

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Portable Fuel Containers

The Environmental Quality Board (Board) by this order establishes Chapter 130 (relating to standards for products) to read as set forth in Annex A.

Subchapter A (relating to portable fuel containers) applies to persons who sell, supply, offer for sale or manufacture for sale in this Commonwealth portable fuel containers or spouts, or both, and portable fuel containers and spouts, for use in this Commonwealth. Subchapter A also adds definitions for terms used in the substantive provisions of the chapter.

This notice is given under Board order at its meeting of July 16, 2002.

A. Effective Date

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

This final-form rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005), which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. Background

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this final-form rulemaking is to reduce the volatile organic compounds (VOCs) emitted from portable fuel containers. This final-form rulemaking is part of the Commonwealth's specific action plan to

achieve and maintain the ozone National Ambient Air Quality Standard in this Commonwealth.

A number of northeastern states have also committed to developing regulations designed to reduce the amount of VOCs emitted into the environment from portable fuel containers. It is anticipated that once these states, together with California, have adopted these regulations, they will have the effect of being a "de facto" National rule.

In addition to reducing VOC emissions, the final-form rulemaking will also reduce public exposure to hazardous constituents present in gasoline such as benzene. Benzene is a toxic air contaminant and a known human carcinogen. Although the risk reductions have not been quantified, it is assumed that the spill-proof features and permeation requirement would significantly reduce benzene emissions.

This final-form rulemaking would also improve water quality in aquifers, lakes and rivers. It would greatly reduce the amount of gasoline spilled onto the ground while refueling lawn, garden and small construction equipment and other machines with small gasoline engines. Many marine pleasure craft, especially personal watercraft, are refueled using portable containers, and the threat of fuel spillage during onwater refueling is always present. The spill-proof systems would allow users of pleasure craft to refuel their engines without fuel spillage; this would eliminate the potential discharge of fuel into the aquatic environment from these activities.

This final-form rulemaking applies to all portable fuel containers or spouts, or both, except: containers with capacity of less than or equal to 1 quart; rapid refueling devices with capacities equal to or greater than 4 gallons, provided they are designed for use in officially sanctioned off-road motorcycle competitions; and safety cans and portable marine fuel tanks that operate in conjunction with outboard motors.

Portable fuel containers or spouts, or both, must be equipped with an automatic shut-off device that stops fuel flow before the fuel tank overflows and an automatic device that closes and seals when it is removed from the fuel tank. There are also other required design specifications, all of which are intended to significantly lessen the possibility of gasoline spillage and reduce emissions.

Compliance with the performance standards is designed to maximize VOC emission reductions. It is estimated that VOCs would be reduced by approximately 75% of total uncontrolled emissions from this sector when the rulemaking is finalized.

The major implementation issues are consumer acceptance and the long life of these containers. These containers will look and operate somewhat differently than those currently on the market. However, based on experiences to date, manufacturers have indicated that consumers prefer the new product after becoming familiar with it. The Commonwealth, through the Ozone Transport Commission (OTC), has worked with manufacturers of these containers, and manufacturers have indicated that they would be able to provide the products to the market by 2003.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final-form rulemaking. At its May 2, 2002, meeting, AQTAC recom-

mended adoption of the final-form rulemaking. AQTC also recommended that the Department continue aggressive efforts with other states to support National standards for these products. The Small Business Compliance Advisory Committee questioned whether or not the provisions are consistent with State Fire Marshal requirements. Prior to proposed rulemaking, a cross-reference was inserted in § 130.101 (relating to applicability) to Fire Marshal requirements.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board received four sets of comments on the proposed rulemaking published at 31 Pa.B. 6185 (November 10, 2001). Following is a summary of the major issues and the Board's responses.

One commentator supported the proposed rulemaking because it will reduce emissions of VOCs and carcinogenic compounds such as benzene. The Board appreciates the support of this commentator. In addition to reducing emissions of VOCs and carcinogenic compounds into the air, the final-form rulemaking will also reduce potential soil, groundwater and surface water contamination by reducing gasoline spillage during fueling.

One commentator recommended that the Board modify the rulemaking to specify a fill range between 1.75 inches and 1.25 inches below the top of the target tank opening. The Board disagrees. Changing the requirement as proposed by the commentator may lead to an increase in refueling events caused by under-filled equipment fuel tanks. This may lead to consumer dissatisfaction with the new portable fuel containers that could result in product tampering.

One commentator expressed concern about the exemptions contained in § 130.104(d) and (e) (relating to exemptions) of the proposed rulemaking. Section 130.104(d) applies to rapid refueling devices used in sanctioned off-highway motorcycle competitions, and § 130.104(e) exempts portable fuel tanks used for outdoor motors on watercraft. The commentator believed that these exemptions should be eliminated if they would result in significant improvements in public health. The Board disagrees. The Board does not believe that the exemptions contained in the final-form rulemaking will result in significant emissions above the level that would be achieved if the tanks were not exempted.

One commentator believed pre-2003 containers should be labeled to advise consumers that the containers do not meet current requirements for future portable fuel containers. The Board does not agree. The labeling would add an additional level of regulation that would provide limited benefits. Informed consumers will be able to make the choice based upon the documentation associated with the new containers.

One commentator indicated that the innovative product exemption should be met through averaging rather than through the highest emitting product. The Board disagrees. Requiring an innovative product to achieve a higher level of control than that required for a complying product would stifle ingenuity and would discourage manufacturers from finding alternative compliance methods.

One commentator indicated that § 130.103(a)(2) (relating to performance standards for portable fuel containers and spill-proof spouts) should be revised to allow the use of spouts that "automatically close and remain completely closed when not dispensing fuel." The commentator indicated that allowing this alternative will minimize tamper-

ing to make complying spouts easier to use. The Board disagrees. Fill spouts that do not automatically stop the flow of fuel and seal when removed from the tank will not reduce spillage and overflowing, which are two of the major sources of emissions the regulation addresses.

One commentator recommended that certain changes be made to the California test methods, which are incorporated by reference in the rulemaking. The Board disagrees. Because the test methods and the standards are closely related, changes to the test method could significantly impact the standard and the emission reduction that will be achieved.

One commentator recommended that § 130.103(a)(3) be revised to require that a portable fuel container have only one opening for both pouring and venting with a second opening for filling. The Board disagrees. Allowing multiple openings in the container may result in significant evaporative loss of fuel from the containers. If a manufacturer can demonstrate that a different design or container configuration is suitable, the manufacturer may request an innovative product exemption under § 130.105 (relating to innovative products).

Another commentator suggested the addition of terms and definitions in § 130.102 (relating to definitions) for clarity to make the rulemaking consistent with CARB. The terms suggested are "consumer," "distributor," "retailer," "retail outlet," "manufacturer" and "VOC." The Board agrees that certain definitions are required. Definitions for all terms except "fuel" and "VOC" have been added to § 130.102. "VOC" is already defined in § 121.1 (relating to definitions), and a clarification has been added to the applicability section as to the relevant fuel types under this rulemaking.

One commentator pointed out that § 130.105 requires an applicant for innovative product exemption to apply in writing. However, the proposed rulemaking does not include a time frame under which the Department will review and act upon the application. The Board agrees and has included a 90-day deadline in the final-form rulemaking.

F. Summary of Regulatory Requirements

Final-form Chapter 130 includes definitions of terms and substantive provisions as well. The definitions in § 130.102 (relating to definitions) include "ASTM," "nominal capacity," "outboard engine," "permeation," "portable fuel container," "product category," "spill-proof spout," "spill-proof system," "spout" and "target fuel tank." Additional definitions added at final-form rulemaking include "consumer," "distributor," "manufacturer," "retailer" and "retail outlet."

The substantive provisions of Chapter 130 include § 130.101 requirements and a cross reference to Department of Labor and Industry (L & I) requirements related to portable fuel containers. Moreover, a clarification was made at final-form rulemaking that the subpart applies to liquid flammable and combustible fuels having a flash point below 200°F. Section 130.103 includes automatic shut-off spouts that stop fuel flow before the tank overflows. Section 130.104 provides exemptions for portable fuel containers and spouts manufactured for sale and use outside of this Commonwealth. Innovative products exemptions are provided for in § 130.105 to encourage the design and manufacture of products that will result in cumulative VOC emissions below those types of containers currently in the market. Additionally, new language was added at final-form rulemaking that under this section, the Department will render a decision on an

exemption application within 90 days of receipt of application. Section 130.106 (relating to administrative requirements) provides for recordkeeping and labeling. Under § 130.107 (relating to variances), a person or manufacturer that cannot comply with Chapter 130 due to extraordinary circumstances beyond that person's reasonable control may request a variance. Test procedures to determine if performance standards for portable fuel containers and spouts have been met are specified in § 130.108 (relating to test procedures). Revisions in § 130.108 indicate a September 13, 2000, administrative amendment to the Consumer Confidence Report correcting section numbers for the test methods.

In addition to the Department's statutory authority to regulate portable fuel containers as an air contamination source under the APCA, L & I has concurrent authority to regulate portable fuel containers used for storage of flammable or combustible liquids under the Combustible and Flammable Liquids Act (35 P. S. §§ 1241—1252). The Department has consulted with L & I regarding this rulemaking, and both departments concluded that the final-form rulemaking does not conflict with L & I's statutory authority or promulgated regulations.

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

G. *Benefits and Costs*

Executive Order 1996-1, "Regulatory Review and Promulgation" requires a cost/benefit analysis of the final-form rulemaking.

Benefits

Overall, the citizens of this Commonwealth will benefit from the final-form rulemaking because it will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which reduce emissions. Moreover, it is also anticipated that adoption of this rulemaking will save consumers money because it will result in reduced evaporative loss and spillage of gasoline.

Compliance Costs

Manufacturers indicate that the requirements may add an additional \$6 to \$10 to the cost of containers. The cost to residents of this Commonwealth is estimated to be approximately \$3.3 million annually with an estimated VOC emission reduction to be approximately 5,700 tons per year. If the value of the emission reductions of gasoline saved is factored in, the net cost to citizens of this Commonwealth will be reduced to be approximately \$500,000.

