

**PART 235**  
**CONSUMER PRODUCTS**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103,  
19-0105, 19-0301, 19-0305)

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**Historical Note**

Part filed Aug. 13, 1963; repealed, new filed: May 21, 1969; March 24, 1971; renum. Part 392, Title 9, filed Sept. 1971; new (§§ 235.1-235.4) filed Aug. 15, 1988; Part (*Consumer and Commercial Products*, §§ 235-1—235.7) repealed, new (Subparts 235-1—235-11) filed Oct. 10, 2002 eff. 30 days after filing.

**SUBPART 235-1**  
**APPLICABILITY**

Sec.  
235-1.1                      **Applicability**

**Historical Note**

Subpart (§ 235-1.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-1.1**    **Applicability.**

Except as provided in Subpart 235-4 of this Part, this Part shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005 for use in the State of New York.

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

## SUBPART 235-2

## DEFINITIONS

Sec.

235-2.1

Definitions

## Historical Note

Subpart (§ 235-2.1) filed Oct. 10, 2002 eff. 30 days after filing.

## § 235-2.1 Definitions.

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

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

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

$$\text{ACP Emissions} = (\text{Emissions})^1 + (\text{Emissions})^2 + \dots + (\text{Emissions})^N$$

where,

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

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

$$\text{ACP Limit} = (\text{Limit})^1 + (\text{Limit})^2 + \dots + (\text{Limit})^N$$

where,

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

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

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

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

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

(g) *Adhesive* means any product that is used to bond one surface to another by attachment. Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. In addition, for contact adhesive only, adhesive also does not include units of product, less packaging, which consist of more than one gallon. These package size limitations do not apply to aerosol adhesives.

(h) *Adhesive remover* means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

(i) *Aerosol adhesive* means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

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

(k) *Aerosol product* means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. Aerosol product does not include pump sprays.

(l) *Agricultural use* means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers which are intended for:

- (1) home use;
- (2) use in structural pest control;
- (3) industrial; or
- (4) institutional use. For the purposes of this definition only:
  - (i) *home use* means use in a household or its immediate environment;
  - (ii) *structural pest control* means a use requiring a license under Part 325 of this Title;
  - (iii) *industrial use* means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites; and
- (5) *institutional use* means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

(m) *Air freshener* means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. Air freshener does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air freshener does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

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

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

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

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

- (1) antimicrobial hand or body washes/cleaners;

- (2) foodhandler hand washes;
- (3) healthcare personnel hand washes;
- (4) pre-operative skin preparations; and
- (5) surgical scrubs.

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

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

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

(t) *ASTM* means the American Society for Testing and Materials.

(u) *Astringent/toner* means any product not regulated as a drug by the United States Food and Drug Administration (FDA) which is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

(v) *Automotive brake cleaner* means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

(w) *Automotive hard paste wax* means an automotive wax or polish which is:

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

(x) *Automotive instant detailer* means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

(y) *Automotive rubbing or polishing compound* means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

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

(aa) *Automotive windshield washer fluid* means any 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. Automotive windshield washer fluid does not include fluids placed by the manufacturer in a new vehicle.

(ab) *Bathroom and tile cleaner* means a product designed to clean tile or surfaces in bathrooms. Bathroom and tile cleaner does not include products specifically designed to clean toilet bowls or toilet tanks.

(ac) *Bug and tar remover* means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

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

(ad) *CARB* means the California Air Resources Board.

(ae) *Carburetor or fuel-injection air intake cleaners* means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. Carburetor or fuel-injection air intake cleaners does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

(af) *Carpet and upholstery cleaner* means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics. Carpet and upholstery cleaner includes, but is not limited to, products that make fabric protectant claims. Carpet and upholstery cleaner does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

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

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

(ah) *Colorant* means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

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

(aj) *Construction, panel, and floor covering adhesive* means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

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

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

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

(al) *Consumer product* means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

(am) *Contact adhesive* means an adhesive that:

- (1) is designed for application to both surfaces to be bonded together;
- (2) is allowed to dry before the two surfaces are placed in contact with each other;
- (3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates.

