 235-4.1 Exemptions

(a) This Part shall not apply to any consumer product manufactured in the State of New York for shipment and use outside of the State of New York.

(b) The provisions of this Part shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of New York a consumer product that does not comply with the VOC content limits specified in section 235-3.1(a) of this Part, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the State of New York, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the State of New York. This

subdivision does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the State of New York.

(c) The medium volatility organic compound (MVOC) content limits specified in section 235-3.1(a) of this Part for antiperspirants or deodorants, shall not apply to ethanol.

(d) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to fragrances up to a combined level of two percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of two percent by weight contained in any antiperspirant or deodorant.

(e) The requirements of section 235-3.1(a) of this Part for antiperspirants or deodorants shall not apply to those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20[°C] degrees Celsius.

(f) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to any LVP-VOC.

(g) The requirements of section 235-6.1(a) of this Part shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. section 136, 'et. seq.')

 (see Table 1, section 200.9 of this Title).

(h) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under Part 200 of this Title or exempted under subdivision (f) of this section.

(i) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to [air fresheners and] insecticides containing at least 98 percent paradichlorobenzene.

[(1) Until January 1, 2010, the VOC limits specified in section 235-3.1(a) of this Part shall not apply to solid air fresheners containing at least 98 percent para-dichlorobenzene. On or after January 1, 2010, the provisions of section 235-3.1(n) of this Part apply to solid air fresheners containing para-dichlorobenzene.]

(j) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to adhesives sold in containers of one fluid ounce or less.

(k) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to bait station insecticides. For the purpose of this Subpart, 'bait station insecticides' are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.

Section 235-5.1 Innovative products

(a) Any manufacturer of consumer products which have been granted an innovative product exemption by the CARB under the innovative products provisions in section 94511, or 94503.5 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) shall be exempt from the Table of Standards in section 235-3.1(a) of this Part for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in the Table of Standards in section 235-3.1(a) of this Part. Any manufacturer claiming such an exemption on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the CARB innovative product exemption decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the exemption. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the innovative product exemption will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

(b) Manufacturers of consumer products that have been granted an innovative products exemption under the innovative products provisions in section 94511, or 94503.5 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) based on California specific data, or that have not been granted an exemption by the CARB may seek an innovative products exemption in accordance with the following criteria:

(1) The director, Division of Air Resources, Department of Environmental Conservation shall exempt a consumer product from the VOC content limits specified in section 235-3.1(a) of this Part if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(i) the VOC emissions from a representative consumer product which complies with the VOC content limits specified in section 235-3.1(a) of this Part; or

(ii) the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC content limits specified in section 235-3.1(a) of this Part. VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \text{VOC}_{STD} \div \text{VOC}_{NC}$$

where:

E_R = the VOC emissions from the non-complying representative product, had it been reformulated.

E_{NC} = the VOC emissions from the non-complying representative product in its current formulation.

VOC_{STD} = the VOC content limit specified in the Table of Standards in section 235-3.1(a) of this Part.

VOC_{NC} = the VOC content of the non-complying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the director, Division of Air Resources, Department of Environmental Conservation.

(2) For the purposes of this Subpart, 'representative consumer product' means a consumer product which meets all of the following criteria:

(i) the representative product shall be subject to the same VOC content limit in section 235-3.1(a) of this Part as the innovative product;

(ii) the representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made; and

(iii) the representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(3) A manufacturer shall apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for any exemption claimed under paragraph (1) of this subdivision. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the director, Division of Air Resources, Department of Environmental Conservation to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a

manufacturer pursuant to this Subpart shall be handled in accordance with the procedures specified in applicable New York State confidentiality requirements.

(4) Within 30 days of receipt of the exemption application, the director, Division of Air Resources, Department of Environmental Conservation shall determine whether an application is complete as provided in applicable New York State laws or regulations.

(5) Within 90 days after an application has been deemed complete, the director, Division of Air Resources, Department of Environmental Conservation shall determine whether, under what conditions, and to what extent, an exemption from the requirements of section 235-3.1(a) of this Part will be permitted. The applicant and the director, Division of Air Resources, Department of Environmental Conservation may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The director, Division of Air Resources, Department of Environmental Conservation shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in paragraph (1) of this subdivision, and that such emissions reductions can be enforced. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the innovative product exemption will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

(6) In granting an exemption for a product, the director, Division of Air Resources, Department of Environmental Conservation shall establish conditions that are enforceable.

These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the director, Division of Air Resources, Department of Environmental Conservation to be necessary. The director, Division of Air Resources, Department of Environmental Conservation shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

(7) For any product for which an exemption has been granted pursuant to this Subpart, the manufacturer shall notify the director, Division of Air Resources, Department of Environmental Conservation in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the director, Division of Air Resources, Department of Environmental Conservation within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the director, Division of Air Resources, Department of Environmental Conservation in support of the exemption application.

(8) If the VOC content limits specified in section 235-3.1(a) of this Part are lowered for a product category through any subsequent rule making, all innovative product exemptions granted for products in the product category, except as provided in this paragraph, shall have no force and effect as of the effective date of the modified VOC content limit. This paragraph shall not apply to those innovative products which have VOC emissions less than the applicable lowered VOC content limit and for which a written notification of the product's emissions status versus the lowered VOC content limit has been submitted to and approved by

the director, Division of Air Resources, Department of Environmental Conservation at least 60 days before the effective date of such limits.

(9) If the director, Division of Air Resources, Department of Environmental Conservation believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in paragraph (1) of this subdivision, the director, Division of Air Resources, Department of Environmental Conservation may review, and for good cause, modify or revoke the exemption in accordance with Part 621 of this Title and the procedures therein as necessary to assure that the product will meet these criteria.

Section 235-6.1 Administrative requirements

(a) 'Product dating'.

(1) Each manufacturer of a consumer product subject to Subpart 235-3 of this Part 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 such date.

(2) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of paragraph (b)(1) of this section, 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, and

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 ('i.e.' the Julian date)

(3) This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in section 235-3.1(a) of this Part.

(4) The date or date-code information shall 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 any part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container without removing any product packaging.

(5) The requirements of this subdivision shall not apply to[

(i)] products containing no VOCs (as defined in subdivision 200.1[cf](cg) of this Title), or containing VOCs at 0.10 percent by weight or less.

(b) 'Additional product dating requirements'.

(1) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to Subpart 235-3 of this Part an explanation of the date portion of the code

must be on file with the director, Division of Air Resources, Department of Environmental Conservation [by the close of business December 31, 2010].

(2) If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to section 235-3.6(b)(1) of this Part, an explanation of the modified code must be submitted to the director, Division of Air Resources, Department of Environmental Conservation before any products displaying the modified code are sold, supplied, or offered for sale in New York State.

(3) No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any 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. (Note: If a manufacturer believes there is something in the date code explanation related to something other than the date of manufacture that the manufacturer believes to be confidential, then the manufacturer should modify the explanation prior to submitting it to the Department so that the date code explanation only includes non-confidential date code information.)

(c) 'Most restrictive limit'.

(1) Products manufactured before January 1, 2010, and FIFRA-registered insecticides manufactured before January 1, 2011. Notwithstanding the definition of product category as

defined in section 235-2.1([ec]ej) of this Part, if anywhere on the principal display panel of any consumer product manufactured before January 1, 2010, or any FIFRA registered insecticide manufactured before June 1, 2011, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC content limit is specified in section 235-3.1(a) of this Part, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products, and insecticide foggers.

(2) Products manufactured on or after January 1, 2010, and FIFRA-registered insecticides manufactured on or after January 1, 2011. Notwithstanding the definition of product category in section 235-2.1(ec) of this Part, if anywhere on the container or packaging of any consumer product manufactured on or after January 1, 2010, or any FIFRA-registered insecticide manufactured on or after January 1, 2011, or on any sticker or label affixed thereto, any 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 section 235-3.1(a) of this Part, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.

(d) 'Additional labeling requirements for aerosol adhesives, adhesive removers, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesives'.

(1) In addition to the requirements specified in subdivision[s] (a) [and (c)] of this section, and Subpart 235-7 of this Part, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover[s], electronic cleaner, electrical cleaner, energized electrical

cleaner, and contact adhesive product subject to this Part shall ensure that all products clearly display the following information on each product container [which is manufactured on or after January 1, 2010]:

(i) the product category as specified in section 235-3.1(a) of this Part or an abbreviation of the category shall be displayed;

(ii) (a) the applicable VOC content limit for the product that is specified in section 235-3.1(a) of this Part, except for energized electrical cleaner, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the director, Division of Air Resources, Department of Environmental Conservation, as provided in Subpart 235-11 of this Part, and the product exceeds the applicable VOC content limit;

(b) if the product is included in an alternative control plan approved by the director, Division of Air Resources, Department of Environmental Conservation, and the product exceeds the applicable VOC content limits specified in section 235-3.1(a) of this Part, the product shall be labeled with the term ACP or ACP Product;

(iii) if the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate/application that qualifies the product as special purpose shall be displayed; and

(iv) if the manufacturer or responsible party uses an abbreviation as allowed by this subdivision, an explanation of the abbreviation must be filed with the director, Division of Air Resources, Department of Environmental Conservation before the abbreviation is used.