Compliance Assistance Plan

The Department will continue to work with the other states in the northeast, with the OTC and with the National product manufacturers to ensure their understanding of the requirements. In addition, the Department is exploring opportunities for partnering with organizations to facilitate the transition to the new products.

Paperwork Requirements

The final-form rulemaking will not increase the paperwork that is already generated during the normal course of business operations.

H. *Sunset Review*

The final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the

Department to determine whether it effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 6185, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on August 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 22, 2002, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposal published at 31 Pa.B. 6185.

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

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

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code, are amended by adding §§ 130.101—130.108 to read as set forth in Annex A.

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

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

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

(e) This order shall take effect immediately upon publication.

DAVID E. HESS,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 4405 (September 7, 2002).)

Fiscal Note: Fiscal Note 7-369 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter A. PORTABLE FUEL CONTAINERS

Sec.	
130.101.	Applicability.
130.102.	Definitions.
130.103.	Performance standards for portable fuel containers and spill-proof spouts.
130.104.	Exemptions.
130.105.	Innovative products.
130.106.	Administrative requirements.
130.107.	Variances.
130.108.	Test procedures.

§ 130.101. Applicability.

Except as provided in § 130.104 (relating to exemptions), this chapter applies to a person who sells, supplies, offers for sale, or manufactures for sale in this Commonwealth portable fuel containers or spouts or both portable fuel containers and spouts for use in this Commonwealth. This chapter applies to liquid flammable and combustible fuels having a flash point below 200°F. For additional requirements, see section 7(c) of the Combustible and Flammable Liquids Act (35 P.S. § 1247(c)) and 37 Pa. Code § 11.7 (relating to container construction).

§ 130.102. Definitions.

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

ASTM—The American Society for Testing and Materials.

Consumer—A person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or institutional use. A person acquiring a portable fuel container or spout or both portable fuel container and spout for resale is not a consumer for that product.

Distributor—A person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers and consumers.

Manufacturer—A person who imports, manufactures, assembles, produces, packages, repackages, or relabels a portable fuel container or spout or both portable fuel container and spout.

Nominal capacity—The volume indicated by the manufacturer that represents the maximum recommended filling level.

Outboard engine—A spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

Permeation—The process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

Portable fuel container—A container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing and dispensing fuel.

Product category—The applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate and permeation rate, as applicable, as determined by the Commonwealth.

Retailer—A person who owns, leases, operates, controls or supervises a retail outlet.

Retail outlet—An establishment at which portable fuel containers or spouts or both portable fuel containers and spouts are sold, supplied or offered for sale.

Spill-proof spout—A spout that complies with the performance standards specified in § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts).

Spill-proof system—A configuration of portable fuel container and firmly attached spout that complies with the performance standards in § 130.103(a).

Spout—A device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.

Target fuel tank—A receptacle that receives fuel from a portable fuel container.

§ 130.103. Performance standards for portable fuel containers and spill-proof spouts.

(a) Except as provided in § 130.104 (relating to exemptions), a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a portable fuel container or spout, or a portable fuel container and spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof systems:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Has only one opening for both filling and pouring.

(4) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on an accompanying package.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5

gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(5) Does not exceed a permeation rate of 0.4 grams per gallon per day.

(6) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(b) Except as provided in § 130.104, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof spouts:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of one of the following:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on an accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(4) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(c) The test procedures for determining compliance with the performance standards in this section are set forth in § 130.108 (relating to test procedures). The manufacturer of portable fuel containers or spouts or both portable fuel containers and spouts shall perform the tests for determining compliance as set forth in § 130.108 to show that its product meets the performance standards of this section prior to allowing the product to be offered for sale in this Commonwealth. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale in this Commonwealth and make those test results available to the Department within 60 days of request.

(d) Notwithstanding subsections (a) and (b), a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003, may be sold, supplied or offered for sale until January 1, 2004, if the

date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

§ 130.104. Exemptions.

(a) This subchapter does not apply to a portable fuel container or spout or both portable fuel container and spout manufactured in this Commonwealth for shipment, sale and use outside of this Commonwealth.

(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards specified in § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), if the manufacturer or distributor can demonstrate the following:

(1) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of this Commonwealth.

(2) The manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed in this Commonwealth.

(c) This subchapter does not apply to portable fuel containers with a nominal capacity less than or equal to 1 quart.

(d) This subchapter does not apply to rapid refueling devices, with nominal capacities greater than or equal to 4 gallons, provided the devices are designed for use in officially sanctioned off-highway motorcycle competitions, or either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

(e) This subchapter does not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

§ 130.105. Innovative products.

The Department may exempt a portable fuel container or spout or both portable fuel container and spout from one or more of the requirements of § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) if a manufacturer demonstrates to the satisfaction of the Department that, due to the product's design, delivery system or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing.

(1) An applicant shall apply in writing to the Commonwealth for an innovative product exemption claimed under this section. The application shall include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption.

(2) For a portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted under this section, the applicant shall notify the Department in writing at least 30 days before the applicant changes a product's design, delivery system or other factors that may effect

the VOC emissions during recommended usage. The applicant shall also notify the Department within 30 days after the applicant learns of information that would alter the emissions estimates submitted to the Department in support of the exemption application.

(3) If the performance standards specified in § 130.103 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this section, have no force and effect as of the effective date of the amended performance standards.

(4) If the Department believes that a portable fuel container or spout or both portable fuel container and spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may revoke or modify the exemption.

(5) The Department will advise the applicant in writing of the Department's decision on the application for an innovative product exemption within 90 days of receipt of a complete application.

§ 130.106. Administrative requirements.

(a) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103(a) (relating to performance standards for portable fuel containers and spill-proof spouts) shall clearly display the following on each spill-proof system:

- (1) The phrase "Spill-Proof System."
- (2) A date of manufacture or representative date.

(3) A representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with § 130.103(a).

(b) Each manufacturer of a spout subject to and complying with § 130.103(b) shall clearly display the following on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

- (1) The phrase "Spill-Proof Spout."
- (2) A date of manufacture or representative date.

(3) A representative code identifying the spout as subject to and complying with § 130.103(b).

(c) Each manufacturer subject to subsection (a) or (b) shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on an accompanying package.

(d) Each manufacturer of a spout subject to subsection (b) shall clearly display the make, model number and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with § 130.103(a) on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.

(e) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103 that, due to its design or other features cannot be used to refuel one or more on-road motor vehicles, shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater.

§ 130.107. Variances.

(a) A person or manufacturer who cannot comply with § 130.103 (relating to performance standards for portable

fuel containers and spill-proof spouts), due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall include the following:

(1) The specific grounds upon which the variance is sought.

(2) The proposed dates by which compliance with § 130.103 will be achieved.

(3) A compliance report detailing the methods by which compliance will be achieved.

(b) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

(c) Upon the application of a person, the Department may review and modify or revoke a variance from § 130.103.

§ 130.108. Test procedures.

(a) Testing to determine compliance with § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts) shall be performed by using the following test procedures:

(1) "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

(2) "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

(3) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

(b) Testing to determine compliance with § 130.103(a) shall be performed by using all test procedures in subsection (a) and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

[Pa.B. Doc. No. 02-1731. Filed for public inspection October 4, 2002, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Consumer Products

The Environmental Quality Board (Board) by this order establishes Subchapter B (relating to consumer products) in Chapter 130 (relating to standards for products) to read as set forth in Annex A.

Section 130.202 (relating to definitions) adds definitions for terms that are used in the substantive sections of Chapter 130. Section 130.201 (relating to applicability) applies to any person who sells, supplies, offers for sale or manufactures consumer products for use in this Commonwealth. Sections 130.211—130.465 establish, among other things, standards and exemptions for these consumer

products. Section 130.471 (relating to public hearings) establishes public hearing requirements.

This notice is given under Board order at its meeting of July 16, 2002.

A. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-9495; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

The final-form rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005), which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. Background and Purpose

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in an activity that involves physical exertion. Though symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address the ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of the final-form rulemaking is to reduce the volatile organic compounds (VOCs) emitted from consumer products. The final-form rulemaking is part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout this Commonwealth. The final-form rulemaking expands upon the Federal consumer products rule, which became effective in December 1998. The Federal rule regulates 24 product categories representing 48% of the consumer products inventory Nationally and reduces VOC emissions from that inventory by 20%. To capture additional emission reductions from these products, the Commonwealth has developed this final-form rulemaking. The Commonwealth has used the California Air Resources Board (CARB) regulations and the Ozone Transport Commission (OTC) model rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth. As a result, the final-form rulemaking includes most, if not all, of the product categories covered in California, with limits effective at a later date than California. To maximize consistency, emission limits for specific product categories are identical to those used in California.

The final-form rulemaking regulates 45 consumer product categories and approximately 80 different types of

products, and requires more stringent VOC content limits than the Federal rule. Some of the limits are currently in effect in California and are known to be technologically feasible. Other limits in California have future effective dates. The proposed compliance date for the Commonwealth limits is January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating products and substituting products with compliant products that are already on the market.

Manufacturers producing consumer products would be responsible for developing and distributing compliant products for sale at the retail and wholesale levels. In addition, persons who sell, supply or offer for sale consumer products would also be held accountable. Consumers would not be affected by this final-form rulemaking in that they should not notice any changes in product performance or quality, and cost increases per consumer for these products will be negligible.

If compliance with the VOC contents becomes problematic, flexibility options are provided for in the final-form rulemaking. These options include an innovative product exemption, variances, exemptions and alternative control plans (ACP).

The final-form rulemaking contains requirements for charcoal lighter materials, aerosol adhesives, floor wax strippers and automotive windshield washer fluids, to name a few. They also contain administrative requirements for labeling and reporting. There is a reporting requirement so that manufacturers may be required to submit information to the Commonwealth upon request.

