

(b) Owners or operators, and any employees or representatives thereof, of any manufacturing facility shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Any facility manufacturing a coating will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale at the manufacturing facility. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or any person who applies coatings for compensation shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of architectural coating at the facility are available on site, these equipment or facilities shall be made available for Department use.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Requirements for manufacturing facilities separated from those for distributors and retailers.

Amended by R.2004 d.236, effective June 21, 2004 (effective July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

In (c), substituted "any person who applies coatings for compensation" for "indirect consumer" in the first sentence, deleted "by the indirect consumer or at the retail or distribution outlet" at the end of the second sentence.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Ass'n v. Kean*, D.N.J.1994, 856 F.Supp. 903.

7:27-23.8 Penalties for failure to comply

(a) Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)1 and 2.

(b) If a product that is subject to this subchapter is determined to fail to comply with the applicable VOC content requirements at N.J.A.C. 7:27-23.3, the Department may issue an order including any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the product in fact complies with the applicable VOC content requirements at N.J.A.C. 7:27-23.3;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall by taking back any of the product it has supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration, satisfactory to the Department, that the product to be sold will meet the applicable VOC content requirements at N.J.A.C. 7:27-23.3.

New Rule, R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

SUBCHAPTER 24. PREVENTION OF AIR POLLUTION FROM CONSUMER PRODUCTS

Authority

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

Source and Effective Date

R.1995 d.567, effective November 6, 1995 (operative December 2, 1995).

See: 27 N.J.R. 1077(a), 27 N.J.R. 4291(a).

7:27-24.1 Definitions

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

"Adhesive" means a product that is used to bond one surface to another by attachment. This term 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.

“Adhesive remover” means a product designed to remove adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates, and includes the subcategories of floor and wall covering adhesive remover, gasket or thread-locking adhesive remover, general purpose adhesive remover, and specialty adhesive remover, each of which is defined elsewhere in this section. This term does not include products that remove adhesives intended exclusively for use on humans or animals. For purposes of this definition of “adhesive remover” and subcategories of “adhesive removers” and notwithstanding the definition of “adhesive” elsewhere in this section, “adhesive” means a substance used to bond one or more materials, and includes, but is not limited to, caulks, sealants, glues or similar substances used for the purpose of forming a bond.

“Adhesive remover - floor and wall covering” means an adhesive remover designed or labeled to remove floor or wall coverings and associated adhesive from the underlying substrate.

“Adhesive remover - gasket or thread-locking” means an adhesive remover designed or labeled to remove gaskets or thread-locking adhesives. This term includes products labeled for dual use as a paint stripper and adhesive remover - gasket remover and/or adhesive remover - thread-locking.

“Adhesive remover - general purpose” means an adhesive remover designed or labeled to remove cyanoacrylate adhesives as well as non-reactive adhesives or residue from a variety of substrates. This term includes, but is not limited to, products that remove thermoplastic adhesives, pressure sensitive adhesives, dextrine or starch-based adhesives, casein glues, rubber or latex-based adhesives, as well as products that remove stickers, decals, stencils, or similar materials. This term does not include adhesive remover - floor or wall covering.

“Adhesive remover - specialty” means an adhesive remover designed to remove reactive adhesives from a variety of substrates. This term does not include adhesive remover - gasket or thread-locking.

“Aerosol adhesive” means an adhesive that is 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. This term includes special purpose spray adhesives, mist spray adhesives and web spray adhesives.

“Aerosol coating product” means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marketing applications.

“Aerosol product” means a product that incorporates a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product’s

container, or by means of a mechanically induced force. This term does not include pump sprays.

“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. This term does not include the use of pesticides for any of the following uses, provided that the label on the packaging in which the pesticide is sold clearly indicates that the product is intended for one or more of the following uses, rather than for agricultural use:

1. Home use, that is, use in a household or the household’s immediate environment;
2. Use in structural pest control;
3. Industrial use, that is, use for or in a manufacturing, mining, or chemical process, or use in the operation of a factory, processing plant or similar site; or
4. Institutional use, that is, use within the confines of, or on property of, or in the buildings used in the operation of, an institution, such as a hospital, school, library, auditorium, or office complex.

“Air freshener” means a 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. This term does not include products that are used on the human body, products that, as indicated on a product label, function primarily as cleaning products, toilet/urinal care products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. This term 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 or in the product’s literature and advertising may be considered. The presence of or representation about a product’s fragrance and ability to deodorize resulting from surface application shall not constitute a claim of air freshening.