(2) The information required in paragraph (1) of this subdivision, shall be displayed on the product container such that it is readily observable without removing or irreversibly disassembling any portion of the product container or packaging. For the purposes of this Subpart, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(3) No person shall remove, alter, conceal, or deface the information required in paragraph (1) of this subdivision prior to final sale of the product.

Section 235-7.1 Reporting requirements

(a) Upon 90 days written notice, the director, Division of Air Resources, Department of Environmental Conservation may require any responsible party to report information for any consumer product or products the director, Division of Air Resources, Department of Environmental Conservation may specify including, but not limited to, all or part of the following information:

(1) the company name of the responsible party and the party's address, telephone number, and designated contact person;

(2) any claim of confidentiality made pursuant to applicable New York State confidentiality requirements;

(3) the product brand name for each consumer product and the product label;

(4) the product category to which the consumer product belongs;

(5) the applicable product form(s) listed separately;

(6) an identification of each product brand name and form as a household product, i&i product, or both;

(7) separate New York State sales in pounds per year, to the nearest pound, and the method used to calculate New York State sales for each product form;

(8) for information submitted by multiple companies, an identification of each company which is submitting relevant data separate from that submitted by the responsible party. All information from all companies shall be submitted by the date specified in this subdivision;

(9) for each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest 0.1 percent:

(i) total Table B compounds;

(ii) total LVP-VOCs that are not fragrances;

(iii) total all other carbon-containing compounds that are not fragrances;

(iv) total all non-carbon-containing compounds;

(v) total fragrance;

(vi) for products containing greater than two percent by weight fragrance:

(‘a’) the percent of fragrance that are LVP-VOCs; and

(‘b’) the percent of fragrance that are all other carbon-containing compounds;

(vii) total paradichlorobenzene;

(10) for each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(i) each Table B compound;

(ii) each LVP-VOC that is not a fragrance;

(11) if applicable, the weight percent comprised of propellant for each product; and

(12) if applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

If the responsible party does not have or does not provide the information requested by the director, Division of Air Resources, Department of Environmental Conservation, the director may require the reporting of this information by the person who has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

(b) In addition to the requirements of paragraph (a)(10) of this section, the responsible party shall report or shall arrange to have reported to the director, Division of Air Resources, Department of Environmental Conservation the net percent by weight of each ozone-depleting compound which is:

(1) listed in section 235-3.1(i) of this Part; and

(2) contained in a product subject to reporting under subdivision (a) of this section in any amount greater than 0.1 percent by weight.

(c) All information submitted by any person pursuant to this Subpart shall be handled in accordance with the procedures specified in applicable New York State confidentiality requirements.

[(d) 'Special reporting requirements for consumer products that contain perchloroethylene or methylene chloride'.

(1) The requirements of this Subpart shall apply to all responsible parties for consumer products that are subject to section 235-3.1(a) of this Part and contain perchloroethylene or methylene chloride and energized electrical cleaners as defined in section 235-2.1(bf) of this Part, that contain perchloroethylene or methylene chloride. For the purposes of this Subpart, a product contains perchloroethylene or methylene chloride if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

(2) For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold in the State of New York during each calendar year, beginning with the year 2005, and ending with the year 2010:

(i) the product brand name and a copy of the product label with legible usage instructions;

(ii) the product category to which the consumer product belongs;

(iii) the applicable product form(s) (listed separately);

(iv) for each product form listed in subparagraph (iii) of this paragraph, the total sales in the State of New York during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating the New York State sales; and

(v) the weight percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the consumer product.

(3) The information specified in paragraph (2) of this subdivision shall be reported for each calendar year by March 1st of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is due on March 1st of each year thereafter, until March 1, 2011, when the last report is due.]

Section 235-8.1 Variances

(a) Any person who cannot comply with the requirements set forth in Subpart 235-3 of this Part, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for a variance. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the variance will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

The variance application shall set forth:

(1) the specific grounds upon which the variance is sought;

(2) the proposed date(s) by which compliance with the provisions of Subpart 235-3 of this Part will be achieved; and

(3) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

(b) No variance shall be granted unless all of the following findings are made:

(1) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with Subpart 235-3 of this Part would result in extraordinary economic hardship;

(2) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

(c) Any variance order shall specify a final compliance date by which the requirements of Subpart 235-3 of this Part will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the director, Division of Air Resources, Department of Environmental Conservation finds necessary to carry out the purposes of applicable New York State health and safety laws and Part 621 of this Title and the procedures therein.

(d) Upon the application of any person, the director, Division of Air Resources, Department of Environmental Conservation may review, and for good cause, modify or revoke a variance from requirements of Subpart 235-3 of this Part in accordance with Part 621 of this Title and the procedures therein and applicable New York State health and safety laws.

Section 235-9.1 Test methods

(a) Testing to determine compliance with the requirements of this Part, shall be performed using CARB Test Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products (see Table 1, section 200.9 of this Title). For the purposes of this Subpart, CARB Test Method 310 reference to Executive Officer will be replaced by director, Division of Air Resources, Department of Environmental Conservation. Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the director, Division of Air Resources, Department of Environmental Conservation. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the alternative test method will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval. Information submitted to the director, Division of Air Resources, Department of Environmental Conservation may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in applicable New York State laws and regulations.

(b) 'VOC content determinations using product formulation and records'. Testing to determine compliance with the requirements of this Part may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

(1) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(2) If product records appear to demonstrate compliance with the VOC content limits, but these records are contradicted by product testing performed using CARB Test Method 310 (see Table 1, section 200.9 of this Title), the results of CARB Test Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this Part.

(c) 'Determination of liquid or solid'. Testing to determine whether a product is a liquid or solid shall be performed using ASTM D 4359-90 (2000)e1 (see Table 1, section 200.9 of this Title).

(d) 'Compliance determinations for charcoal lighter material products'. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title).

(e) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D 86-90 (September 28, 1990) (see Table 1, section 200.9 of this Title).

(f) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

Section 235-10.1 Severability

Each [part] provision of this Part shall be deemed severable, and in the event that any [part] provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

Section 235-11.1 Alternative control plan for consumer products

The purpose of this Subpart is to provide an alternative method to comply with the Table of Standards specified in section 235-3.1(a) of this Part. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified in Subparts 235-1 through 235-11 of this Part. Only responsible ACP parties for consumer products may enter into an ACP. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the Alternative Control Plan (ACP) will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

(a) Any manufacturer of consumer products which have been granted an ACP agreement by the CARB under the provisions in sections 94540-94555 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) shall be exempt from the Table of Standards in section 235-3.1(a) of this Part for the period of time that the CARB ACP agreement remains in effect provided that all ACP products within the CARB ACP agreement are contained in the Table of Standards in section 235-3.1(a) of this Part. Any manufacturer claiming such an ACP agreement on this basis must submit to the director, Division of Air Resources, Department of Environmental

Conservation a copy of the CARB ACP decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the exemption.

(b) Manufacturers of consumer products that have been granted an ACP agreement under the ACP provision in sections 94540-94555 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP agreement in accordance with subdivisions (c) through (m) of this section.

(c) 'Requirements and process for approval of an ACP'.

(1) To be considered by the director, Division of Air Resources, Department of Environmental Conservation for approval, an application for a proposed ACP shall be submitted in writing to the director, Division of Air Resources, Department of Environmental Conservation by the responsible ACP party and shall contain all of the following:

(i) an identification of the contact persons, phone numbers, names and addresses of the responsible ACP party which is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement;

(ii) a statement of whether the responsible ACP party is a small business or a one-product business, as defined in section 235-2.1[(ey)](fg) and 235-2.1[(dr)](dx) of this Part;

(iii) a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category(ies) for each distinct ACP product that is proposed for inclusion in the ACP;

(iv) for each proposed ACP product identified in subparagraph (iii) of this paragraph, a demonstration to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in clause ('e') of this subparagraph. To provide this demonstration, the responsible ACP party shall do all of the following:

(a) provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales; and

(b) determine the enforceable sales of each product using enforceable sales records as defined in section 235-2.1[(bg)](bk) of this Part; and

(c) demonstrate, to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party; and

(‘d’) calculate the percentage of the gross New York State sales, as defined in section 235-2.1[(cg)](ck) of this Part which is comprised of enforceable sales; and

(‘e’) determine which ACP products have enforceable sales which are 75 percent or more of the gross New York State sales. Only ACP products meeting this criteria shall be allowed to be sold in the State of New York under an ACP;