A CARB test method would be primarily used to demonstrate compliance. Enforcement of the product VOC content limits and other requirements would be done by the Commonwealth.

Because the Commonwealth, in conjunction with other northeastern states, has in the past met with representatives of the various National consumer product manufacturers in related industries, and have gathered their support for the final-form rulemaking, it is important that the final-form rulemaking be implemented consistently and uniformly as negotiated. Any deviation from the regulations may hinder the ability of manufacturers to comply with the requirements.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of the final-form rulemaking. At its May 2, 2002, meeting, AQTAC recommended adoption of the final-form rulemaking. In addition, AQTAC recommended that the Department continue aggressive efforts with other states to support National standards for these products.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board received seven sets of comments on the proposed rulemaking. The following summarizes the major issues and the Board's responses.

A number of commentators support the rulemaking because it is consistent with the OTC model rule, which will assure consistency with those states that adopt the regulation. The Board agrees that it is important that the regulation be consistent with the OTC model rule and that this consistency will ensure the manufacturers' ability to manufacture and supply compliant products.

A number of commentators believe that the Board should correct the numerical table of standards to main-

tain consistency with the VOC limits in the OTC model rule. The Board agrees and has made the recommended changes.

A commentator supports the provisions in § 130.455 (relating to surplus reductions and surplus trading) that allows manufacturers the option of voluntarily entering into ACPs for products, but requests that the paragraph be revised to allow 15 days to submit information instead of 5 days. The Board agrees. The new paragraph has been added, which allows 15 days for the submission of information to the Department.

The commentator recommends that the Department revise portions in § 130.459(a)(2) (relating to notification of modifications to and ACP by the responsible ACP party) so that manufacturers are required only to submit general information about changes to product formulation. The Board disagrees. The provisions of the paragraph are intended to require that responsible ACP parties provide information on the product formulation and not on the product formula. It is not the intent to require responsible ACP parties to submit specific product formulation information.

The commentator urges the Board to revise the provisions of § 130.463 (relating to treatment of information) to assure protection of highly sensitive business information. The Board agrees. The provisions of the section, which has been renumbered as § 130.464, now specify that product formulation information can be protected as confidential business information under the provisions of section 13.2 of the APCA (35 P. S. § 4013.2).

The commentator requests that the definition of "adhesive" be revised to make it consistent with the California regulation. The Board agrees and has made the requested revision.

A commentator objects to the exemptions in § 130.335 (relating to air fresheners) for certain air fresheners and pesticides and believes that these exemptions should be deleted. The Board disagrees. The Board believes it is in the best interest of the Commonwealth to assure that the product VOC limits and exemptions in the final-form rulemaking are consistent with the OTC model rule.

The commentator suggests that § 130.371 (relating to code-dating) should require the manufacturer to display the actual date of the product manufacture and should not allow the use of "cod-dating" to signify the date of manufacture. The Board disagrees. The use of "code-dating" requirements different from those in the OTC model rule would result in considerable added expense for the manufacturers.

The commentator suggests that the availability of variances as provided for in §§ 130.411–130.414 should be severely curtailed or eliminated. The Board disagrees. The VOC limits in the final-form rulemaking are strongly technology forcing. It is prudent to provide an opportunity for manufacturers to seek relief if it becomes apparent that the product reformulation to meet the compliance limits is not possible.

This commentator further states that if the Department retains the provisions relating to variances that they should be limited for a period of not longer than 1 year. The Board disagrees. An application for a variance will specify the length of the time requested and, if the Department's evaluation indicates at that time it is excessive, then the Department will restrict the time period to an appropriate interval.

The commentator requests that the Board assure that there is an opportunity for public input before the

Department issues a final order granting a variance. The Board agrees. The final-form rulemaking contains § 130.471 that contains provisions specifying that a public hearing is to be held before the issuance, revocation or modification of a variance.

The commentator believes that provisions that allow manufacturers to obtain ACPs may result in lower emission reductions than anticipated, but will result in the continued exposure of consumers to hazardous air pollutants. The Board disagrees. For a manufacturer to obtain an ACP, significant reformulation of products must occur. In the aggregate, emissions from products covered by an ACP will not be any greater than emissions from the same group of products that had to be complied with individually.

One commentator notes that proposed §§ 130.412, 130.414, 130.461(b) (renumbered § 130.462(b)) and 130.463 (renumbered § 130.464) have open references to "Commonwealth laws and regulations." The Board should make specific references to pertinent statutes or regulations. The Board agrees. Section 130.471 has been added to specify requirements for hearings related to the issuance, modification or revocation/cancellation of variances and ACPs.

A commentator notes that § 130.371 establishes requirements for submitting product "date coding" information to the Department not less than 12 months before the effective date of the applicable standard. The commentator believes that a concrete effective date would be clearer. The Board agrees, and a specific date has been placed in that section.

A commentator believes that there should be procedures or time frames for public notice or inspection of variance applications by the public. The Board agrees. Section 130.411 (relating to application for variance) and § 130.471 establish appropriate procedures.

The commentator notes that the proposed rulemaking does not specify procedures to be used for an applicant for an alternative compliance plan. The Board has revised the regulation to set forth requirements related to the application for an ACP under § 130.454 (relating to application for an ACP).

F. *Summary of Regulatory Requirements and Major Changes Between Proposed and Final-Form Rulemaking*

Subchapter B includes the following definitions of terms that will be used in the substantive provisions of the final-form rulemaking. The definitions include: "ACP—Alternative Control Plan," "ACP agreement," "ACP emissions," "ACP limit," "ACP product," "ACP reformulation" or "ACP reformulated," "ACP standard," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol cooking spray," "aerosol product," "agricultural use," "air freshener," "all other carbon-containing compounds," "all other forms," "antimicrobial hand or body cleaner or soap," "antiperspirant," "architectural coating," "astringent/toner," "automotive brake cleaner," "automotive hard paste wax," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive wax, polish, sealant or glaze," "automotive windshield washer fluid," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "charcoal lighter material," "colorant," "compliance period," "construction, panel and floor covering adhesive," "consumer," "consumer product," "contact adhesive," "container/packaging," "contact person," "crawling bug insecticide," "date-code," "deodorant," "device," "disinfectant,"

“distributor,” “double-phase aerosol air freshener,” “dry cleaning fluid,” “dusting aid,” “electronic cleaner,” “enforceable sales,” “enforceable sales record,” “engine degreaser,” “fabric protectant,” “facial cleaner or soap,” “fat wood,” “flea and tick insecticide,” “flexible flooring material,” “floor polish or wax,” “floor seam sealer,” “floor wax stripper,” “flying bug insecticide,” “fragrance,” “furniture maintenance product,” “furniture coating,” “gel,” “general purpose adhesive,” “general purpose cleaner,” “general purpose degreaser,” “general-use hand or body cleaner or soap,” “glass cleaner,” “gross Pennsylvania sales,” “HVO—high volatility organic compound,” “hair mousse,” “hair shine,” “hair styling gel,” “hair spray,” “heavy-duty hand cleaner or soap,” “herbicide,” “household product,” “insecticide,” “insecticide fogger,” “institutional product or industrial and institutional (I&I) product,” “lower vapor pressure (LVP) content,” “lower vapor pressure (LVP)-VOC,” “label,” “laundry prewash,” “laundry starch product,” “lawn and garden insecticide,” “liquid,” “lubricant,” “MVO—medium volatility organic compound,” “manufacturer,” “medicated astringent/medicated toner,” “metal polish/cleaner,” “missing data days,” “mist spray adhesive,” “multipurpose dry lubricant,” “multipurpose lubricant,” “multipurpose solvent,” “nail polish,” “nail polish remover,” “nonaerosol product,” “noncarbon containing compound,” “nonresilient flooring,” “nonselective terrestrial herbicide,” “one-product business,” “oven cleaner,” “paint,” “paint remover or stripper,” “penetrant,” “pesticide,” “Pennsylvania sales,” “plasticizer,” “pre-ACP VOC content,” “principal display panel or panels,” “product brand name,” “product category,” “product line,” “propellant,” “pump spray,” “reconcile” or “reconciliation,” “reconciliation” of shortfalls plan,” “responsible party,” “responsible ACP party,” “restricted materials,” “retailer,” “retail outlet,” “roll-on product,” “rubber and vinyl protectant,” “rubbing alcohol,” “sealant and caulking compound,” “semisolid,” “shaving cream,” “shortfall,” “silicone-based multipurpose lubricant,” “single-phase aerosol air freshener,” “solid,” “special purpose spray adhesive,” “spot remover,” “spray buff product,” “stick product,” “structural waterproof adhesive,” “surplus reduction,” “surplus trading,” “TMHE—total maximum historical emissions,” “Table B compound,” “terrestrial,” “tire sealant and inflation,” “Type A propellant,” “Type B propellant,” “Type C propellant,” “undercoating,” “usage directions,” “VOC content,” “wasp and hornet insecticide,” “waterproofing,” “wax,” “web spray adhesive,” “wood floor wax” and “working day.”

Section 130.211 (relating to table of standards) sets forth the percentage of VOC by weight, which cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. Sections 130.212—130.216 contain other requirements that relate specifically to certain products like charcoal lighter materials, products registered under the Federal Insecticides, Fungicides and Rodenticides Act (FIFRA), aerosol adhesives and floor wax strippers. Sections 130.331—130.337 set forth the general exemption requirements for products for shipment and use outside of this Commonwealth and exemptions for specific consumer products like antiperspirants and deodorants, adhesives, insecticides, fungicides and rodenticides registered under FIFRA and air fresheners. Sections 130.351 and 130.352 (relating to innovative products exemption; and request for exemption) set forth exemptions for products that are considered innovative to advance and encourage new technologies. Section 130.371 and §§ 130.372 and 130.373 (relating to most restrictive limit; and additional labeling requirements for aerosol adhesives) set forth code-dating and additional labeling requirements for consumer products that are subject to this subsection. Sections 130.391

and 130.392 (relating to required reporting of information to the Department; and confidentiality) set forth general reporting requirements, special reporting requirements, reporting requirements for ozone depleting compounds and confidentiality requirements. Sections 130.411—130.414 set forth the procedures that a manufacturer may use to apply for and be granted a variance for certain products that would otherwise be subject to regulation. Additional requirements under § 130.411 were added at final-form rulemaking that set forth public hearing requirements for variance determinations. Section 130.431 (relating to testing for compliance) sets forth the test methods that will be used to ensure that the products are in compliance with this subchapter. Sections 130.451—130.465 set forth alternative methods of compliance for consumer products and administrative and other applicable requirements. In addition, more extensive ACP application requirements have been added to ensure that all applicants know what information is needed. Finally, § 130.471 was added.