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

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

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

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

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

(aq) *Date-code* means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

(ar) *Deodorant* means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

(as) *Device* means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

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

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

(2) products designed for agricultural use;

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

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

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

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

(aw) *Dry cleaning fluid* means any non-aqueous liquid product designed and labeled exclusively for use on:

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

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition *s-coded fabric* means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the joint industry fabric standards committee.

(ax) *Dusting aid* means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. Dusting aid does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

(ay) *Electronic cleaner* means 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.

(az) *Enforceable sales* means the total amount of an ACP product sold for use in the State of New York, during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

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

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

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

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

(bb) *Engine degreaser* means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

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

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

(be) *Fat wood* means pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. Fat wood does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

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

(bg) *Flexible flooring material* means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

(bh) *Floor polish or wax* means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to Part 205 of this Title.

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

(bj) *Floor wax stripper* means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

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

(1) *moth-proofing product* means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

(bl) *Fragrance* means 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.

(bm) *Furniture maintenance product* means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. Furniture maintenance product 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.

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

(bo) *Gel* means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

(bp) *General purpose adhesive* means any non-aerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

(1) contact adhesives;

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

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

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

(bq) *General purpose cleaner* means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner 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.

(br) *General purpose degreaser* means any 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. General purpose degreaser 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:

- (1) sold exclusively to establishments which manufacture or construct goods or commodities; and
- (2) labeled not for retail sale.

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

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

(bt) *Glass cleaner* means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

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

- (1) apportionment of national or regional sales of the ACP product to New York State sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the State of New York's current population; or
- (2) any other documented method which provides an accurate estimate of the total current New York State sales of the ACP product.

(bv) *Hair mousse* means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

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

(bx) *Hair styling gel* means 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.

(by) *Hair spray* means 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.

(bz) *Heavy-duty hand cleaner or soap* means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printers ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand

cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

(ca) *Herbicide* means a pesticide product designed to kill or retard a plant's growth, but excludes products that are:

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

(cb) *High volatility organic compound (HVOC)* means any VOC that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20° C.

(cc) *Household product* means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

(cd) *Insecticide* means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (1) for agricultural use;
- (2) for a use which requires a structural pest control license under Part 325 of this Title; or
- (3) restricted materials that require a permit for use and possession.

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

(cf) *Institutional product* or *industrial and institutional (i&i) product* means a consumer product that is designed for use in the maintenance or operation of an establishment that:

- (1) manufactures, transports, or sells goods or commodities, or provides services for profit; or
- (2) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

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

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

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

(cj) *Lawn and garden insecticide* means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

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

(cl) *Lubricant* means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and

turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals or products that are:

(1) sold exclusively to establishments which manufacture or construct goods or commodities; and

(2) labeled not for retail sale.

(cm) *LVP content* means the total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

(cn) *LVP-VOC* means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(1) has a vapor pressure less than 0.1 mm Hg at 20 C, as determined by CARB Method 310 (see Table 1, section 200.9 of this Title);

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

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

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

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

(co) *Manufacturer* means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

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

(cq) *Medium volatility organic compound (MVOC)* means any 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.

(cr) *Metal polish/cleanser* means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To *improve the appearance* means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. Metal polish/cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. Metal polish/cleanser does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

(cs) *Missing data days* means the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the director, Division of Air Resources, Department of Environmental Conservation, as specified in the ACP agreement approving an ACP.

(ct) *Mist spray adhesive* means any 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.

(cu) *Multi-purpose dry lubricant* means any lubricant which is:

(1) 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; and

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

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

(cw) *Multi-purpose solvent* means any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. Multi-purpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. Multi-purpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

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

(cy) *Nail polish remover* means a product designed to remove nail polish and coatings from fingernails or toenails.

(cz) *New York State sales* means the sales (net pounds of product, less packaging and container, per year) in the State of New York for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, any consecutive 12-month period commencing no earlier than two years prior to the due date of the registration. If direct sales data for the State of New York is not available, sales may be estimated by prorating national or regional sales data by population.

(da) *Non-aerosol product* means any consumer product that is not dispensed by a pressurized spray system.