(v) for each of the ACP products identified in clause (iv)(‘e’) of this paragraph, the inclusion of the following:

(‘a’) legible copies of the existing labels for each product;

(‘b’) the VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods, as follows:

(‘1’) the VOC and LVP contents of the product at the time the application for an ACP is submitted; and

(‘2’) any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent ($\pm 10.0\%$) of the VOC or LVP contents reported in subclause (‘1’), of this clause;

(vi) a written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation;

(vii) an operational plan covering all the products identified under clause (iv)(e) of this paragraph for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(a) an identification of the compliance periods and dates for the responsible ACP party to report the information required by the director, Division of Air Resources, Department of Environmental Conservation in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than 365 days. The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the director, Division of Air Resources, Department of Environmental Conservation at the same time and at the same frequency; and

(‘b’) an identification of specific enforceable sales records to be provided to the director, Division of Air Resources, Department of Environmental Conservation for enforcing the provisions of this Part and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the director, Division of Air Resources, Department of Environmental Conservation no later than the compliance period dates specified in clause (‘a’) of this subparagraph; and

(‘c’) for a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party(ies) that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP; and

(‘d’) for each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method; and

(‘e’) the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect; and

(f) a detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (‘i.e.’, by ACP reformulation). This demonstration shall use the equations specified in Subparts 235-2 and 235-3 of this Part for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of New York during each compliance period; and

(g) a certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of this Part; and

(h) written explanations of the date-codes that will be displayed on each ACP product’s container or packaging; and

(i) a statement of the approximate dates by which the responsible ACP party plans to meet the applicable VOC content limit for each product in the ACP; and

(j) an operational plan (reconciliation of shortfalls plan) which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(1) a clear and convincing demonstration of how shortfalls of up to five percent, 10 percent, 15 percent, 25 percent, 50 percent, 75 percent and 100 percent of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined; and

(2) a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this clause; and

(3) a commitment to provide any record or information requested by the director, Division of Air Resources, Department of Environmental Conservation to verify that the shortfalls have been completely reconciled;

(viii) a declaration, signed by a legal representative for the responsible ACP party, which states that all information and operational plans submitted with the ACP application are true and correct.

(2) (i) In accordance with the time periods specified in subdivision (d) of this section, the director, Division of Air Resources, Department of Environmental Conservation shall

issue an ACP agreement approving an ACP which meets the requirements of this Part. The director, Division of Air Resources, Department of Environmental Conservation shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC content limits specified in section 235-3.1(a) of this Part. The ACP shall also include:

(a) only those ACP products for which the enforceable sales are at least 75 percent of the gross New York State sales, as determined in clause (iv)(e) of this paragraph;

(b) a reconciliation of shortfalls plan meeting the requirements of this Part; and

(c) operational terms, conditions, and data to be reported to the director, Division of Air Resources, Department of Environmental Conservation to ensure that all requirements of this Part are met;

(ii) The director, Division of Air Resources, Department of Environmental Conservation shall not approve an ACP submitted by a responsible ACP party if the director, Division of Air Resources, Department of Environmental Conservation determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in Subparts 235-1 through

235-11 of this Part, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

(d) 'ACP approval time frames'.

(1) The director, Division of Air Resources, Department of Environmental Conservation shall take appropriate action on an ACP within the following time periods:

(i) Within 30 working days of receipt of an ACP application, the director, Division of Air Resources, Department of Environmental Conservation shall inform the applicant in writing that either:

(‘a’) the application is complete and accepted for filing; or

(‘b’) the application is deficient, and identify the specific information required to make the application complete;

(ii) Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the director, Division of Air Resources, Department of Environmental Conservation shall inform the applicant in writing that either:

(‘a’) the additional information is sufficient to make the application complete, and the application is accepted for filing; or

(‘b’) the application is deficient, and identify the specific information required to make the application complete;

(iii) If the director, Division of Air Resources, Department of Environmental Conservation finds that an application meets the requirements of subdivision (c) of this section, then he or she shall issue an ACP agreement in accordance with the requirements of this Part. The director, Division of Air Resources, Department of Environmental Conservation shall act to approve or disapprove a complete application within 90 working days after the application is deemed complete.

(2) Before the end of each time period specified in this Subpart, the director, Division of Air Resources, Department of Environmental Conservation and the responsible ACP party may mutually agree to a longer time period for the director, Division of Air Resources, Department of Environmental Conservation to take the appropriate action.

(e) ‘Recordkeeping and availability of requested information’.

(1) All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

(2) The records specified in paragraph (1) of this subdivision shall be made available to the director, Division of Air Resources, Department of Environmental Conservation or his or her authorized representative:

(i) immediately upon request, during an on-site visit to a responsible ACP party;

(ii) within five working days after receipt of a written request from the director, Division of Air Resources, Department of Environmental Conservation; or

(iii) within a time period mutually agreed upon by both the director, Division of Air Resources, Department of Environmental Conservation and the responsible ACP party.

(f) 'Violations'.

(1) Any person who commits a violation of this Part is subject to the penalties specified in applicable New York State laws and regulations. Failure to meet any requirement of this Part or any condition of an applicable ACP agreement shall constitute a single, separate violation of this Part for each day until such requirement or condition is satisfied, except as otherwise provided in paragraphs (2) through (8) of this subdivision.

(2) False reporting of any information contained in an ACP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this Part for each day that the approved ACP is in effect.

(3) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this Part for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the State of New York.

(4) Any of the following actions shall each constitute a single, separate violation of the requirements of this Part for each day after the applicable deadline until the requirement is satisfied:

(i) failure to report data ('i.e.', missing data) or failure to report data accurately ('i.e.', inaccurate data) in writing to the director, Division of Air Resources, Department of Environmental Conservation regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified in the applicable ACP agreement;

(ii) false reporting of any information submitted to the director, Division of Air Resources, Department of Environmental Conservation for determining compliance with the ACP requirements;

(iii) failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement, within 30 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental Conservation; and

(iv) failure to completely reconcile the shortfall as specified in the ACP agreement, within 90 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental Conservation.

(5) False reporting or failure to report any of the information specified in subparagraph (g)(2)(ix) of this section, or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation of the requirements of this Part for each day during the time period for which the surplus reductions are claimed to be valid.

(6) Except as provided in paragraph (7) of this subdivision, any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this Part for each day of the applicable compliance period. The director, division of Air Resources, Department of Environmental Conservation shall determine whether an exceedance of the ACP limit has occurred as follows:

(i) if the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the director, Division of Air Resources, Department of Environmental Conservation shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

(ii) if the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the director, Division of Air Resources, Department of Environmental Conservation shall determine whether an exceedance of the ACP limit has occurred as follows:

(‘a’) for the missing data days, the director, Division of Air Resources, Department of Environmental Conservation shall calculate the total maximum historical emissions, as specified in section 235-2.1[(fl)](fu) of this Part;

(‘b’) for the remaining portion of the compliance period which are not missing data days, the director, Division of Air Resources, Department of Environmental Conservation shall calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

(‘c’) the ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to clause (‘a’) of this subparagraph, and the emissions determined pursuant to clause (‘b’) of this subparagraph;

(‘d’) the director, Division of Air Resources, Department of Environmental Conservation shall calculate the ACP limit for the entire compliance period using the VOC content limit applicable to each ACP product and the enforceable sales records specified in clause (‘b’) of this subparagraph. The enforceable sales for

each ACP product during missing data days, as specified in clause ('a') of this subparagraph, shall be zero;

('e') an exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to clause ('c') of this subparagraph, exceeds the ACP limit, determined pursuant to clause ('d') of this subparagraph.

(7) If a violation specified in this subdivision occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$\text{NEV} = (\text{ACP Emissions} - \text{ACP Limit}) \times 1 \text{ Violation}/40 \text{ Pounds}$$

where,

NEV = number of ACP limit violations

ACP Emissions = the ACP emissions for the compliance period

ACP Limit = the ACP limit for the compliance period

The responsible ACP party may determine the number of ACP limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP limit violations pursuant to this paragraph.

(8) In assessing the amount of penalties for any violation occurring pursuant to paragraphs (1) through (7) of this subdivision, the circumstances identified in applicable New York State health and safety laws and regulations shall be taken into consideration.

(9) A cause of action against a responsible ACP party under this Subpart shall be deemed to accrue on the date(s) when the records establishing a violation are received by the director, Division of Air Resources, Department of Environmental Conservation.

(10) The responsible ACP party is fully liable for compliance with the requirements of this Part, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this Part.

(g) 'Surplus reductions and surplus trading'.

(1) The director, Division of Air Resources, Department of Environmental Conservation shall issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, any surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in paragraph (2) of this subdivision. All surplus reductions shall be calculated by the director, Division of Air Resources, Department of Environmental Conservation at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or any other form of property.