The major changes that were made from proposed to final-form rulemaking include numerical changes in the table of standards under § 130.211; more detailed variance application requirements under § 130.411; § 130.454 that sets forth an application procedure for an ACP; treatment of information is more specific under § 130.464; and § 130.471 related to public hearing requirements has been added.

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

G. *Benefits and Costs*

Executive Order 1996-1, “Regulatory Review and Promulgation,” requires a cost/benefit analysis of the final-form rulemaking.

Benefits

Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because it will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which will reduce emissions. The final-form rulemaking will also result in reduced levels of hazardous air pollutants throughout this Commonwealth. In addition, the final-form rulemaking will reduce citizen exposure to a variety of solvents, including hazardous air pollutants that are used in a variety of consumer products.

Compliance Costs

Under the final-form rulemaking, it is estimated that the reduction of VOC content of the affected consumer products will cost approximately \$800 per ton of emissions reduced based on annual emission reductions of approximately 6,000 tons or 1 pound per person. This equates to an estimated annual cost increase of \$4.8 million annually, or 30¢—40¢ per Commonwealth consumer.

Compliance Assistance Plan

The Department plans to educate and assist the public and the regulated community in understanding the newly-revised requirements and how to comply with them. This will be accomplished through the Department’s ongoing regional compliance assistance program.

Paperwork Requirements

The final-form rulemaking will not increase the paperwork that is already generated during the normal course of business operations.

H. *Sunset Review*

The final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the final amendments effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

In preparing this final-form rulemaking, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this preamble.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on August 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(c) of the Regulatory Review Act, IRRC met on August 22, 2002, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposal published at 31 Pa.B. 6163 (November 10, 2001).

(4) This rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

(5) This rulemaking is necessary for the Commonwealth to achieve and maintain ambient air quality standards.

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code, are amended by adding §§ 130.201, 130.202, 130.211—130.216, 130.331—130.337, 130.351, 130.352, 130.371—130.373, 130.391, 130.392, 130.411—130.414, 130.431, 130.451—130.465 and 130.471 to read as set forth in Annex A.

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

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

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

(e) This order shall take effect immediately upon publication.

DAVID E. HESS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 4405 (September 7, 2002).)

Fiscal Note: Fiscal Note 7-370 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter B. CONSUMER PRODUCTS

GENERAL PROVISIONS

Sec.	
130.201.	Applicability.
130.202.	Definitions.

STANDARDS

130.211.	Table of standards.
130.212.	Products diluted prior to use.
130.213.	Products registered under FIFRA.
130.214.	Requirements for charcoal lighter materials.
130.215.	Requirements for aerosol adhesives.
130.216.	Requirements for floor wax strippers.

EXEMPTIONS

130.331.	Products for shipment and use outside this Commonwealth.
130.332.	Antiperspirants and deodorants.
130.333.	LVP-VOC.
130.334.	Products registered under FIFRA.
130.335.	Air fresheners.
130.336.	Adhesives.
130.337.	Bait station insecticides.

INNOVATIVE PRODUCTS

130.351.	Innovative products exemption.
130.352.	Request for exemption.

ADMINISTRATIVE REQUIREMENTS

130.371.	Code-dating.
130.372.	Most restrictive limit.
130.373.	Additional labeling requirements for aerosol adhesives.

REPORTING REQUIREMENTS

130.391.	Required reporting of information to the Department.
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VARIANCES

130.411.	Application for variance.
130.412.	Variance orders.
130.413.	Termination of variance.
130.414.	Modification of variance.

TEST METHODS

130.431.	Testing for compliance.
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ACP FOR CONSUMER PRODUCTS

130.451.	Alternative methods of compliance.
130.452.	Exemption.
130.453.	Request for exemption.
130.454.	Application for an ACP.
130.455.	Recordkeeping and availability of requested information.
130.456.	Surplus reductions and surplus trading.
130.457.	Limited-use surplus reduction credits for early reformulations of ACP products.
130.458.	Reconciliation of shortfalls.
130.459.	Notification of modifications to an ACP by the responsible ACP party.

- 130.460. Modifications that require Department preapproval.
- 130.461. Other modifications.
- 130.462. Modification of an ACP by the Department.
- 130.463. Cancellation of an ACP.
- 130.464. Treatment of information.
- 130.465. Other applicable requirements.

PUBLIC HEARING REQUIREMENTS

- 130.471. Public hearings.

GENERAL PROVISIONS

§ 130.201. Applicability.

Except as provided in §§ 130.331—130.337 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005, for use in this Commonwealth.

§ 130.202. Definitions.

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

ACP—Alternative Control Plan—An emissions averaging program approved by the Department under this subchapter.

ACP agreement—The document signed by the Department which includes the conditions and requirements of the ACP, and which allows manufacturers to sell ACP products in this Commonwealth under the requirements of this subchapter.

ACP emissions—

(i) 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:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N \times (VOC\ Content) \times (Enforceable\ Sales)$$

$$Emissions = \frac{\hspace{10em}}{100}$$

where,

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

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

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

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

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

(iii) For charcoal lighter material products only:

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

Certified Emissions = the emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter materials), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound CH₂ per start.

Certified Use Rate = the usage level for products approved by the Department under § 130.214, as deter-

mined under “South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991),” expressed to the nearest 0.001 pound certified product used per start.

ACP limit—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:

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

where,

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

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

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

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

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

ACP product—A consumer product subject to the VOC standards specified in § 130.211, except those products that have been exempted under §§ 130.331—130.337 (relating to exemptions), or exempted as innovative products under §§ 130.351 and 130.352 (relating to innovative products).

ACP reformulation or ACP reformulated—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.

ACP standard—The Pre-ACP VOC content of an ACP product or the applicable VOC standard specified in § 130.211, whichever is less.

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

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

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

$$VOC\ Standard = \frac{(0.020\ pound\ CH_2\ per\ start \times 100)}{Certified\ Use\ Rate}$$

where,

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

Certified Use Rate = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management Dis-

strict Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

ASTM—The American Society for Testing and Materials.

Adhesive—A product that is used to bond one surface to another by attachment.

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

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

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

Adhesive remover—A product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

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

Aerosol cooking spray—An aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

Aerosol product—A pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. The term does not include pump sprays.

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

(i) *Home use*. Use in a household or its immediate environment.

(ii) *Structural pest control*. A use requiring a license under the applicable State pesticide licensing requirement.

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

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

Air freshener—A consumer product, including sprays, wicks, powders and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air.

(i) The term does not include:

(A) Products that are used on the human body.

(B) Products that function primarily as cleaning products.

(C) Disinfectant products claiming to deodorize by killing germs on surfaces.

(D) Institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution.

(ii) The term includes 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.

(iii) 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) does not constitute a claim of air freshening.

All other carbon-containing compounds—Compounds which contain at least one carbon atom and are not a "Table B" compound or a "LVP-VOC."

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

Antimicrobial hand or body cleaner or soap—

(i) A cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. The term includes the following:

(A) Antimicrobial hand or body washes/cleaners.

(B) Foodhandler hand washes.

(C) Healthcare personnel hand washes.

(D) Preoperative skin preparations.

(E) Surgical scrubs.

(ii) The term does not include the following:

(A) Prescription drug products.

(B) Antiperspirants.

(C) Astringent/toner.

(D) Deodorant.

(E) Facial cleaner or soap.

(F) General-use hand or body cleaner or soap.

(G) Hand dishwashing detergent, including antimicrobial.

(H) Heavy-duty hand cleaner or soap.

(I) Medicated astringent/medicated toner.

(J) Rubbing alcohol.

Antiperspirant—A product, including 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% in at least 50% of a target population.

Architectural coating—A coating applied to stationary structures and their appurtenances, to mobile homes, to pavements or to curbs.

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

- (i) Hand, face or body cleaner or soap products.
- (ii) Medicated astringent/medicated toner.
- (iii) Cold cream.
- (iv) Lotion.
- (v) Antiperspirant.

Automotive brake cleaner—A cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

Automotive hard paste wax—An automotive wax or polish which is:

- (i) Designed to protect and improve the appearance of automotive paint surfaces.
- (ii) A solid at room temperature.
- (iii) 0% water by formulation.

Automotive instant detailer—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.

Automotive rubbing or polishing compound—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.

Automotive wax, polish, sealant or glaze—A product designed to seal out moisture, increase gloss or otherwise enhance a motor vehicle's painted surfaces.

- (i) The term includes products designed for:
 - (A) Use in autobody repair shops and drive-through car washes.
 - (B) Use by the general public.
- (ii) The term does not include:
 - (A) Automotive rubbing or polishing compounds.
 - (B) Automotive wash and wax products.
 - (C) Surfactant-containing car wash products.
 - (D) Products designed for use on unpainted surfaces such as bare metal, chrome, glass or plastic.

Automotive windshield washer fluid—A liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing or wetting the windshield. The term does not include fluids placed by the manufacturer in a new vehicle.

Bathroom and tile cleaner—A product designed to clean tile or surfaces in bathrooms. The term does not include products specifically designed to clean toilet bowls or toilet tanks.