(db) *Non-carbon containing compound* means any compound which does not contain any carbon atoms.

(dc) *Nonresilient flooring* means flooring of a mineral content which is not flexible. Nonresilient Flooring includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

(dd) *Non-selective terrestrial herbicide* means a terrestrial herbicide product that is toxic to plants without regard to species.

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

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

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

(df) *Oven cleaner* means any cleaning product designed to clean and to remove dried food deposits from oven walls.

(dg) *Paint* means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

(dh) *Paint remover or stripper* means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multi-purpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

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

(dj) *Pesticide* means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term pesticide will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

(dk) *Pre-ACP VOC content* means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the application for a proposed ACP is submitted to the director, Division of Air Resources, Department of Environmental Conservation, based on either the data on the product obtained from the March 12, 1991 CARB Consumer Products Survey, or other accurate records available to the director, Division of Air Resources, Department of Environmental Conservation, whichever yields the lowest VOC content for the product.

(dl) *Principal display panel or panels* means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

(dm) *Product brand name* means the name of the product exactly as it appears on the principal display panel of the product.

(dn) *Product category* means the applicable category which best describes the product as listed in this Subpart.

(do) *Product line* means a group of products of identical form and function belonging to the same product category(ies).

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

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

(dr) *Reconcile or reconciliation* means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

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

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

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

(dv) *Restricted materials* means pesticides established as restricted materials under applicable Part 325 of this Title.

(dw) *Retailer* means any person who sells, supplies, or offers consumer products for sale directly to consumers.

(dx) *Retail outlet* means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

(dy) *Roll-on product* means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

(dz) *Rubber and vinyl protectant* means any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

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

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

(ec) *Semisolid* means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

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

(ee) *Shortfall* means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation.

(ef) *Silicone-based multi-purpose lubricant* means any lubricant which is:

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

(2) designed and labeled for general purpose lubrication, or for use in a wide variety of applications. Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

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

(eh) *Small business* means any business that is independently owned and operated, and employs 100 or fewer individuals.

(ei) *Solid* means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under D 4359-90 (2000)e1 (see Table 1, section 200.9 of this Title).

(ej) *Special purpose spray adhesive* means an aerosol adhesive that meets any of the following definitions:

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

(2) *Flexible vinyl adhesive* means an aerosol adhesive designed to bond flexible vinyl to substrates. *Flexible vinyl* means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A *plasticizer* is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E 260-96 (2001) (see Table 1, section 200.9 of this Title) or from product formulation data.

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

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

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

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

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

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

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

(ek) *Automotive engine compartment adhesive* means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200° - 275°F.

(el) *Spot remover* means any 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. Spot remover does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

(em) *Spray buff product* means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

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

(eo) *Structural waterproof adhesive* means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type I, Grade A) (see Table 1, section 200.9 of this Title). This definition is as per the Federal Consumer Products Regulation 40 CFR part 59, subpart C (see Table 1, section 200.9 of this Title).

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

(eq) *Surplus trading* means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

(er) *Table B compound* means any carbon-containing compound listed as an exception to the definition of VOC as defined in section 200.1(cf) of this Title.

(es) *Terrestrial* means to live on or grow from land.

(et) *Tire sealant and inflation* means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

(eu) *Total maximum historical emissions (TMHE)* means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE 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,

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

where,

Highest

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

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

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

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

(ev) *Type A propellant* means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, 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.

(ew) *Type B propellant* means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

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

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

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

(fa) *VOC content* means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging).

as determined pursuant to section 235-9.1(a) and (b) of this Part, and calculated according to the following equations:

For all products except for charcoal lighter material products:

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

where,

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

B = total weight of all VOC per unit, as defined in section 200.1(cf) of this Title

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

For charcoal lighter material products only:

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

where,

**Certified**

**Emissions** = the emissions level for products approved by director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(e) of this Part, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified Use Rate** = the usage level for products approved by the director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(e) of this Part, as determined pursuant to 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.

(fb) *Wasp and hornet insecticide* means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

(fc) *Waterproofer* means a product designed and labeled exclusively to repel water from fabric or leather substrates. Waterproofer does not include fabric protectants.