(2) The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

(i) for the purposes of this Part, VOC reductions from sources of VOCs other than consumer products subject to the VOC content limits specified in section 235-3.1(a) of this Part may not be used to generate surplus reductions;

(ii) surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP;

(iii) surplus reductions are valid only after the director, division of Air Resources, Department of Environmental Conservation has issued an ACP agreement pursuant to paragraph (1) of this subdivision;

(iv) any surplus reductions issued by the director, Division of Air Resources, Department of Environmental Conservation may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision (k) of this section;

(v) surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;

(vi) except as provided in clause (vii)(b) of this paragraph, only small or one-product businesses selling products under an approved ACP may purchase surplus

reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase;

(vii) while valid, surplus reductions can be used only for the following purposes:

(‘a’) to adjust either the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(‘b’) to be traded for the purpose of reconciling another responsible ACP party’s shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the director, Division of Air Resources, Department of Environmental Conservation pursuant to clause (c)(1)(vii)(‘j’) of this section;

(viii) a valid surplus reduction certificate shall be in effect starting five days after the date of issuance by the director, Division of Air Resources, Department of Environmental Conservation, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period;

(ix) at least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the director, Division of Air Resources, Department of Environmental Conservation in writing of the transfer. The notification shall include all of the following:

(‘a’) the date the transfer is to become effective;

(‘b’) the date the surplus reductions being traded are due to expire;

(‘c’) the amount (in pounds of VOCs) of surplus reductions that are being transferred;

(‘d’) the total purchase price paid by the buyer for the surplus reductions;

(‘e’) the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions; and

(‘f’) a copy of the director, Division of Air Resources, Department of Environmental Conservation-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non-traded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully

understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this Subpart;

(x) surplus reduction certificates shall only be traded between ACP product(s) for consumer products.

(3) 'Limited-use surplus reduction certificates for early reformulations of ACP products'.

(i) For the purposes of this paragraph, 'early reformulation' means an ACP product which is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied, or offered for sale in the State of New York for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the director, Division of Air Resources, Department of Environmental Conservation. Early reformulation does not include any reformulated ACP products which are sold, supplied, or offered for sale in the State of New York more than one year prior to the date on which the ACP application is submitted to the director, Division of Air Resources, Department of Environmental Conservation.

(ii) If requested in the application for a proposed ACP, the director, Division of Air Resources, Department of Environmental Conservation shall, upon approval of the ACP, issue surplus reduction certificates for early reformulation(s) of ACP product(s), provided that all of the following documentation has been provided by the responsible

ACP party to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation:

(‘a’) accurate documentation showing that the early reformulation(s) reduced the VOC content of the ACP product(s) to a level which is below the pre-ACP VOC content of the product(s), or below the applicable VOC content limit(s) specified in section 235-3.1(a) of this Part, whichever is the lesser of the two;

(‘b’) accurate documentation demonstrating that the early reformulated ACP product(s) was sold in the State of New York retail outlets within the time period specified in subparagraph (i) of this paragraph;

(‘c’) accurate sales records for the early reformulated ACP product(s) which meet the definition of enforceable sales records in section 235-2.1[(bh)](bl) of this Part, and which demonstrate that the enforceable sales for the ACP product(s) are at least 75.0 percent of the gross New York State sales for the product(s), as specified in subparagraph (c)(1)(iv) of this section;

(‘d’) accurate documentation for the early reformulated ACP product(s) which meets the requirements specified in subparagraphs (c)(1)(iii) through (iv) of this section, clauses (c)(1)(vii)(‘g’) through (‘h’) of this section, and subparagraph (c)(1)(viii) of this section, and which identifies the specific test methods for verifying the claimed early reformulation(s) and the statistical

accuracy and precision of the test methods as specified in clause (c)(1)(vii)(i) of this section.

(iii) Surplus reduction certificates issued pursuant to this paragraph shall be calculated separately for each early reformulated ACP product by the director, Division of Air Resources, Department of Environmental Conservation according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}})}{100}$$

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,

$(\text{VOC Content})_{\text{initial}}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC content limit specified in Subpart 235-3.1 of this Part, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product,

(VOC Content)_{final} = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

(iv) The use of surplus reduction certificates issued pursuant to this paragraph shall be subject to all of the following provisions:

(‘a’) surplus reduction certificates shall be used solely to reconcile the responsible ACP party’s shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and shall not be used for any other purpose;

(‘b’) surplus reduction certificates shall not be transferred to, or used by, any other responsible ACP party;

(‘c’) except as provided in this paragraph, surplus reduction certificates shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in paragraphs (1) and (2) of this subdivision.

(h) ‘Reconciliation of shortfalls’.

(1) At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period, as specified in the ACP agreement approving the ACP. Upon receipt of this information, the director, Division of Air

Resources, Department of Environmental Conservation shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

(2) 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 director, Division of Air Resources, Department of Environmental Conservation.

(3) All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental Conservation, by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

(4) All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

(i) 'Notification of modifications to an ACP by the responsible ACP party'.

(1) Modifications that do not require director, Division of Air Resources, Department of Environmental Conservation pre-approval: The responsible ACP party shall notify the director, Division of Air Resources, Department of Environmental Conservation, in writing, of any change in an ACP product's:

(i) product name;

(ii) product formulation;

(iii) product form;

(iv) product function;

(v) applicable product category(ies);

(vi) VOC content;

(vii) LVP content;

(viii) date-codes; or

(ix) recommended product usage directions, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

(‘a’) the nature of the modification;

(‘b’) the extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

(‘c’) the extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

(‘d’) the effective date and corresponding date-codes for the modification.

(2) Modifications that require director, Division of Air Resources, Department of Environmental Conservation pre-approval: 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. Any such proposed modifications shall be fully described in writing and forwarded to the director, Division of Air Resources, Department of Environmental Conservation. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this Part. The director, Division of Air Resources, Department of Environmental Conservation shall act on the proposed modifications using the procedure set forth in subdivision (d) of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as any proposed modification(s) is approved in writing by the director, Division of Air Resources, Department of Environmental Conservation.

(3) Other modifications: Except as otherwise provided in paragraphs (1) and (2) of this subdivision, the responsible ACP party shall notify the director, Division of Air Resources, Department of Environmental Conservation, in writing, of any information learned of by the

responsible ACP party which may alter any of the information submitted pursuant to the requirements of subdivision (c) of this section. The responsible ACP party shall provide such notification to the director, Division of Air Resources, Department of Environmental Conservation no later than 15 working days from the date such information is known to the responsible ACP party.

(j) 'Modification of an ACP by the director, Division of Air Resources, Department of Environmental Conservation'.

(l) If the director, Division of Air Resources, Department of Environmental Conservation determines that:

(i) the enforceable sales for an ACP product are no longer at least 75 percent of the gross New York State sales for that product;

(ii) the information submitted pursuant to the approval process set forth in subdivision (c) of this section is no longer valid; or

(iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the director, Division of Air Resources, Department of Environmental Conservation shall modify the ACP as necessary in accordance with Part 621 of this Title and the procedures therein to ensure that the ACP meets all requirements of this Part and that the ACP emissions will not exceed the ACP limit.

(2) If any applicable VOC content limits specified in section 235-3.1(a) of this Part are modified by the Department of Environmental Conservation in a future rule making, the director, Division of Air Resources, Department of Environmental Conservation shall modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified VOC content limits as of their effective dates.

(k) 'Cancellation of an ACP'.

(1) An ACP shall remain in effect until:

(i) the ACP reaches the expiration date specified in the ACP agreement;

(ii) the ACP is modified by the responsible ACP party and approved by the director, Division of Air Resources, Department of Environmental Conservation, as provided in subdivision (i) of this section;

(iii) the ACP is modified by the director, Division of Air Resources, Department of Environmental Conservation, as provided in subdivision (j) of this section;

(iv) the ACP includes a product for which the VOC content limit specified in section 235-3.1(a) of this Part is modified. The ACP will terminate on the effective date(s) of the modified standard; or

(v) The ACP is cancelled pursuant to paragraph (2) of this subdivision.

(2) The director, Division of Air Resources, Department of Environmental Conservation shall cancel an ACP if any of the following circumstances occur:

(i) the responsible ACP party demonstrates to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation that the continuation of the ACP will result in an extraordinary economic hardship;

(ii) the responsible ACP party violates the requirements of the approved ACP, and the violation(s) results in a shortfall that is 20 percent or more of the applicable ACP limit ('i.e.', the ACP emissions exceed the ACP limit by 20 percent or more);

(iii) the responsible ACP party fails to meet the requirements of subdivision (h) (reconciliation of shortfalls) of this section within the time periods specified in subdivision (h) of this section; and

(iv) the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

(3) The responsible ACP party for an ACP which is canceled pursuant to this Subpart and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

(i) all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subdivision (h) of this section; and

(ii) all ACP products subject to the ACP shall be in compliance with the applicable VOC content limits in section 235-3.1(a) of this Part immediately upon the effective date of ACP cancellation.