Bug and tar remover—A product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (i) Biological-type residues such as insect carcasses and tree sap.
- (ii) Road grime, such as road tar, roadway paint markings and asphalt.

Carburetor or fuel-injection air intake cleaners—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. The term does not include products designed exclusively to be

introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

Carpet and upholstery cleaner—A cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

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

(ii) The term does not include:

- (A) General purpose cleaners, spot removers, vinyl or leather cleaners or dry cleaning fluids.
- (B) Products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

Charcoal lighter material—A combustible material designed to be applied on, incorporated in, added to or used with charcoal to enhance ignition. The term does not include the following:

- (i) Electrical starters and probes.
- (ii) Metallic cylinders using paper tinder.
- (iii) Natural gas.
- (iv) Propane.
- (v) Fat wood.

Colorant—A pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

Compliance period—The period of time, not to exceed 1 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.

Construction, panel and floor covering adhesive—

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

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

- (I) Beams.
- (II) Trusses.
- (III) Studs
- (IV) Paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, predecorated hardboard or tileboard, and the like).
- (V) Ceiling and acoustical tile.

(VI) Molding, fixtures, countertops or countertop laminates, cove or wall bases and flooring or subflooring.

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

- (I) Wood or simulated wood covering.
- (II) Carpet, carpet pad or cushion, vinyl-backed carpet.
- (III) Flexible flooring material.
- (IV) Nonresilient flooring material.
- (V) Mirror tiles and other types of tiles.
- (VI) Artificial grass.

(ii) The term does not include floor seam sealer.

Consumer—A person who purchases or acquires a consumer product for personal, family, household or institutional use. Persons acquiring a consumer product for resale are not “consumers” for that product.

Consumer product—

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

- (A) Detergents.
- (B) Cleaning compounds.
- (C) Polishes.
- (D) Floor finishes.
- (E) Cosmetics.
- (F) Personal care products.
- (G) Home, lawn and garden products.
- (H) Disinfectants.
- (I) Sanitizers.
- (J) Aerosol paints.
- (K) Automotive specialty products.

(ii) The term does not include other paint products, furniture coatings or architectural coatings.

Contact adhesive—

(i) An adhesive that:

(A) Is designed for application to both surfaces to be bonded together.

(B) Is allowed to dry before the two surfaces are placed in contact with each other.

(C) Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other.

(D) 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.

(ii) The term does not include rubber cements that are primarily intended for use on paper substrates.

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

Contact person—A representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement.

Crawling bug insecticide—An insecticide product that is designed for use against ants, cockroaches or other household crawling arthropods, including mites, silverfish or spiders. The term does not include products designed to be used exclusively on humans or animals, or house dust mite product. For the purposes of this definition only:

(i) *House dust mite*. 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.

(ii) *House dust mite product*. 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.

Date-code—The day, month and year on which the consumer product was manufactured, filled or packaged, or a code indicating such a date.

Deodorant—A product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

Device—An instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling or mitigating a pest or other form of plant or animal life (other than man and other than bacteria, virus or other microorganism on or in living man or other living animals). The term does not include equipment used for the application of pesticides when sold separately.

Disinfectant—

(i) A 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.A. §§ 136—136y).

(ii) The term does not include the following:

(A) Products designed solely for use on humans or animals.

(B) Products designed for agricultural use.

(C) Products designed solely for use in swimming pools, therapeutic tubs or hot tubs.

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

Distributor—A person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce. The term does not include manufacturers, retailers and consumers.

Double-phase aerosol air freshener—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.

Dry cleaning fluid—

(i) A nonaqueous liquid product designed and labeled exclusively for use on:

(A) Fabrics which are labeled “for dry clean only,” such as clothing or drapery.

(B) “S-coded” fabrics.

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

(iii) The term does not include spot remover or carpet and upholstery cleaner.

(iv) 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.

Dusting aid—A product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include products that consist entirely of compressed gases for use in electronic or other specialty areas.

Electronic cleaner—A product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels and generators.

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

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

- (i) Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period.
- (ii) 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 data comprising the summaries is submitted by the responsible ACP party and approved by the Department.
- (iii) Other accurate product sales records approved by the Department as meeting the criteria specified in this definition.

Engine degreaser—A cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

Fabric protectant—A product designed to be applied to fabric substrates to protect the surface from soiling by dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include waterproofers, products designed for use solely on leather or products designed for use solely on fabrics which are labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

Facial cleaner or soap—A cleaner or soap designed primarily to clean the face. The term includes, but is not limited to, facial cleansing creams, gels, liquids, lotions and substrate-impregnated forms. The term does not include:

- (i) Prescription drug products.
- (ii) Antimicrobial hand or body cleaner or soap.
- (iii) Astringent/toner.
- (iv) General-use hand or body cleaner or soap.
- (v) Medicated astringent/medicated toner.
- (vi) Rubbing alcohol.

Fat wood—Pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. The term does not include kindling with

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

Flea and tick insecticide—An insecticide product that is designed for use against fleas, ticks, their larvae or their eggs. The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

Flexible flooring material—Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

Floor polish or wax—A wax, polish or other product designed to polish, protect or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include:

- (i) Spray buff products.
- (ii) Products designed solely for the purpose of cleaning floors.
- (iii) Floor finish strippers.
- (iv) Products designed for unfinished wood floors.
- (v) Coatings subject to architectural coatings regulations in this chapter.

Floor seam sealer—A product designed and labeled exclusively for bonding, fusing or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

Floor wax stripper—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. The term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

Flying bug insecticide—An insecticide product that is designed for use against flying insects or other flying arthropods, including mosquitoes, moths or gnats. The term does not include:

- (i) Wasp and hornet insecticide.
- (ii) Products that are designed to be used exclusively on humans or animals.
- (iii) A moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging or accompanying literature indicates that the product is designed 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.

Fragrance—A substance or complex mixture of aroma chemicals, natural essential oils and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

Furniture maintenance product—A wax, polish, conditioner or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. The term does not include dusting aids, products designed solely for the purpose of cleaning and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

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

Gel—A colloid in which the dispersed phase has combined with the continuous phase to produce a semisolid material, such as jelly.

General purpose adhesive—A nonaerosol adhesive designed for use on a variety of substrates. The term does not include:

- (i) Contact adhesives.
- (ii) Construction, panel and floor covering adhesives.
- (iii) Adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers or vinyls).
- (iv) Adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping or carpets).

General purpose cleaner—A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. The term includes products designed for general floor cleaning, kitchen or countertop cleaning and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

General purpose degreaser—

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

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

- (A) Sold exclusively to establishments that manufacture or construct goods or commodities.
- (B) Labeled "not for retail sale."
- (iii) Solvent cleaning tanks or related equipment including, but is not limited to:
 - (A) Cold cleaners.
 - (B) Vapor degreasers.
 - (C) Conveyorized degreasers.
 - (D) Film cleaning machines.
 - (E) Products designed to clean miscellaneous metallic parts by immersion in a container.

General-use hand or body cleaner or soap—A cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils.

(i) The term includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels and moisturizing cleaners or soaps.

- (ii) The term does not include:
 - (A) Prescription drug products.
 - (B) Antimicrobial hand or body cleaner or soap.
 - (C) Astringent/toner.
 - (D) Facial cleaner or soap.
 - (E) Hand dishwashing detergent, including antimicrobial.
 - (F) Heavy-duty hand cleaner or soap.
 - (G) Medicated astringent/medicated toner.
 - (H) Rubbing alcohol.

Glass cleaner—A cleaning product designed primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

Gross Pennsylvania sales—The estimated total sales in this Commonwealth 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 Department will provide an accurate Pennsylvania sales estimate:

(i) Apportionment of National or regional sales of the ACP product to Pennsylvania 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 this Commonwealth's current population.

(ii) Another documented method which provides an accurate estimate of the total current Pennsylvania sales of the ACP product.

HVOC—High volatility organic compound—A volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20°C.

Hair mousse—A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

Hair shine—A product designed for the primary purpose of creating a shine when applied to the hair. The term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. The term does not include:

- (i) Hair spray.
- (ii) Hair mousse.
- (iii) Hair styling gel or spray gel.
- (iv) Products whose primary purpose is to condition or hold the hair.

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

Hair spray—A 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.

Heavy-duty hand cleaner or soap—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. The term does not include:

- (i) Prescription drug products.
- (ii) Antimicrobial hand or body cleaner or soap.
- (iii) Astringent/toner.
- (iv) Facial cleaner or soap.
- (v) General-use hand or body cleaner or soap.
- (vi) Medicated astringent/medicated toner.
- (vii) Rubbing alcohol.

Herbicide—A pesticide product designed to kill or retard a plant's growth, but excludes products that are:

- (i) For agricultural use.
- (ii) Restricted materials that require a permit for use and possession.

Household product—A 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.

Insecticide—A pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (i) For agricultural use.
- (ii) For a use which requires a structural pest control license under applicable laws or regulations of the Commonwealth.
- (iii) Restricted materials that require a permit for use and possession.

Insecticide fogger—An insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

Institutional product or industrial and institutional (I&I) product—

(i) A consumer product that is designed for use in the maintenance or operation of an establishment that:

- (A) Manufactures, transports or sells goods or commodities, or provides services for profit.
- (B) Is engaged in the nonprofit promotion of a particular public, educational or charitable cause.

(ii) Establishments include, but are not limited to, the following:

- (A) Government agencies.
- (B) Factories.
- (C) Schools.
- (D) Hospitals.
- (E) Sanitariums.
- (F) Prisons
- (G) Restaurants.
- (H) Hotels.
- (I) Stores.
- (J) Automobile service and parts centers.
- (K) Health clubs.
- (L) Theaters.
- (M) Transportation companies.

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

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

Lower vapor pressure (LVP)-VOC—

- (i) A chemical compound or mixture that contains at least one carbon atom and meets one of the following:
 - (A) Has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310.

(B) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown.

(C) Is a chemical compound with a boiling point greater than 216°C, as determined by CARB Method 310.