(fd) *Wax* means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

(fe) *Web spray adhesive* means any aerosol adhesive which is not a mist spray or special purpose spray adhesive.

(ff) *Wood floor wax* means wax-based products for use solely on wood floors.

(fg) *Working day* means any day between Monday through Friday, inclusive, except for days that are Federal holidays.

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

## SUBPART 235-3

### STANDARDS

Sec.  
235-3.1                      Standards

#### Historical Note

Subpart (§ 235-3.1) filed Oct. 10, 2002 eff. 30 days after filing.

#### § 235-3.1 Standards.

(a) Except as provided in Subparts 235-4 (Exemptions), 235-5 (Innovative Products), 235-8 (Variances), and 235-11 (Alternative Control Plan) of this Part, no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any consumer product manufactured on or after January 1, 2005 which contains VOCs in excess of the VOC content limits specified in the following Table of Standards:

**Table of Standards**

Product Category	VOC Content Limit (percent by weight)
<b>Adhesives:</b>	
Mist Spray	65
Web Spray	55
<b>Special Purpose Spray Adhesives:</b>	
Mounting, Automotive Engine Compartment, and Flexible Vinyl	70
Polystyrene Foam and Automotive Headliner	65
Polyolefin and Laminate Repair/Edgebanding	60
<b>Contact</b>	
Construction, Panel, and Floor Covering	15
<b>General Purpose</b>	
Structural Waterproof	15
<b>Air Fresheners:</b>	
Single-Phase Aerosols	30
Double-Phase Aerosols	25
Liquids/Pump Sprays	18
Solids/Gels	3
<b>Antiperspirants:</b>	
Aerosols	40 HVOC 10 MVOC
Non-Aerosols	0 HVOC 0 MVOC
Automotive Brake Cleaners	45
Automotive Rubbing or Polishing Compound	17
<b>Automotive Wax, Polish, Sealant or Glaze:</b>	
Hard Paste Waxes	45
Instant Detailers	3
All Other Forms	15
Automotive Windshield Washer Fluids	35
<b>Bathroom and Tile Cleaners:</b>	
Aerosols	7
All Other Forms	5
Bug and Tar Remover	40
Carburetor or Fuel-Injection Air Intake Cleaners	45
<b>Carpet and Upholstery Cleaners:</b>	
Aerosols	7

Product Category	VOC Content Limit (percent by weight)
Non-Aerosols (Dilutables)	0.1
Non-Aerosols (Ready-to-Use)	3
Charcoal Lighter Material	See subdivision (e) of this section
Cooking Spray:	
Aerosols	18
Deodorants:	
Aerosols	0 HVOC 10 MVOC
Non-Aerosols	0 HVOC 0 MVOC
Dusting Aids:	
Aerosols	25
All Other Forms	7
Engine Degreasers:	
Aerosols	35
Non-Aerosols	5
Fabric Protectants	60
Floor Polishes/Waxes:	
Products for Flexible Flooring Materials	7
Products for Nonresilient Flooring	10
Wood Floor Wax	90
Floor Wax Strippers:	
Non-Aerosols	See subdivision (g) of this section
Furniture Maintenance Products:	
Aerosols	17
All Other Forms Except Solid or Paste	7
General Purpose Cleaners:	
Aerosols	10
Non-Aerosols	4
General Purpose Degreasers:	
Aerosols	50
Non-Aerosols	4
Glass Cleaners:	
Aerosols	12
Non-Aerosols	4
Hair Mousses	6
Hairshines	55
Hairsprays	55
Hair Styling Gels	6
Heavy-Duty Hand Cleaner or Soap	8
Insecticides:	
Crawling Bug (Aerosol)	15
Crawling Bug (All Other Forms)	20
Flea and Tick	25
Flying Bug (Aerosol)	25
Flying Bug (All Other Forms)	35
Foggers	45
Lawn and Garden (All Other Forms)	20
Lawn and Garden (Non-Aerosol)	3
Wasp and Hornet	40
Laundry Prewash:	