(4) Any violations incurred pursuant to subdivision (f) of this section shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to subdivision (i), (j), or (k) of this section.

(l) 'Treatment of information'. The information required by subparagraphs (c)(1)(i) through (ii) of this section and subparagraph (g)(2)(ix) of this section is public information which may not be claimed as confidential. All other information submitted to the director, Division of Air Resources, Department of Environmental Conservation to meet the requirements of this Part shall be handled in accordance with the procedures specified in applicable New York State laws and regulations.

(m) 'Other applicable requirements'. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(1) The director, division of Air Resources, Department of Environmental Conservation shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted

separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(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 all requirements of the ACP agreement approving the ACP and this Part.

6 NYCRR Part 200, General Provisions

Express Terms

(Sections 200.1 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

235-2.1(g)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (Feb. 28, 1991)	††††
<u>235-2.1(w)</u>	<u>ASTM, D4236-94 (March 1, 2005)</u>	<u>****</u>
235-2.1 [(ay)] (bb)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et. seq. (January 2, 2001)	**
235-2.1 [(bl)] (bp)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136, et. seq. (January 2, 2001)	**
235-2.1 [(cx)] (dd)	ASTM, D4359-90(2000)el (2000)	****
235-2.1 [(da)] (dg) (1)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-2.1 [(da)] (dg) (3)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-2.1 [(da)] (dg) (4)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
<u>235-2.1(ey)</u>	<u>Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136, et. seq. (January 2, 2001)</u>	<u>**</u>
235-2.1 [(ez)] (fh)	ASTM, D4359-90(2000)el (2000)	****

235-2.1 [(fa)] (fi) (2)	ASTM, E 260-96 (2001)	****
235-2.1 [(fe)] (fm)	Department of Defense Federal Specification MMM-A-181D (Type 1, Grade A) 40 CFR Part 59, Subpart C (July 1, 2001)	††† *
235-2.1 [(fs)] (gb)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(b)	Title 17, California Code of Regulations, Section 93000 (Amended July 21, 1999)	***
235-3.1(e)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq. (January 2, 2001)	**
235-3.1(f)(1)(i)(‘a’)	Title 17, California Code of Regulations, Section 94509(h) (Amended May 25, 2000)	***
235-3.1(f)(2)(i)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(ii)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘a’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘b’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February	††††

	28, 1991)	
235-3.1(f)(2)(iii)(‘c’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(4)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(g)(1)	California Health and Safety Code section 41712(h)(2)	†
235-4.1(g)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq. (January 2, 2001)	**
235-5.1(a)	Title 17, California Code of Regulations, Section 94511 (Amended May 25, 2000)	***
235-5.1(a)	Title 17, California Code of Regulations, Section 94503.5 (Amended October 26, 2000)	***
235-5.1(b)	Title 17, California Code of Regulations, Section 94511 (Amended May 25, 2000) Title 17, California Code of Regulations, Section 94503.5 (Amended October 26, 2000)	*** ***
235-9.1(a)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-9.1(b)(2)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-9.1(c)	ASTM, D 4359-90(2000)el (2000)	****
235-9.1(d)	South Coast Air Quality Management District, Rule 1174,	††††

	Ignition Method Compliance Certification Protocol (February 28, 1991)	
235-9.1(e)	ASTM D 86-90 (September 28, 1990)	****
235-11.1(a)	Title 17, California Code of Regulations, Sections 94540-94555 (March 23, 1995)	***
235-11.1(b)	Title 17, California Code of Regulations, Sections 94540-94555 (March 23, 1995)	***

Revised - Regulatory Impact Statement - Summary

6 NYCRR Part 235, Consumer Products

6 NYCRR Part 200, General Provisions

1. INTRODUCTION

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

2. STATUTORY AUTHORITY

The statutory authority for the promulgation of Part 235 and the attendant revision to Part 200 is found in the New York State Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

3. LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices. It is the policy of the State to require the use of all available, practical and reasonable methods to prevent and control air pollution in New York. To facilitate this objective, the Legislature granted specific powers and duties to the Department, including the power to adopt and promulgate regulations to prevent, control and prohibit air pollution. The provisions cited above clearly provide the Department with the requisite authority to adopt this regulation.

4. NEEDS AND BENEFITS

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health concern, New York has enacted a series of regulations designed to control ozone and its chemical precursors, including VOCs. In an effort to achieve reductions of VOC emissions in the state, New York has promulgated regulations under Part 235 to limit the VOCs emitted by a group of household and commonly used products, collectively known as consumer products.

A. Background

The Department estimates that 164,200 tons of VOCs were released in the state during 2014 from consumer products and architectural and industrial maintenance coatings.¹ It is essential that the Department adopt stringent consumer product emissions limitations to protect human health and the environment. The current version of the consumer products regulations in New York State is

¹ VOC emissions from architectural and industrial maintenance coatings are regulated under Part 205.

based on a 1996 version of regulations effective in California as required by Section 183 of the Clean Air Act. 42 USC 7511b.

In order to reduce VOCs from consumer products in California, the South Coast Air Quality Management District (SCAQMD) adopted a rule in March 2009 to reduce the VOC content of paint thinners and multi-purpose solvents to 300 grams per liter (g/l) effective January 1, 2010 and then to 25 g/l effective January 1, 2011. The California Air Resources Board (CARB) amended its consumer products regulation to limit VOCs in certain product categories to 30 percent VOC by weight, as of December 31, 2010, and to a limit of three percent, by December 31, 2013. CARB's regulation also provided a three-year sell-through period in which noncompliant solvents, produced before the compliance deadline, could be sold.

In order to adopt the California regulations on the east coast, DAR staff led the OTC process to develop a new consumer products model rule, largely based on Suggested Control Measures (SCM) developed by CARB. The final model rule, for use by all OTC states, supports the application of consistent product standards amongst states to address the regional nature in which consumer products are sold and distributed. On June 3, 2010, the OTC adopted a Resolution wherein member states agreed to pursue, as necessary and appropriate, state-specific rulemakings to update rules in accordance with the 2010 OTC Consumer Products Model Rule. The 2010 OTC Model Rule was revised on May 10, 2012 to include CARB's limits for multi-purpose solvents and paint thinners based on the CARB 2009 Consumer Products Regulatory Amendments. The OTC revised the model rule again on May 21, 2013 with a minor amendment that did not affect emissions calculations.

To adopt the limits in the 2010 OTC Model Rule as amended through 2013, Part 235 must be revised to add new categories and revise others. New categories include: "Artist's Solvent/Thinner," "Paint Thinners and Multi-Purpose Solvents," and "Dual Purpose Air Freshener/Disinfectant." Revised categories include the definitions of "Air Freshener" and "Sanitizer" in order to include a

category of "Dual Purpose Air Freshener/Disinfectant," and revising the definition of "Oven Cleaner" to become "Oven or Grill Cleaner." A new definition of "Zinc Rich Primer" is also included in the rule. The Table of Standards (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. The revisions will also provide adequate lead time to manufacturers to comply with the rule and will not be applied retroactively.

B. Benefits

Revisions to Part 235 are expected to reduce VOC emissions from products used throughout the state. As a result of these product formulation revisions, the amount of VOC released to the air is expected to be reduced by 5.3 tons per day (approximately 1900 tons per year). Since emissions from consumer products are highest in population centers, the reduction in the New York City metropolitan area, where the ozone standard is exceeded, is expected to be 3.4 tons per day.

5. COSTS

The changes are not expected to have any significant impacts on production costs and the Department does not expect manufacturers to pass on the cost of compliance to consumers in the form of increased retail prices. The new product formulations are already available for sale in the marketplace and the rule should have no adverse impact on consumer costs.

Adoption of this proposal would promote consistency with other states in the northeast and uniformity of product requirements and would help eliminate different versions of the regulatory standards being applied to products in the states in the northeast; thereby reducing the costs and complexities of compliance across markets with different product VOC requirements.

6. LOCAL GOVERNMENT MANDATES

The regulations would not impose any additional mandates on local governments. The products will be distributed in the same manner as they have been, and the responsibility to provide products compliant with the regulation lies upon the manufacturers and distributors of the products. This is not a mandate on local governments pursuant to Executive Order 17.

7. PAPERWORK

The regulations would not impose any paperwork burdens on the regulated community. The products will be distributed in the same manner as they have been, and the responsibility to provide products compliant with the regulation lies upon the manufacturers and distributors of the products. No additional paperwork is required by manufacturers or sellers.

8. DUPLICATION

While there are federal rules for consumer products, enacted September 11, 1998, the provisions of the existing and final regulations create requirements above and beyond the limits in the federal rule in order to address air quality improvement efforts in New York.