(D) Is the weight percent of a chemical mixture that boils above 216°C, as determined by CARB Method 310.

(ii) For the purposes of this definition, chemical compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substance comprised of two or more chemical compounds.

Label—Written, printed or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on or appearing upon a 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.

Laundry prewash—A product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance, or both.

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

Lawn and garden insecticide—An insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

Liquid—A substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90. The term does not include powders or other materials that are composed entirely of solid particles.

Lubricant—A product designed to reduce friction, heat, noise or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. The term does not include:

- (i) Automotive power steering fluids.
- (ii) Products for use inside power generating motors, engines and turbines, and their associated power-transfer gearboxes.
- (iii) Two cycle oils or other products designed to be added to fuels.
- (iv) Products for use on the human body or animals.
- (v) Products that are sold exclusively to establishments which manufacture or construct goods or commodities, and are labeled "not for retail sale."

MVOC—Medium volatility organic compound—A VOC that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

Manufacturer—A person who imports, manufactures, assembles, produces, packages, repackages or relabels a consumer product.

Medicated astringent/medicated toner—A product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores. The term includes, but is not limited to, clarifiers and substrate-impregnated products. The term does not include:

- (i) Hand, face or body cleaner or soap products.
- (ii) Astringent/toner.
- (iii) Cold cream.
- (iv) Lotion.
- (v) Antiperspirants.
- (vi) Products that must be purchased with a doctor's prescription.

Metal polish/cleanser—A product designed primarily to improve the appearance of finished metal, metallic or metallized surfaces by physical or chemical action by removing or reducing stains, impurities or oxidation from surfaces or by making surfaces smooth and shiny. The term includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. The term does not include:

- (i) Automotive wax, polish, sealant or glaze.
- (ii) Wheel cleaner.
- (iii) Paint remover or stripper.
- (iv) Products designed and labeled exclusively for automotive and marine detailing.
- (v) Products designed for use in degreasing tanks.

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 to the Department, as specified in the ACP agreement.

Mist spray adhesive—An aerosol 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.

Multipurpose dry lubricant—A lubricant which is:

- (i) Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly) or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces.
- (ii) Designed for general purpose lubrication or for use in a wide variety of applications.

Multipurpose lubricant—A lubricant designed for general purpose lubrication or for use in a wide variety of applications. The term does not include:

- (i) Multipurpose dry lubricants.
- (ii) Penetrants.
- (iii) Silicone-based multipurpose lubricants.

Multipurpose solvent—An 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. The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. The term does not include solvents used in:

- (i) Cold cleaners.
- (ii) Vapor degreasers.
- (iii) Conveyorized degreasers.
- (iv) Film cleaning machines.
- (v) Solvents that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

Nail polish—A clear or colored coating designed for application to the fingernails or toenails and including lacquers, enamels, acrylics, base coats and top coats.

Nail polish remover—A product designed to remove nail polish and coatings from fingernails or toenails.

Nonaerosol product—A consumer product that is not dispensed by a pressurized spray system.

Noncarbon containing compound—A compound that does not contain carbon atoms.

Nonresilient flooring—Flooring of a mineral content that is not flexible, including:

- (i) Terrazzo.
- (ii) Marble.
- (iii) Slate.
- (iv) Granite.
- (v) Brick.
- (vi) Stone.
- (vii) Ceramic tile.
- (viii) Concrete.

Nonselective terrestrial herbicide—A terrestrial herbicide product that is toxic to plants without regard to species.

One-product business—A responsible ACP party which sells, supplies, offers for sale or manufactures for use in this Commonwealth:

- (i) Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of §§ 130.211—130.216.
- (ii) Only one distinct ACP product line subject to the requirements of §§ 130.211—130.216, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

Oven cleaner—A cleaning product designed to clean and to remove dried food deposits from oven walls.

Paint—A pigmented liquid or 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.

Paint remover or stripper—A product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. The term does not include:

- (i) Multipurpose solvents.
- (ii) Paint brush cleaners.
- (iii) Products designed and labeled exclusively to remove graffiti.
- (iv) Hand cleaner products that claim to remove paints and other related coatings from skin.

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

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

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

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

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

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

Product brand name—The name of the product exactly as it appears on the principal display panel of the product.

Product category—The applicable category that best describes the product as listed in this section.

Product line—A group of products of identical form and function belonging to the same product category.

Propellant—A liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

Pump spray—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.

Reconcile or reconciliation—Providing sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

Reconciliation of shortfalls plan—The plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the Department under § 130.458 (relating to reconciliation of shortfalls).

Responsible party—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.

Responsible ACP party—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 is the party which the ACP product was manufactured for or distributed by, as noted on the label.

Restricted materials—Pesticides established as restricted materials under applicable laws or regulations of the Commonwealth.

Retailer—A person who sells, supplies or offers consumer products for sale directly to consumers.

Retail outlet—An establishment at which consumer products are sold, supplied or offered for sale directly to consumers.

Roll-on product—An antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

Rubber and vinyl protectant—A 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. The term 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.

Rubbing alcohol—A 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.

Sealant and caulking compound—A product with adhesive properties that is designed to fill, seal, waterproof or weatherproof gaps or joints between two surfaces.

- (i) The term does not include:
 - (A) Roof cements and roof sealants.
 - (B) Insulating foams.
 - (C) Removable caulking compounds.
 - (D) Clear/paintable/water resistant caulking compounds.
 - (E) Floor seam sealers.
 - (F) Products designed exclusively for automotive uses.
 - (G) Sealers that are applied as continuous coatings.
- (ii) The term also does not include units of product, less packaging, which weigh more than 1 pound and consist of more than 16 fluid ounces.
- (iii) For the purposes of this definition only:
 - (A) "Removable caulking compounds" means a compound which temporarily seals windows or doors for 3 to 6 month time intervals.
 - (B) "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.

Semisolid—A product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes and greases.

Shaving cream—An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

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

Silicone-based multipurpose lubricant—

(i) A lubricant which is:

(A) Designed and labeled to provide lubricity primarily through the use of silicone compounds, including polydimethylsiloxane.

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

(ii) The term does not include products designed and labeled exclusively to release manufactured products from molds.

Single-phase aerosol air freshener—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.

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

Special purpose spray adhesive—

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

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

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

(C) *Polystyrene foam adhesive*. An aerosol adhesive designed to bond polystyrene foam to substrates.

(D) *Automobile headliner adhesive*. An aerosol adhesive designed to bond together layers in motor vehicle headliners.

(E) *Polyolefin adhesive*. An aerosol adhesive designed to bond polyolefins to substrates.

(F) *Laminate repair/edgebanding adhesive*. An aerosol adhesive designed for:

(I) The touch-up or repair of items laminated with high pressure laminates (for example-lifted edges, delaminates, and the like).

(II) The touch-up, repair or attachment of edgebanding materials, including other laminates, synthetic marble, veneers, wood molding and decorative metals.

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

(H) *Automotive engine compartment adhesive*. An aerosol adhesive designed 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.

Spot remover—A product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery and clothing, that does not require subsequent laundering to achieve stain removal. The term does not include:

- (i) Dry cleaning fluid.
- (ii) Laundry prewash.
- (iii) Carpet and upholstery cleaner.
- (iv) Multipurpose solvent.

Spray buff product—A product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

Stick product—An 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.

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

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

Surplus trading—The buying, selling or transfer of surplus reductions between responsible ACP parties.

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

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

where,

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

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

Highest Sales = the maximum 1-year gross Pennsylvania sales of the ACP product in the previous 5 years, if

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

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

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.

Table B compound—A carbon-containing compound listed as an exception to the definition of VOC in section 94508 of the CCR.

Terrestrial—To live on or grow from land.

Tire sealant and inflation—A pressurized product that is designed to temporarily inflate and seal a leaking tire.

Type A propellant—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.

Type B propellant—A halocarbon which is used as a propellant, including:

- (i) Chlorofluorocarbons (CFCs).
- (ii) Hydrochlorofluorocarbons (HCFCs).
- (iii) Hydrofluorocarbons (HFCs).

Type C propellant—A propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane and dimethyl ether (also known as dimethyl oxide).

Undercoating—An aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior or firewall of motor vehicles to prevent the formation of rust or to deaden sound. The term includes, but is not limited to, rubberized, mastic or asphaltic products.

Usage directions—The text or graphics on the product's principal display panel, label or accompanying literature that describes to the end user how and in what quantity the product is to be used.

VOC content—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 under § 130.431 (relating to testing for compliance).

For charcoal lighter material products only,

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

Certified Emissions = the emissions level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH₂ per start.

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

Wasp and hornet insecticide—An insecticide product that is designed 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.

Waterproof—A product designed and labeled exclusively to repel water from fabric or leather substrates. The term does not include fabric protectants.

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

- (i) Substances derived from the secretions of plants and animals such as caruba wax and beeswax.
- (ii) Substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

Web spray adhesive—An aerosol adhesive which is not a mist spray or special purpose spray adhesive.

Wood floor wax—Wax-based products for use solely on wood floors.

Working day—A day from Monday through Friday, inclusive, except for days that are Federal or State holidays.

STANDARDS

§ 130.211. Table of standards.