Product Category	VOC Content Limit (percent by weight)
Aerosols/Solids	22
All Other Forms	5
Laundry Starch Products	5
Metal Polishes/Cleaners	30
Multi-Purpose Lubricant (Excluding Solid or Semi-Solid Products)	50
Nail Polish Remover	75
Non-Selective Terrestrial Herbicide:	
Non-Aerosols	3
Oven Cleaners:	
Aerosol/Pump Sprays	8
Liquid	5
Paint Remover or Strippers	50
Penetrants	50
Rubber and Vinyl Protectants:	
Non-Aerosols	3
Aerosols	10
Sealants and Caulking Compounds	4
Shaving Creams	5
Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60
Spot Removers:	
Aerosols	25
Non-Aerosols	8
Tire Sealants and Inflators	20
Undercoatings:	
Aerosols	40

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

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

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

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

(d) *Products registered under FIFRA.* For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. section 136, *et. seq.*) (see Table 1, section 200.9 of this Title), the effective date of the VOC content limits specified in Table of Standards in this Subpart is January 1, 2006.

(e) *Requirements for charcoal lighter materials.* The following requirements shall apply to all charcoal lighter material products as defined in section 235-2.1(ag) of this Part:

(1) Regulatory standards.

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

(a) the manufacturer can demonstrate that they have been issued a currently effective certification by the CARB under the Consumer Products provisions under subchapter 8.5, article 2, section 94509(h), of title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title). This certification remains in effect for the State of New York for as long as the CARB certification remains in effect. Any manufacturer claiming such a certification on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the certification decision (*i.e.*, the Executive Order), including all conditions established by CARB applicable to the certification;

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

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

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

(2) Certification requirements.

(i) No charcoal lighter material formulation shall be certified under this subsection unless the applicant for certification demonstrates to the director, Division of Air Resources, Department of Environmental Conservation satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the South Coast Air Quality Management District Rule 1174 Testing Protocol) (see Table 1, section 200.9 of this Title). The provisions relating to LVP-VOC in sections 235-2.1(c) and 235-4.1(f) of this Part shall not apply to any charcoal lighter material subject to the requirements of this subdivision and subdivision (a) of this section.

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

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

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

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

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

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

(c) for a charcoal lighter material which meets the criteria specified in subclause (b)(1) of this subparagraph, the usage instructions provided to the director, Division of Air

Resources, Department of Environmental Conservation shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) for that product; and

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

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

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

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

(i) any change in the usage directions; or

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

(4) Revocation of certification. If the director, Division of Air Resources, Department of Environmental Conservation determines that any certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) and the statistical analysis procedures contained therein, the director, Division of Air Resources, Department of Environmental Conservation shall revoke or modify the certification in accordance with Part 621 of this Title and the procedures therein as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Historical Note

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

**SUBPART 235-4**  
**EXEMPTIONS**

Sec.  
235-4.1 Exemptions

**Historical Note**

Subpart (§ 235-4.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-4.1 Exemptions.**

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

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

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

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

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

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

(g) The requirements of section 235-6.1(a) of this Part shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. section 136, *et. seq.*) (see Table 1, section 200.9 of this Title).

(h) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under section 200.1(cf) of this Title or exempted under subdivision (f) of this section.

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

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

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

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

## SUBPART 235-5

### INNOVATIVE PRODUCTS

Sec.  
235-5.1 Innovative products

#### Historical Note

Subpart (§ 235-5.1) filed Oct. 10, 2002 eff. 30 days after filing.

### § 235-5.1 Innovative products.

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

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

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

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

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

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

where

$E_R$  = the VOC emissions from the noncomplying representative product, had it been reformulated.

$E_{NC}$  = the VOC emissions from the noncomplying representative product in its current formulation.

$\text{VOC}_{NC}$  = the VOC content limit specified in the Table of Standards in section 235-3.1(a) of this Part.

$\text{VOC}_{STD}$  = the VOC content of the noncomplying product in its current formulation.