9. ALTERNATIVES

DEC considered four alternatives to the rule:

1) No Action. The severity of New York State's air quality problems requires more VOC reductions than this option would provide.

2) New York could adopt some, but not all, of the proposed amendments. Given the regional nature of consumer product sales and distribution, and commitments by the Department to the other OTC states to adopt consistent regulations, this option is preferred.

3) New York could revert to federal emissions standards. The severity of New York State's air quality problems requires more VOC reductions than this option would provide.

4) New York could go further and adopt the current CARB standards, which exceed the consensus limitations developed in the OTC model rule process. This would make New York consistent with only California, and would make it difficult for manufacturers to comply with the regulations in the Northeast. It would also create a difficult enforcement scenario because of the regional nature in which products are sold and distributed.

10. FEDERAL STANDARDS

The EPA adopted national consumer product standards in September 1998. The OTC model rule amendments, which form part of the basis of the revisions to Part 235, Consumer Products Rule, include limits which are more restrictive than federal standards. These include stricter VOC limits for 14 existing consumer product categories and 3 new categories.

11. COMPLIANCE SCHEDULE

The rule takes effect 30 days after filing with the New York State Department of State. The rule streamlines compliance by establishing a single compliance date for all categories subject to the rule, to be January 1, 2022.

Revised - Regulatory Impact Statement

6 NYCRR Part 235, Consumer Products

6 NYCRR Part 200, General Provisions

1. INTRODUCTION

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and provide some of the reductions in VOC emissions necessary to address the nonattainment status of the New York Metropolitan Area (NYMA). The regulation will strive to maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

Under the CAA, ozone pollution in the Northeast is recognized as a regional problem that often requires coordinated regional action. CAA Section 184(a) established the Ozone Transport Region

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document “MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf”](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20MOU_adoption_of_new_regional_controls[1][1].pdf)

and the OTC. 42 USC 7511c; see also, CAA Section 176(a), 42 USC 7506a. The OTC members are the states of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, as well as the portion of northern Virginia that is included within the metropolitan area that includes the District of Columbia. Under CAA Section 176A(b)(2), the OTC is required to assess the degree of interstate transport of ozone or its precursors throughout the region, assess strategies for mitigating pollution, and recommend to the United States Environmental Protection Agency (EPA) measures found necessary to ensure that the State Implementation Plans (SIPs) of the OTC states meet the requirements of CAA Section 110(a)(2)(D). CAA Section 110(a)(2)(D) requires that a SIP must prohibit emissions within an upwind state from contributing significantly to nonattainment in, or interfering with maintenance by, any downwind state.

These VOC emission reductions are needed to improve air quality in New York, and especially in the NYMA. EPA recently reclassified the NYMA as serious nonattainment of the 2008 ozone standard, and, on June 4, 2018, as moderate nonattainment of the 2015 ozone standard. These designations require that New York plan and provide emission reductions in a timely manner, and the VOC reductions in the Part 235 revisions are an important part in the strategy toward attainment.

The Department proposes to incorporate the revisions to Part 235 and the attendant revisions to Part 200 into New York's SIP, and provide the revised SIP to EPA for review and approval.

2. STATUTORY AUTHORITY

The statutory authority for the promulgation of 6 NYCRR Part 235 and the attendant revision to 6 NYCRR Part 200 is found in the New York State Environmental Conservation Law (ECL) Sections

1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

ECL Section 1-0101 declares it to be the policy of New York State to conserve, improve, and protect its natural resources and environment and control air pollution in order to enhance the health, safety, and welfare of the people of New York State and their overall economic and social well-being. Section 1-0101 further expresses, among other things, that it is the policy of New York State to coordinate the State's environmental plans, functions, powers, and programs with those of the federal government and other regions and manage air resources to the end that the State may fulfill its responsibility as trustee of the environment for present and future generations. This section also provides that it is the policy of New York State to foster, promote, create, and maintain conditions by which man and nature can thrive in harmony by providing that care is taken for air resources that are shared with other states.

ECL Section 3-0301 provides that it shall be the responsibility of the Department to carry out the environmental policy of the State. This section empowers the Department to promulgate regulations to carry out the environmental policy of New York State set forth in Section 1-0101 and specifically empowers the Department to cooperate with officials and representatives of the federal government, other states and interstate agencies regarding problems affecting the environment of New York State. Section 3-0301 specifically empowers the Department to provide for the prevention and abatement of air pollution.

ECL Section 3-0303. This section requires that the Department formulate and, from time to time, revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state. In formulating this plan and any

revisions, the Department is required to conduct public hearings, cooperate with other departments, agencies and government officials, and any other interested parties, and obtain assistance and data as may be necessary from any department, division, board, bureau, commission or other agency of the state or political subdivision or any public authority to enable the Department to carry out its responsibilities.

ECL Section 19-0103. This section declares that it is the policy of New York State to maintain the purity of air resources and to require the use of all available practical and reasonable methods to prevent and control air pollution in the state.

ECL Section 19-0105. This section declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of New York State under a program which is consistent with the policy expressed in Section 19-0103 and in accordance with other provisions of Article 19.

ECL Section 19-0107. This section provides definitions to be used in the application of the requirements of Article 19 of the ECL.

ECL Section 19-0301. This section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution and that the Department has the duty and responsibility to cooperate with agencies of the federal government and with agencies of other State governments with respect to the control of air pollution.

ECL Section 19-0302. This section states that permit applications, renewals, modifications, suspensions and revocations are governed by rules and regulations adopted by the Department, and that permits issued may not include performance, emission or control standards more stringent than any standard established by the Act or EPA unless such standards are authorized by rules or regulations.

ECL Section 19-0303. This section provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources.

ECL Section 19-0305. This section authorizes the Department to enforce the codes, rules and regulations established in accordance with Article 19.

ECL Sections 71-2103 and 71-2105. These sections include provisions for the civil and criminal enforcement of Article 19 of the ECL.

3. LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices. It is the policy of the State to require the use of all available, practical and reasonable methods to prevent and control air pollution in New York. To facilitate this objective, the Legislature granted specific powers and duties to the Department, including the power to adopt and promulgate regulations to prevent, control and prohibit air pollution. The provisions cited above clearly provide the Department with the requisite authority to adopt this regulation.

4. NEEDS AND BENEFITS

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health concern, New York has enacted a series of regulations designed to control ozone and its chemical precursors, including VOCs. In an effort to achieve reductions of VOC emissions in the state, New York has

promulgated regulations under 6 NYCRR Part 235 to limit the VOCs emitted by a group of household and commonly used products, collectively known as consumer products.

On March 12, 2008, the EPA revised the 8-hour ozone NAAQS to a level of 0.075 parts per million (ppm). On May 21, 2012, EPA designated the NYMA, consisting of New York City, Long Island, and Rockland and Westchester Counties, and the Jamestown area as nonattainment for the 2008 NAAQS. Subsequently, on May 4, 2016 the Jamestown area was found to be attaining the 2008 NAAQS, while the NYMA was reclassified from marginal to moderate nonattainment. EPA determined that the NYMA failed to attain the 2008 ozone NAAQS by the July 20, 2018 moderate area attainment date and reclassified the area to “serious” nonattainment.

On October 1, 2015, the EPA strengthened the ozone NAAQS by revising the 8-hour ozone NAAQS to a level of 0.070 ppm. On June 4, 2018, EPA designated the New York City metropolitan area as nonattainment with a “moderate” classification.

Pursuant to the CAA, New York State is required to develop and implement enforceable strategies that will bring the entire state into attainment for the 2008 and 2015 8-hour ozone NAAQS. Part 235, the Consumer Products Rule, is currently part of New York State's 1-hour (1990) and 8-hour (1997) SIPs, and is one of the regulations that the Department is proposing to revise in order to help achieve statewide attainment with the more stringent 2008 and 2015 NAAQS.

A. Background

The Department estimates that 164,200 tons of VOCs were released in the state during 2014 from consumer products and architectural and industrial maintenance coatings.² It is essential that

² VOC emissions from architectural and industrial maintenance coatings are regulated under Part 205.

the Department continue to adopt stringent consumer product emissions limitations to protect human health and the environment. The current version of the Consumer Products Rule in New York State is based on a 1996 version of regulations effective in California as required by Section 183 of the Clean Air Act. 42 USC 7511b.

In order to further reduce VOCs from consumer products in California, the South Coast Air Quality Management District (SCAQMD) adopted a rule in March 2009 to reduce the VOC content of paint thinners and multi-purpose solvents to 300 grams per liter (g/l) effective January 1, 2010 and then to 25 g/l effective January 1, 2011. As a result of litigation on the rule (regarding concerns over flammability), SCAQMD worked with the California Air Resources Board (CARB) and others to address various issues with the products and amended its rule to conform to the court's ruling. In September 2009, CARB amended its consumer products regulation to limit VOCs in certain product categories to 30 percent VOC by weight, as of December 31, 2010, and to a limit of three percent, by December 31, 2013. CARB's regulation also provided a three-year sell-through period in which noncompliant solvents, produced before the compliance deadline, could be sold.