“All other forms” means all product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, this term includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

“Alternative control plan” or “ACP” means an emissions averaging program for chemically formulated consumer products, which provides a manufacturer with an alternative method to comply with the VOC content limits in Table 1 at N.J.A.C. 7:27-24.4(a), and which was issued in accordance with N.J.A.C. 7:27-24.4(j) and (k) by:

1. CARB pursuant to its consumer products regulations (including all amendments and supplements) at 17 CCR 94540-94555; or

2. The air pollution control agency of another state pursuant to its consumer product regulations if those consumer product regulations are based on the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. This term includes, but is not limited to, antimicrobial hand or body washes/cleaners, food handler hand washes, healthcare personnel hand washes, pre-operative skin preparations, and surgical scrubs. This term does not include prescription drug products, antiperspirants, astringent/toners, deodorants, 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.

"Antiperspirant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, gels, and squeeze bottles, which is marketed for the purpose of reducing perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"Anti-static product" means a product that is labeled to eliminate, prevent, or inhibit the accumulation of static electricity. This term does not include electronic cleaner, floor polish or wax, floor coating, aerosol coating product, or architectural coating.

"Architectural coating" means architectural coating as that term is defined at N.J.A.C. 7:27-23.2.

"ASTM" means the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Astringent/toner" means a product not regulated as a drug by the FDA, and that is applied to the skin for the purpose of cleaning or tightening pores. This term also includes clarifiers and substrate impregnated products. This term does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" or "brake cleaner" means a product designed, labeled, promoted or advertised (expressed or implied) to clean motor vehicle brake mechanisms and parts by removing oil, grease, brake fluid, brake pad material or dirt from them.

"Automotive consumer product" means any of the following chemically formulated consumer products, aerosol or liquid, used in automotive maintenance or repair activities: brake cleaners, carburetor or fuel-injection air intake cleaners,

engine degreasers, and general purpose degreasers intended for use in automotive maintenance or repair activities.

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

"Automotive hard paste wax" means an automotive wax or polish that:

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

"Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

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

"Automotive maintenance or repair activities" means any service, repair, restoration, or modification activity to a motor vehicle in which cleaning or degreasing products could be used including, but not limited to, brake work, engine work, machining operations, and general degreasing of engines, motor vehicles, parts, or tools.

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

"Automotive wax, polish, sealant or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. This term 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. This term does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, or products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means a product that is a liquid designed for use in a motor vehicle windshield washer system as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. This term does not include fluids placed by the manufacturer in a new vehicle.

"Bait station insecticide" means an insecticide consisting of a container enclosing an insecticidal bait that is designed to be ingested by insects and is composed of solid material.

feeding stimulants with less than five percent active ingredients.

“Bathroom and tile cleaner” means a product designed to clean tile or surfaces in bathrooms. This term does not include products designed primarily to clean toilet bowls, toilet tanks, or urinals.

“Bug and tar remover” means a product labeled 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.

“CARB” means the California Air Resources Board.

“Carburetor or fuel-injection air intake cleaner” 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. This term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

“Carpet and upholstery cleaner” means a product designed for the purpose of cleaning 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 by eliminating dirt and stains on them. This term includes, but is not limited to, products that make fabric protectant claims. This term 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.

“CAS Registry Number” means a unique accession number assigned by the Chemical Abstracts Service, a division of the American Chemical Society.

“CCR” means the California Code of Regulations.

“Charcoal lighter material” means a combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This term does not include:

1. Electrical starters and probes;
2. Metallic cylinders using paper tinder;
3. Natural gas;
4. Propane; or
5. Fat wood.

“Chemically formulated consumer product category” means a category listed in Table 1 at N.J.A.C. 7:27-24.4(a)

that best describes a chemically formulated consumer product.

“Chlorinated toxic air contaminant” means methylene chloride, perchloroethylene, or trichloroethylene.

“Colorant” means a pigment or coloring material used in a product for an aesthetic effect, or to dramatize an ingredient.

“Construction, panel, and floor covering adhesive” means a one-component adhesive that:

1. Is designed exclusively for the installation, remodeling, maintenance, or repair of:

- i. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (including, but not limited to, drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, or flooring or subflooring; or

- ii. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles or other types of tiles, or artificial grass; and

2. Is not a floor seam sealer.

“Consumer” means a person who purchases or otherwise acquires any consumer product for personal, family, household, or institutional use. This term does not include a person acquiring a product for resale.