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

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

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

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

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

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

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

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

(6) In granting an exemption for a product the director, Division of Air Resources, Department of Environmental Conservation shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the director, Division of Air Resources, Department of Environmental Conservation to be necessary. The director, Division of Air Resources, Department of Environmental Conservation shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

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

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

lowered VOC content limit and for which a written notification of the products emissions status versus the lowered VOC content limit has been submitted to and approved by the director, Division of Air Resources, Department of Environmental Conservation at least 60 days before the effective date of such limits.

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

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

**SUBPART 235-6****ADMINISTRATIVE REQUIREMENTS**

Sec.

235-6.1

Administrative requirements

**Historical Note**

Subpart (§ 235-6.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-6.1 Administrative requirements.**

(a) *Code-dating.* Each manufacturer of a consumer product subject to Subpart 235-3 of this Part shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. 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 any part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than 12 months prior to the effective date of the applicable standard specified in section 235-3.1(a) of this Part. No person shall erase, alter, deface or otherwise remove or make illegible any date or code-date from any regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs (as defined in section 200.1[cf] of this Title), or containing VOCs at 0.10 percent by weight or less.

(b) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to Subpart 235-3 of this Part an explanation of the code must be filed with the director, Division of Air Resources, Department of Environmental Conservation no later than 12 months prior to the effective date of the applicable standard specified in section 235-3.1(a) of this Part.

(c) *Most restrictive limit.* Notwithstanding the definition of *product category* as defined in section 235-2.1(dn) of this Part, if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC content limit is specified in section 235-3.1(a) of this Part, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

(d) *Additional labeling requirements for aerosol adhesives.*

(1) In addition to the requirements specified in subdivisions (a) and (c) of this section, and Subpart 235-7 of this Part, both the manufacturer and responsible party for each aerosol adhesive product subject to this Part shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005:

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

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

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

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

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

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

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

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

**SUBPART 235-7  
REPORTING REQUIREMENTS**

Sec.

235-7.1

Reporting requirements

**Historical Note**

Subpart (§ 235-7.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-7.1 Reporting requirements.**

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

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

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

(3) the product brand name for each consumer product subject to registration and upon request by the director, Division of Air Resources, Department of Environmental Conservation, the product label;

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

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

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

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

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

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

(i) total Table B compounds;

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

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

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

(v) total fragrance;

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

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

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

(vii) total paradichlorobenzene;

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

(i) each Table B compound;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Historical Note

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

**SUBPART 235-8  
VARIANCES**

Sec.

235-8.1

Variances

**Historical Note**

Subpart (§ 235-8.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-8.1 Variances.**

(a) Any person who cannot comply with the requirements set forth in Subpart 235-3 of this Part, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for a variance. The variance application shall set forth:

- (1) the specific grounds upon which the variance is sought;
- (2) the proposed date(s) by which compliance with the provisions of Subpart 235-3 of this Part will be achieved; and
- (3) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

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

- (1) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with Subpart 235-3 of this Part would result in extraordinary economic hardship;
- (2) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and
- (3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

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

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

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

## SUBPART 235-9

## TEST METHODS

Sec.

235-9.1

Test methods

**Historical Note**

Subpart (§ 235-9.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-9.1 Test methods.**

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

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

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

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

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

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

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

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

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

**SUBPART 235-10  
SEVERABILITY**

Sec.  
235-10.1 Severability

**Historical Note**

Subpart (§ 235-10.1) filed Oct. 10, 2002 eff. 30 days after filing.

**§ 235-10.1 Severability.**

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

**Historical Note**

Sec. filed Oct. 10, 2002 eff. 30 days after filing.

## SUBPART 235-11

### ALTERNATIVE CONTROL PLAN (ACP) FOR CONSUMER PRODUCTS

Sec.

235-11.1

Alternative control plan for consumer products

#### Historical Note

Subpart (§ 235-11.1) filed Oct. 10, 2002 eff. 30 days after filing.

#### § 235-11.1 Alternative control plan for consumer products.

The purpose of this Subpart is to provide an alternative method to comply with the Table of Standards specified in section 235-3.1(a) of this Part. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified in this Subpart and Subparts 235-1 through 235-11 of this Part. Only responsible ACP parties for consumer products may enter into an ACP.