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

**Table of Standards
(percent VOC by weight)**

<i>Product Category</i>	<i>Effective Date</i> 1/1/2005
Adhesives	
Aerosol:	
Mist Spray	65
Web Spray	55
Special Purpose Spray Adhesives:	
Mounting, Automotive Engine	
Compartment, and Flexible Vinyl	70
Polystyrene Foam and Automotive	65
Headliner	
Polyolefin and Laminate Repair/ Edgebanding	60
Contact	80
Construction, Panel and Floor Covering	15
General Purpose	10
Structural Waterproof	15

<i>Product Category</i>	<i>Effective Date 1/1/2005</i>	<i>Product Category</i>	<i>Effective Date 1/1/2005</i>
Air Fresheners		Insecticides	
Single-Phase Aerosols	30	Crawling Bug (Aerosol)	15
Double-Phase Aerosols	25	Crawling Bug (all other forms)	20
Liquids/Pump Sprays	18	Flea and Tick	25
Solids/Gels	3	Flying Bug (Aerosol)	25
Antiperspirants		Flying Bug (all other forms)	35
Aerosol	40 HVOC 10 MVOC	Foggers	45
Nonaerosol	0 HVOC 0 MVOC	Lawn and Garden (all other forms)	20
Automotive Brake Cleaners	45	Lawn and Garden (Nonaerosol)	3
Automotive Rubbing or Polishing Compound	17	Wasp and Hornet	40
Automotive Wax, Polish, Sealant or Glaze		Laundry Prewash	
Hard Paste Waxes	45	Aerosols / Solids	22
Instant Detailers	3	All Other Forms	5
All Other Forms	15	Laundry Starch Products	5
Automotive Windshield Washer Fluids	35	Metal Polishes / Cleansers	30
Bathroom and Tile Cleaners		Multipurpose Lubricant (Excluding Solid or Semisolid Products)	50
Aerosols	7	Nail Polish Remover	75
All Other Forms	5	Nonselective Terrestrial Herbicide	
Bug and Tar Remover	40	Nonaerosols	3
Carburetor or Fuel-Injection Air Intake Cleaners	45	Oven Cleaners	
Carpet and Upholstery Cleaners		Aerosols / Pump Sprays	8
Aerosols	7	Liquids	5
Nonaerosols (Dilutables)	0.1	Paint Remover or Strippers	50
Nonaerosols (Ready-to-Use)	3.0	Penetrants	50
Charcoal Lighter Material	See § 130.214	Rubber and Vinyl Protectants	
Cooking Spray Aerosols	18	Nonaerosols	3
Deodorants		Aerosols	10
Aerosol	0 HVOC 10 MVOC	Sealants and Caulking Compounds	4
Nonaerosol	0 HVOC 0 MVOC	Shaving Creams	5
Dusting Aids		Silicone-Based Multipurpose Lubricants (Excluding Solid or Semisolid Products)	60
Aerosols	25	Spot Removers	
All Other Forms	7	Aerosols	25
Engine Degreasers		Nonaerosols	8
Aerosol	35	Tire Sealants and Inflators	20
Nonaerosol	4	Undercoatings	
Fabric Protectants	60	Aerosols	40
Floor Polishes/Waxes			
Products for Flexible Flooring Materials	7		
Products for Nonresilient Flooring	10		
Wood Floor Wax	90		
Floor Wax Strippers			
Nonaerosol	See § 130.216		
Furniture Maintenance Products			
Aerosols	17		
All Other Forms Except Solid or Paste	7		
General Purpose Cleaners			
Aerosols	10		
Nonaerosols	4		
General Purpose Degreasers			
Aerosols	50		
Nonaerosols	4		
Glass Cleaners			
Aerosols	12		
Nonaerosols	4		
Hair Mousses	6		
Hairshines	55		
Hairsprays	55		
Hair Styling Gels	6		
Heavy-Duty Hand Cleaner or Soap	8		

§ 130.212. Products diluted prior to use.

(a) 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 limits specified in § 130.211 (relating to table of standards) apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, minimum recommended dilution does not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(b) For consumer products for which the label, packaging or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in § 130.211 apply to the product only after the maximum recommended dilution has taken place.

§ 130.213. Products registered under FIFRA.

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

§ 130.214. Requirements for charcoal lighter materials.

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

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

(i) The manufacturer can demonstrate that the manufacturer has 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 CCR. This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming a certification on this basis shall submit to the Department a copy of the certification decision (that is, the Executive Order), including all conditions established by CARB applicable to the certification.

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

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

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

(2) *Certification requirements.*

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

(ii) The Department 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 Test Protocol.

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

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

(i) A change in the usage directions.

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

(4) *Revocation of certification.* If the Department determines that a 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 Testing Protocol and the statistical analysis procedures contained therein, the Department will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

§ 130.215. Requirements for aerosol adhesives.

(a) As specified in CCR Section 41712(h)(2), the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial and commercial uses. Except as otherwise provided in §§ 130.331—130.337, 130.351 and 130.352 and 130.411—130.414, a person may not sell, supply, offer for sale, use or manufacture for sale in this Commonwealth an aerosol adhesive which, at the time of sale, use or manufacture, contains VOCs in excess of the specified standard.

(b) For a special purpose spray adhesive:

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

(2) If a product meets more than one of the definitions specified in § 130.202 for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in § 130.211 (relating to table of standards).

(c) Aerosol adhesives shall comply with the labeling requirements specified in § 130.373 (relating to additional labeling requirements for aerosol adhesives).

§ 130.216. Requirements for floor wax strippers.

A person may not sell, supply, offer for sale or manufacture for use in this Commonwealth a floor wax stripper unless the following requirements are met:

(1) The label of each nonaerosol floor wax stripper shall specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3% by weight or less.

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

EXEMPTIONS

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

(a) This subchapter does not apply to a consumer product manufactured in this Commonwealth for shipment and use outside of this Commonwealth.

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

§ 130.332. Antiperspirants and deodorants.

(a) The MVOC content standards in § 130.211 (relating to table of standards) for antiperspirants and deodorants do not apply to ethanol.

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

(c) The requirements of § 130.211 for antiperspirants and deodorants do 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.

§ 130.333. LVP-VOC.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to an LVP-VOC.

§ 130.334. Products registered under FIFRA.

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

§ 130.335. Air fresheners.

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

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

§ 130.336. Adhesives.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to adhesives sold in containers of 1 fluid ounce or less.

§ 130.337. Bait station insecticides.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to bait station insecticides. For the purpose of this section, 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 5% active ingredients.

INNOVATIVE PRODUCTS**§ 130.351. Innovative products exemption.**

A manufacturer of consumer products that has been granted an innovative products exemption by the CARB under the innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in § 130.211. A manufacturer claiming such an exemption on this basis shall submit to the Department a copy of the CARB innovative products exemption decision (that is, the Executive Order), including all conditions established by CARB applicable to the exemption.

§ 130.352. Request for exemption.

A manufacturer of consumer products that has been granted an innovative products exemption under the

innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the CCR based on California-specific data, or that has not been granted an exemption by CARB may seek an innovative products exemption in accordance with the following criteria:

(1) The Department may exempt a consumer product from the VOC limits specified in § 130.211 (relating to table of standards) if a manufacturer demonstrates 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 than the standard established in § 130.211.

(2) A manufacturer shall apply in writing to the Department for an exemption claimed under this section. 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 shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content.

(3) If the VOC limits specified in § 130.211 are lowered for a product category through a subsequent rulemaking, the innovative product exemptions granted for products in the product category, except as provided in this subsection, shall have no force and effect as of the effective date of the modified VOC standard. This paragraph does not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of the limits.

(4) If the Department 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), the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

ADMINISTRATIVE REQUIREMENTS**§ 130.371. Code-dating.**

(a) *Code-dating.* Each manufacturer of a consumer product subject to §§ 130.211—130.216 (relating to standards) shall clearly display on each consumer product container or package, the day, month and year on which the product was manufactured, or a code indicating that date. 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 disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than January 1, 2004. The requirements of this subsection do not apply to products containing no VOCs as defined in § 130.202 (relating to definitions), or containing VOCs at 0.10% by weight or less.

(b) *Explanation of code.* If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to §§ 130.211—130.216, an explanation of the code shall be filed with the Department no later than 12 months prior to the effective date of the applicable standard specified in § 130.211.

§ 130.372. Most restrictive limit.

Notwithstanding the definition of "product category" in § 130.202 (relating to definitions), if on the principal display panel of a consumer product, a representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in § 130.211 (relating to table of standards), the lowest VOC limit applies. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

§ 130.373. Additional labeling requirements for aerosol adhesives.

(a) In addition to the requirements specified in §§ 130.371 and 130.372, 130.391 and 130.392, both the manufacturer and responsible party for each aerosol adhesive product subject to this subchapter shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005:

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

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

(3) If the product is included in an alternative control plan approved by the Department, and the product exceeds the applicable VOC standard specified in § 130.211, the product shall be labeled with the term "ACP" or "ACP product."

(4) If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed.

(5) If the manufacturer or responsible party uses an abbreviation as allowed by this section, an explanation of the abbreviation shall be filed with the Department before the abbreviation is used.

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

REPORTING REQUIREMENTS

§ 130.391. Required reporting of information to the Department.

Upon 90 days written notice, the Department may require a responsible party to report information for a consumer product the Department may specify.

§ 130.392. Confidentiality.

The information submitted by a responsible party under § 130.391 (relating to required reporting of information to the Department) or in accordance with other provisions in this subchapter will be handled in accordance with the procedures specified in section 13.2 of the Air Pollution Control Act (35 P. S. § 4013.2).

VARIANCES

§ 130.411. Application for variance.

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

(1) The specific grounds upon which the variance is sought.

(2) The proposed dates by which compliance with § 130.211 (relating to table of standards) will be achieved.

(3) A compliance report reasonably detailing the methods by which compliance will be achieved.

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

(1) Whether a variance from the requirements in §§ 130.211—130.216 is necessary.

(2) Under what conditions a variance from the requirements in §§ 130.211—130.216 is necessary.

(3) To what extent a variance from the requirements in §§ 130.211—130.216 is necessary.

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

(1) That because of reasons beyond the reasonable control of the applicant, requiring compliance with §§ 130.211—130.216 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 increased emissions of air contaminants that would result from issuing the variance.

(3) That the compliance program proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

§ 130.412. Variance orders.

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

§ 130.413. Termination of variance.

A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

§ 130.414. Modification of variance.

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

TEST METHODS

§ 130.431. Testing for compliance.

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

(1) Using CARB Method 310, "*Determination of Volatile Organic Compounds (VOC) in Consumer Products*," adopted September 25, 1997, and as last amended on September 3, 1999.