In order to adopt the California regulations on the east coast, DAR staff led the OTC process to develop a new consumer products model rule, largely based on Suggested Control Measures (SCM) developed by CARB. Over this time period, DAR staff met with stakeholders and other OTC states to develop the emission reduction strategies included in the agreed upon model rule that serves as the basis for the revisions to Part 235. The final model rule, for use by all OTC states, supports the application of consistent product standards amongst states to address the regional nature in which consumer products are sold and distributed. On June 3, 2010, the OTC adopted a resolution wherein member states agreed to pursue, as necessary and appropriate, state-specific rulemakings to update rules in accordance with the 2010 OTC Consumer Products Model Rule. The 2010 OTC Model Rule

was revised on May 10, 2012 to include CARB's limits for multi-purpose solvents and paint thinners based on the CARB 2009 Consumer Products Regulatory Amendments. The OTC revised the model rule again on May 21, 2013 with a minor amendment that did not affect emissions calculations.

To adopt the limits in the 2010 OTC Model Rule as amended through 2013, Part 235 must be revised to add new categories and revise others. New categories include: "Artist's Solvent/Thinner," "Paint Thinners and Multi-Purpose Solvents," and "Dual Purpose Air Freshener/Disinfectant." Revised categories include the definitions of "Air Freshener" and "Sanitizer" in order to include a category of "Dual Purpose Air Freshener/Disinfectant," and revising the definition of "Oven Cleaner" to become "Oven or Grill Cleaner." A new definition of "Zinc Rich Primer" is also included in the rule. The Table of Standards (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. The revisions will also provide adequate lead time to manufacturers to comply with the rule and will not be applied retroactively.

B. Benefits

Revisions to Part 235 are expected to reduce VOC emissions from products used throughout the state. As a result of these product formulation revisions, the amount of VOC released to the air is expected to be reduced by 5.3 tons per day (approximately 1900 tons per year). Since emissions from consumer products are highest in population centers, the reduction in the New York City metropolitan area, where the ozone standard is exceeded, is expected to be 3.4 tons per day.

5. COSTS

The changes are not expected to have any significant impacts on production costs and the Department does not expect manufacturers to pass on the cost of compliance to consumers in the form of increased retail prices. The new product formulations are already available for sale in the

marketplace and the rule should have no adverse impact on consumer costs. Any alternative formulations compliant with the regulations typically reduce costs due to the use of less expensive, less complicated and less toxic alternative chemicals.

Adoption of this proposal would promote consistency of product specifications in other states in the northeast and uniformity of product requirements and would help eliminate different versions of the regulatory standards being applied to products in the states in the northeast, thereby reducing the costs and complexities of compliance across markets with different product VOC requirements. Additionally, adopting the consumer product regulations would help reduce confusion over what requirements apply in the various states.

The revisions could enable the manufacturers to reduce costs by reducing the number of different product specifications in the national market. Although new standards are continuously being developed in California, the OTC and the Lake Michigan Air Directors Consortium are committed to adopting the 2009 version of the CARB regulations while the remainder of the US relies on outdated federal standards for consumer products. Adoption of this regulatory proposal would help to reduce the number of versions of the standards and reduce the cost of compliance to the manufacturers. Adopting these consumer product regulations would also remove existing confusion over what requirements apply to which products in which states for consumers.

The impact on the Department consists of time for rulemaking development and outreach. Department enforcement staff will continue to conduct enforcement activities to ensure compliance with the current Part 235 during the rulemaking, and the revised rule is not expected to require additional staff time to implement the rule.

6. LOCAL GOVERNMENT MANDATES

The revisions would not impose any additional mandates on local governments. The products will be distributed in the same manner as they have been, and the responsibility to provide products compliant with the regulation lies upon the manufacturers and distributors of the products. Local governments will purchase the products as they have in the past, with no additional requirements placed upon them. This is not a mandate on local governments pursuant to Executive Order 17.

7. PAPERWORK

The revisions would not impose any additional paperwork burdens on the regulated community. The products will be distributed in the same manner as they have been, and the responsibility to provide products compliant with the regulation lies upon the manufacturers and distributors of the products. No additional paperwork is required by manufacturers or sellers.

8. DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS

While there are federal rules for consumer products, enacted September 11, 1998, the provisions of the existing and final regulations create requirements above and beyond the limits in the federal rule in order to address air quality improvement efforts in New York.

9. ALTERNATIVES

The Department considered four alternatives to the rule:

1) No Action. New York could maintain the current consumer products standards in Part 235 without adopting the 2010 OTC Consumer Products Model Rule. However, given the need to reduce ozone levels in order to attain the 2015 8-hour ozone NAAQS, not adopting the OTC model rule is not a viable option. New York State must obtain as many emission reductions as possible in order to come into attainment with the ozone NAAQS.

2) New York could adopt some, but not all, of the proposed amendments. Given the regional nature of consumer product sales and distribution, and our commitments to the other OTC states to adopt consistent regulations, a full revision is preferred. A partial revision would also limit the VOC reduction potential that could be achieved by adopting all of the proposed revisions.

3) New York could revert to federal emissions standards. Acceptance of the federal standards would not provide the same criteria pollutant emissions reductions that could be achieved with these proposed standards. The severity of New York State's air quality problems means New York State would need to achieve reductions necessary for attainment of the ozone and maintenance of the carbon monoxide standards from other source categories which may not be viable.

4) New York could go further and adopt the current CARB standards, which exceed the consensus limitations developed in the OTC model rule process. This would make New York consistent with only California, and would make it difficult for manufacturers to comply with the regulations in the northeast. It would also create a difficult enforcement scenario because of the regional nature in which products are sold and distributed.

10. FEDERAL STANDARDS

The EPA adopted national consumer product standards in September 1998. The CARB and OTC model rules are, for several of the consumer products categories, more stringent than the EPA's Consumer Products rule.

The 2010 OTC Model Rule amendments, which are the basis of the revisions to Part 235, Consumer Products Rule, include limits which are more restrictive than the Federal Standards. These include stricter VOC limits for 14 existing consumer product categories (15, including subcategories), and 3 new categories (5, including subcategories: disinfectant, sanitizer and

temporary hair color) which will be regulated for the first time in New York with VOC limits. Hand sanitizers were not included in the amendments to the CARB regulation because representatives from the Centers for Disease Control, California's Department of Health Services, and the Food and Drug Administration indicated that regulating hand sanitizers would not be appropriate. The CARB amendments also clarified or modified previously defined or regulated categories and included a prohibition on the use of chlorinated toxic compounds in certain consumer product categories (construction, panel, and floor covering, oven cleaner, general purpose cleaner, and bathroom and tile cleaner).

The 2010 OTC Model Rule was revised on May 10, 2012 to include CARB's limits for multi-purpose solvents and paint thinners based on the CARB 2009 Consumer Products Regulatory Amendments. The OTC revised the model rule again on May 21, 2013 with a minor amendment that did not affect emissions calculations. The "dual purpose air freshener/ disinfectant, aerosol" category was added to the OTC model rule to make it consistent with the CARB Consumer Product rule. The dual purpose air freshener / disinfectant category had been regulated in California since 1994 at a 60% limit. The revised model rule for consumer products would apply to anyone who sells, supplies, offers for sale, or manufactures consumer products for use in an OTC member jurisdiction. The rule applies to a vast range of consumer products that are used across the OTC.

11. COMPLIANCE SCHEDULE

The rule takes effect 30 days after filing notice of adoption with the New York State Department of State. The rule streamlines compliance by establishing a single compliance date for all categories subject to the rule, to be January 1, 2022.

Revised Job Impact Statement

6 NYCRR Part 235, Consumer Products

6 NYCRR Part 200, General Provisions

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the State comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

1. NATURE OF IMPACT

There will be little, if any impact on jobs and employment opportunities in the State. Manufacturers of consumer products have developed and market products that would meet these standards in California, Connecticut, Delaware, Maryland and New Hampshire, where rule limits identical to DEC’s rule have already been adopted.

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document “MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf”](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20%22MOU_adoption_of_new_regional_controls%22%20%281%29.pdf)

2. CATEGORIES AND NUMBERS AFFECTED

There will be little, if any impact on any specific category of jobs or employment opportunities in the State. Retail outlets will continue to sell consumer products, with slight changes in formulation already developed for and available in California, Connecticut, Delaware, Maryland, and New Hampshire.

3. REGIONS OF ADVERSE IMPACT

The regulation applies statewide, and as such, there will be no disproportionate adverse impact on existing jobs, nor will it disproportionately promote the development of new employment opportunities. Therefore, the Department does not anticipate any region-specific adverse impacts.