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

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

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

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

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

(ii) a statement of whether the responsible ACP party is a small business or a one-product business, as defined in section 235-2.1(eh) and (de) of this Part;

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

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

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

(b) determine the enforceable sales of each product using enforceable sales records as defined in section 235-2.1(az) of this Part;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) written explanations of the date-codes that will be displayed on each ACP products' container or packaging;

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

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

(1) a clear and convincing demonstration of how shortfalls of up to 5 percent, 10 percent, 15 percent, 25 percent, 50 percent, 75 percent and 100 percent of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

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

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

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

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

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

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

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

(ii) The director, Division of Air Resources, Department of Environmental Conservation shall not approve an ACP submitted by a responsible ACP party if the director, Division

of Air Resources, Department of Environmental Conservation determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this Subpart and Subparts 235-1 through 235-10 of this Part, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

(d) *ACP approval time frames.*

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

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

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

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

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

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

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

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

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

(e) *Recordkeeping and availability of requested information.*

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

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

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

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

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

(f) *Violations.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) the director, Division of Air Resources, Department of Environmental Conservation shall calculate the ACP limit for the entire compliance period using the VOC content limit applicable to each ACP product and the enforceable sales records specified in clause (b) of this subparagraph. The enforceable sales for each ACP product during missing data days, as specified in clause (a) of this subparagraph, shall be zero;

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

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

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

where,

NEV = number of ACP limit violations

ACP Emissions = the ACP emissions for the compliance period

ACP Limit = the ACP limit for the compliance period

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

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

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

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

(g) *Surplus reductions and surplus trading.*

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

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

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

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

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

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

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

(vi) except as provided in clause (vii)(b) of this paragraph, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase;

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

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

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

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

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

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

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

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

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

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

(f) a copy of the director, Division of Air Resources, Department of Environmental Conservation-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non-traded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this Subpart;

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

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

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

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

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

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

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

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

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

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

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<sub>initial</sub> = the pre-ACP VOC content of the ACP product, or the applicable VOC content limit specified in section 235-3.1 of this Part, whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product,

VOC Content<sub>final</sub> = 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.

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

(a) surplus reduction certificates shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immedi-

ately after the issuance of the ACP agreement approving an ACP, and shall not be used for any other purpose;

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

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

(h) *Reconciliation of shortfalls.*

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

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

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

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

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

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

- (i) product name;
- (ii) product formulation;
- (iii) product form;
- (iv) product function;
- (v) applicable product category(ies);
- (vi) VOC content;
- (vii) LVP content;
- (viii) date-codes; or

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

(a) the nature of the modification;

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

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

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

(2) Modifications that require director, Division of Air Resources, Department of Environmental Conservation pre-approval. The responsible ACP party may propose modifications to

the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement approving the ACP. Any such proposed modifications shall be fully described in writing and forwarded to the director, Division of Air Resources, Department of Environmental Conservation. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this Part. The director, Division of Air Resources, Department of Environmental Conservation shall act on the proposed modifications using the procedure set forth in subdivision (d) of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as any proposed modification(s) is approved in writing by the director, Division of Air Resources, Department of Environmental Conservation.

(3) Other modifications. Except as otherwise provided in paragraphs (1) and (2) of this subdivision, the responsible ACP party shall notify the director, Division of Air Resources, Department of Environmental Conservation, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of subdivision (c) of this section. The responsible ACP party shall provide such notification to the director, Division of Air Resources, Department of Environmental Conservation no later than 15 working days from the date such information is known to the responsible ACP party.

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

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

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

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

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

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

(k) *Cancellation of an ACP.*

(1) An ACP shall remain in effect until:

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

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

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

(iv) the ACP includes a product for which the VOC content limit specified in section 235-3.1(a) of this Part is modified by the director, Division of Air Resources, Department of Environmental Conservation in a future rule making, and the responsible ACP party informs the director, Division of Air Resources, Department of Environmental Conservation in writing that the ACP will terminate on the effective date(s) of the modified standard; and

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

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

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

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

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

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

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

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

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

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

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

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

(1) The director, Division of Air Resources, Department of Environmental Conservation shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

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

#### Historical Note

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