(2) 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 Department.

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

(i) 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 shall be kept for at least 3 years and be made available to the Department on request.

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

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

where,

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

B = total weight of all VOCs per unit.

C = total weight of VOCs exempted under §§ 130.331—130.337, 130.351 and 130.352 per unit

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

(b) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (May 25, 1990).

(c) 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 (February 28, 1991).

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (September 28, 1990).

(e) A person may not create, alter, falsify or otherwise modify records so that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and other test, processes or records used in connection with product manufacture.

ACP FOR CONSUMER PRODUCTS

§ 130.451. Alternative methods of compliance.

The purpose of this section is to provide an alternative method to comply with the Table of Standards specified in § 130.211 (relating to table of standards). 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 this subchapter. Only responsible ACP parties for consumer products may enter into an ACP.

§ 130.452. Exemption.

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

§ 130.453. Request for exemption.

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

(b) The Department will not approve an ACP submitted by a responsible ACP party if the Department determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this subchapter, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

§ 130.454. Application for an ACP.

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

(1) Identify the responsible ACP party including names, telephone numbers and addresses of the representative of the manufacturer who will be responsible for implementing the ACP requirements specified in the ACP agreement.

(2) Contain a statement of whether the responsible ACP party is a small business or a one-product business.

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

(4) Demonstrate in writing to the satisfaction of the Department that the enforceable sales records to be used by the responsible ACP party for tracking product sales provide the following information:

(i) The names, telephone numbers, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales.

(ii) The enforceable sales of each ACP product.

(iii) A written demonstration to the satisfaction of the Department regarding the validity of the enforceable sales.

(iv) The percentage of the gross Pennsylvania sales which is comprised of enforceable sales.

(v) That the ACP products have enforceable sales that are 75% or more of the gross Pennsylvania sales. Only ACP products meeting this criteria will be allowed to be sold in this Commonwealth under an ACP.

(5) Include legible copies of the existing labels for each ACP product specifying the VOC and LVP content.

(6) Report for each of the ACP products:

(i) The VOC and LVP-VOC contents of the product at the time the application for an ACP is submitted.

(ii) Changes in VOC and LVP contents of the product that have occurred within the 4 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 10.0% of the VOC or LVP contents reported in subparagraph (i).

(7) Contain a written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP and to display the date-code on each ACP product container or package no later than 5 working days after the date an ACP agreement is signed by the Department.

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

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

(ii) Identify the specific enforceable sales records to be provided to the Department for enforcing this chapter and the ACP agreement. The enforceable sales records shall be provided to the Department no later than the compliance period reporting dates specified in subparagraph (i).

(iii) For a small business or a one-product business that will be relying on surplus trading to meet the ACP limits, contain a written commitment from the responsible ACP parties that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(iv) Specify the VOC content levels for each ACP product that will be applicable for the ACP product during each compliance period and identify the specific methods by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.

(v) Estimate the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(vi) Contain a detailed demonstration showing the combination of specific ACP reformulations or surplus trading reductions (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 reformulations or surplus trading reductions are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (that is, by ACP reformulation). This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in this Commonwealth during each compliance period.

(vii) Contain a written explanation of the date-codes that will be displayed on each ACP product container or packaging.

(viii) Contain a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(ix) Contain an operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall demonstrate how shortfalls will be reconciled within 90 working days from the date the shortfall is determined, listing the records and other information that will be used to verify that the shortfalls were reconciled.

(9) Contain a declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct under penalty of law. This declaration shall certify that all reductions in the VOC content of a product will be real and 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 this chapter.

§ 130.455. Recordkeeping and availability of requested information.

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

(b) The records specified in this section shall be made available to the Department:

(1) Immediately upon request during an onsite visit to a responsible ACP party.

(2) Within 15 working days after receipt of a written request from the Department.

(3) Within a time period mutually agreed upon by both the Department and the responsible ACP party.

§ 130.456. Surplus reductions and surplus trading.

(a) The Department will issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, 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 this section. Surplus reductions will be calculated by the Department at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates do not constitute instruments, securities or other form of property.

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

(1) For the purposes of this section, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in § 130.211 (relating to table of standards) may not be used to generate surplus reductions.

(2) 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.

(3) Surplus reductions are valid only after the Department has issued an ACP agreement under this section.

(4) Surplus reductions issued by the Department may be used by the responsible ACP party who generated the surplus until the reductions expire or are traded or until the ACP is canceled under this section.

(5) Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

(6) Except as provided in this section, 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.

(7) While valid, surplus reductions can be used only for one of the following purposes:

(i) To adjust 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 a 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.

(ii) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided the reconciliation is part of the reconciliation of shortfalls plan approved by the Department under this section.

(8) A valid surplus reduction shall be in effect starting 5 days after the date of issuance by the Department, 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.

(9) At least 5 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 Department in writing of the transfer. The notification shall include the following:

(i) The date the transfer is to become effective.

(ii) The date the surplus reductions being traded are due to expire.

(iii) The amount (in pounds of VOCs) of surplus reductions that are being transferred.

(iv) The total purchase price paid by the buyer for the surplus reductions.

(v) 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.

(vi) A copy of the Department-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 remaining nontraded 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 the surplus reductions as provided in this section.

(10) Surplus reduction credits shall only be traded between ACPs products for consumer products.

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

(a) For the purposes of this section, "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 this Commonwealth for the first time during the 1 year (365-day) period immediately prior to the date on which the application for a proposed ACP is submitted to the Department. "Early reformulation" does not include reformulated ACP products which are sold, supplied or offered for sale in this Commonwealth more than 1 year prior to the date on which the ACP application is submitted to the Department.

(b) If requested in the application for a proposed ACP, the Department will, upon approval of the ACP, issue surplus reduction credits for early reformulations of ACP products, provided that the following documentation has been provided by the responsible ACP party to the satisfaction of the Department:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level which is below the pre-ACP VOC content of the product, or below the applicable VOC standards in § 130.211 (relating to table of standards), whichever is the lesser of the two.

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets in this Commonwealth within the time period specified in this section.

(3) Accurate sales records for the early reformulated ACP product which meets the definition of "enforceable sales records" in § 130.202 (relating to definitions), and which demonstrate that the enforceable sales for the ACP product are at least 75% of the gross Pennsylvania sales for the product.

(4) Accurate documentation for the early reformulated ACP product which meets the requirements specified in this section, and which identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in this section.

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

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

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,

VOC Content_{initial} = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in § 130.211, whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product,

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

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

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

(2) Surplus reduction credits may not be transferred to, or used by, another responsible ACP party.

(3) Except as provided in this section, surplus reduction credits shall be subject to the requirements applicable to surplus reductions and surplus trading, as specified in this section.

§ 130.458. Reconciliation of shortfalls.

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

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

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

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

§ 130.459. Notification of modifications to an ACP by the responsible ACP party.

(a) *Modifications that do not require Department preapproval.* The responsible ACP party shall notify the Department, in writing, of a change in the following with respect to an ACP product:

- (1) Product name.
- (2) Product formulation.
- (3) Product form.
- (4) Product function.
- (5) Applicable product category.
- (6) VOC content.
- (7) LVP content.
- (8) Date-codes.
- (9) Recommended product usage directions.

(b) *Notification.* The notification shall be submitted no later than 15 working days from the date the change occurs. For each modification, the notification shall fully explain the following:

- (1) The nature of the modification.
- (2) The extent to which the ACP product formulation, VOC content, LVP content or recommended usage directions will be changed.
- (3) The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period.
- (4) The effective date and corresponding date-codes for the modification.

§ 130.460. Modifications that require Department preapproval.

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

§ 130.461. Other modifications.

The responsible ACP party shall notify the Department, in writing, of information that the responsible ACP party may have which may alter the information submitted under § 130.454 (relating to application for an ACP). The responsible ACP party shall provide the notification to the Department no later than 15 working days from the date the information is known to the responsible ACP party.

§ 130.462. Modification of an ACP by the Department.

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

(1) The enforceable sales for an ACP product are no longer at least 75% of the gross Pennsylvania sales for that product.

(2) The information submitted under the approval process in § 130.454 (relating to application for an ACP) is no longer valid.

(3) The ACP emissions are exceeding the ACP Limit specified in the ACP agreement.

(b) The Department will not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing in accordance with § 130.471 (relating to public hearings) to determine if the ACP should be modified.

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

§ 130.463. Cancellation of an ACP.

An ACP shall remain in effect until:

(1) The ACP reaches the expiration date specified in the ACP agreement.

(2) The ACP is modified by the responsible ACP party and approved by the Department.

(3) The ACP is modified by the Department.

(4) The ACP includes a product for which the VOC standard specified in § 130.211 (relating to table of standards) is modified by the Department in a future rulemaking, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date of the modified standard.

(5) The ACP is cancelled by the Department.

§ 130.464. Treatment of information.

The information required by this section, §§ 130.451—130.463 and 130.465 related to product formulation shall be protected as confidential business information upon written request to the Department by the responsible ACP party. Other information submitted to the Department to meet the requirements of this subchapter will be handled in accordance with section 13.2 of the Air Pollution Control Act (35 P. S. § 4013.2).

§ 130.465. Other applicable requirements.

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

(1) The Department 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 5 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 the requirements of the ACP agreement approving the ACP and this subchapter.

PUBLIC HEARING REQUIREMENTS**§ 130.471. Public hearings.**

(a) Prior to issuance, modification or revocation of a variance order or an ACP, the Department will hold a hearing to take public comment.

(b) The Department will publish notice of the time, place and purpose of the hearing in a local newspaper of general circulation and the *Pennsylvania Bulletin* not less than 30 days prior to the hearing.

(c) At least 30 days prior to the hearing the Department will make available the application for the variance or ACP and the proposed order for issuing, modifying or revoking the variance or ACP.

[Pa.B. Doc. No. 02-1732. Filed for public inspection October 4, 2002, 9:00 a.m.]