4. MINIMIZING ADVERSE IMPACT

The Department does not anticipate any significant adverse impacts on existing jobs nor on the promotion of new employment opportunities as a result of this rulemaking. Additionally, the Department has already undertaken efforts to minimize any potential impacts by conducting outreach with stakeholders and the Ozone Transport Commission states, and reviewed all public comments received during the rulemaking process.

5. SELF-EMPLOYMENT OPPORTUNITIES

The adoption of revised Part 235 is not expected to result in negative impacts to self-employment opportunities.

6. INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

Revised - Rural Area Flexibility Analysis

6 NYCRR Part 235, Consumer Products

6 NYCRR Part 200, General Provisions

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The regulation applies statewide, and as such, will apply consistently to all rural areas throughout the state.

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document “MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf”](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20%22MOU_adoption_of_new_regional_controls%5B1%5D%5B1%5D.pdf%22)

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The compliance requirements will apply statewide to any person who sells, supplies, offers for sale, or manufactures consumer products for use in the State of New York. There are no reporting, recordkeeping or other compliance requirements nor any need for professional services based specifically on a person's or manufacturer's location in rural areas of the state. The rule requires specified consumer products to be formulated, manufactured and sold in compliance with the standards in the regulation, and that manufacturers produce compliant products. The revisions establish a single compliance date, January 1, 2022, for all categories subject to the rule.

3. COSTS

The Department does not anticipate any capital or annual costs to comply with the rule that are specific to rural areas of the state since product formulations under the regulation will apply to all areas of the state consistently. There are no specific cost impacts for public nor private entities in rural areas of the state.

4. MINIMIZING ADVERSE IMPACT

The rule is designed to minimize any adverse impacts on rural areas by applying consistently to all areas of the state. Manufacturers of consumer products have developed and marketed products that meet the standards in California, Connecticut, Delaware, Maryland, and New Hampshire.

5. RURAL AREA PARTICIPATION

The Department developed the regulation after the Ozone Transport Commission developed the model rule to be applied to the northeast states. The OTC effort was undertaken to enable public and private interests to participate, to ease implementation of the regulations, and to provide consistent product formulations throughout the region.

Additionally, potentially affected entities in all areas, including rural, were given the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments received were considered during the development of the requirements. Because the regulation applies consistently throughout the state, adoption or modification of procedural rules will be consistent throughout the state.

6. INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

Revised - Regulatory Flexibility Analysis for Small Businesses and Local Governments

6 NYCRR Part 235, Consumer Products

6 NYCRR Part 200, General Provisions

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

1. EFFECT OF RULE

The rule will apply to consumer products consistently throughout the state. It lowers VOC content in various products, including adhesives, deodorant, hair care products, and

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document “MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf”](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20%22MOU_adoption_of_new_regional_controls%5B1%5D%5B1%5D.pdf%22)

some automotive care products available at retail outlets throughout the state. Unless a small business or local government manufactures products impacted by the rule or engages in the sale of products that are not in compliance with the rule, these revisions do not apply to small businesses or local governments who merely sell or offer to sell consumer products that are in compliance with the requirements of this rule.

2. COMPLIANCE REQUIREMENTS

There are no additional compliance requirements as a result of these revisions on small businesses or local governments in the State. Unless they engage in the manufacturing of the consumer products regulated, they will not be required to document, report, or keep records on the consumer products impacted by this regulatory revision. Retail outlets will continue to sell consumer products, with slight changes in formulation as required. The formulation changes have already been developed for and are available in California, Connecticut, Delaware, Maryland, and New Hampshire.

3. PROFESSIONAL SERVICES

The compliance date of January 1, 2022 will apply statewide to any person who sells, supplies, offers for sale, or manufactures consumer products for use in New York State. There are no additional requirements for professional services based specifically on whether the entity is a small business or government agency. The rule requires specified consumer products to be formulated, manufactured and sold in compliance with the standards in the regulation and that manufacturers produce compliant products.

4. COMPLIANCE COSTS

The changes are not expected to have any significant impacts on production costs and the Department does not expect manufacturers to pass on the cost of compliance to consumers in the form of increased retail prices. The new product formulations are already available for sale in the marketplace and the rule should have no adverse impact on consumer costs. Any alternative formulations compliant with the regulations typically reduce costs due to the use of less expensive, less complicated and less toxic alternative chemicals.

There are no specific cost impacts for continuing compliance with the regulation for small businesses or local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The economic and technological feasibility of the rule has already been proven for products impacted by the rule. No compliance impacts will be imposed on small businesses or local governments since the rules apply consistently to all areas of the state. The consumer product reformulations have already been made by manufacturers, and products meeting the standards are being sold in California, Connecticut, Delaware, Maryland, and New Hampshire.

6. MINIMIZING ADVERSE IMPACT

The rule is designed to minimize any adverse impacts on local governments, rural areas, or small businesses by applying consistently to all areas of the state. Manufacturers have developed and made available consumer products that meet the standards in California, Connecticut, Delaware, Maryland, and New Hampshire.

The Department does not anticipate any significant adverse impacts on small businesses or local governments as a result of this rulemaking. Additionally, the Department

has already undertaken efforts to minimize any potential impacts by conducting outreach with stakeholders and the Ozone Transport Commission states, and considered all public comments received during the rulemaking process.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rule is based upon the 2010 OTC model rule as amended through 2013 and developed by the Ozone Transport Commission for adoption by member states. The OTC effort was undertaken to provide public and private interests the opportunity to participate in the development of the model rule in order to ease implementation of the regulations and provide consistent product formulations throughout the region.

Potentially affected entities, including those involved in small businesses and local governments, were given the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments received were considered during the development of the requirements.

8. CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 235. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce impacts on affected sources the rule streamlines compliance by establishing a single compliance date for all categories subject to the rule, to be January 1, 2022.

9. INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

Assessment of Public Comments
6 NYCRR Part 235, Consumer Products, and
6 NYCRR Part 200, General Provisions

Comments received from February 12, 2020 through 5:00 P.M., May 21, 2020

General:

Comment 1: Supports the adoption of regionally consistent consumer products regulations based on the OTC Model Rule. (Commenter 1)

Comment 2: Supports the proposed new or revised VOC limits. (Commenter 1)

Response to Comments 1 and 2: The Department thanks you for your support of this rulemaking.

Comment 3: The Department is not focusing on the largest emission sources and should pay attention to other emission sectors. (Commenter 2)

Response to Comment 3: The Department is addressing numerous emission sources in several ways in order to reduce ozone, including by regulating products that contain ozone precursor pollutant emissions. Difficulty in reaching the ozone standard requires that all sectors be addressed, and that reductions be obtained from all sources of volatile organic compounds, including consumer products. Recent research by the National Oceanic and Atmospheric Administration, in 2018, has indicated that the use of volatile chemical products (VCPs) – including pesticides, coatings, printing inks, adhesives, cleaning agents, and personal care products – now constitutes half of VOC emissions in industrialized cities.

Effective Date:

Comment 4: There is insufficient time from the publication date of the final rule and the January 1, 2021 effective date of the regulation, considering the need for product manufacturers and distributors to comply with the regulation. (Commenter 1)

Response to Comment 4: The Department based these Part 235 revisions on a model rule developed cooperatively with the Ozone Transport Commission. While products regulated in Part 235 are currently available for sale in California and various east coast states, the Department recognizes that manufacturers and distributors may still require additional time in order to address distribution issues and provide compliant products to retail outlets. The Department is revising the rule to change the compliance date to January 1, 2022.

Technical Corrections:

Comment 5: The Department should make the following technical correction to Section 235-3.1(e) in the final regulation – “(e) ‘Products registered under FIFRA’. For those consumer products that are registered under the Federal Insecticide, ... in this Subpart is January 1, ~~2014~~ 2022.” (Commenter 1)

Response to Comment 5: The Department has made this technical correction. Because the compliance deadline has been changed from January 1, 2021 to January 1, 2022 (see Response to comment 4), this date has also been changed (to January 1, 2023). The commenter correctly pointed

out that the date for products registered under FIFRA should be one year beyond the general compliance deadline.

Sell Through of Products:

Comment 6: The Department should revise Section 235-3.1(o) to provide a reasonable sell-through limitation for the five product categories that are subject to new regulatory requirements.” Commenter recommends the following revisions to Section 235-3.1(o)(1) in the final regulation:

“(1) ~~Effective January 1, 2021,~~ no person shall sell, supply, ...or grill cleaner manufactured on or after January 1, 2021, that contains...” (Commenter 1)

Response to Comment 6: After reviewing comments and hearing legitimate concerns from manufacturers, the Department is revising the rule to include a sell through provision to allow manufacturers to sell existing stock of products that were manufactured before the compliance date (also revised, now January, 1, 2022). Also, see response to Comment 4.

Commenter #1 – HCPA – The Household and Commercial Products Association

Commenter #2 - Jim Murray adkmurray@yahoo.com