“Consumer product” means a household or institutional product, including any packaging, that includes, but is not limited to:

1. Chemically formulated products including, but not limited to, products that are detergents; cleaning compounds; floor polishes and waxes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products. This term also refers to aerosol adhesives, including aerosol adhesives used for consumer, industrial or commercial uses and automotive consumer products; and

2. A portable fuel container or spout or both a portable fuel container and spout.

“Contact adhesive” means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;

2. Is designed to be 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;

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;

5. Is not a rubber cement that is primarily intended for use on paper substrates; and

6. Does not include vulcanizing fluids that are designed and labeled for tire repair only.

“Contact adhesive - general purpose” means any contact adhesive that is not a contact adhesive - special purpose.

“Contact adhesive - special purpose” means a contact adhesive that:

1. Is used to bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch or less in thickness to any porous or nonporous surface; or

2. Is used in automotive applications that are either automotive under-the-hood applications requiring heat, oil or gasoline resistance, or body-side molding, automotive weatherstrip or decorative trim.

“Cooking spray” means a product that is an aerosol and is designed either to reduce sticking on cooking and baking surfaces, or to be applied on food, or both.

“Crawling bug insecticide” means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This term does not include products designed to be used exclusively on humans or animals, or any house dust mite product.

“Date-code” means a code indicating the day, month and year on which a product was manufactured, filled, or packaged.

“Deodorant” means:

1. For products manufactured before January 1, 2009, a 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; and

2. For products manufactured on or after January 1, 2009, any product including, but not limited to, aerosol, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can

be used on or applied to the human axilla to provide a scent and/or minimize odor.

This term also includes a deodorant body spray that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla.

“Deodorant body spray” means:

1. For products manufactured before January 1, 2009, a personal fragrance product with 20 percent or less fragrance; or

2. For products manufactured on or after January 1, 2009, a personal fragrance product with 20 percent or less fragrance that is designed for application all over the human body to provide a scent.

“Department” means the New Jersey Department of Environmental Protection.

“Disinfectant” means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under FIFRA. This term does not include:

1. Products designed solely for use on humans or animals;

2. Products designed for agricultural use;

3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or

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

“Distributor” means a person to whom a product is sold or supplied for the purpose of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

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

“Dry cleaning fluid” means a non-aqueous liquid product designed and labeled exclusively for use on fabrics which are labeled “dry clean only,” such as clothing or drapery, or on “S-coded” fabrics (that is, upholstery fabrics designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee). This term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer’s residence or work place. This term does not include “spot remover” or “carpet and upholstery cleaner.”

"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. This term does not include a pressurized gas duster.

"Electrical cleaner" means a product labeled to remove heavy soils such as grease, grime, or oil from electrical equipment, including, but not limited to, armatures, electric motors, electric panels, generators or relays. This term does not include an anti-static product, dusting aid, electronic cleaner, energized electrical cleaner, engine degreaser, general purpose cleaner, general purpose degreaser, pressurized gas duster, or a product designed to clean the casings or housings of electrical equipment.

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

"Energized electrical cleaner" means a product that meets both of the following criteria:

1. The product is labeled to clean and/or degrease electrical equipment, where cleaning and/or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor; and
2. The product label clearly displays the statements: "Energized Equipment use only. Not to be used for motorized vehicle maintenance, or their parts."

This term does not include electronic cleaner.

"Engine degreaser" means a product designed to clean engines and other mechanical parts by removing grease, grime, oil and other contaminants from their external surfaces.

"EPA" means the United States Environmental Protection Agency.

"Establishment" means, when used with respect to an institutional product, any facility (other than living quarters or a residence) including, but not limited to, an office, government agency, factory, school, hospital, sanitarium, prison, retail outlet, restaurant, hotel, store, automobile service and parts center, health club, theater, or transportation facility.

"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. This term does not include waterproofer,

products designed for use solely on leather, or products sold in packages of 10 fluid ounces or less and designed for use solely on fabrics labeled "dry clean only."

"Fabric refresher" means a product labeled to neutralize or eliminate odors on non-laundered fabric including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, clothing and/or on household furniture or objects upholstered or covered with fabrics such as, but not limited to, wool, cotton, or nylon. This term does not include an anti-static product, a carpet and upholstery cleaner, soft household surface sanitizers, footwear or leather care product, spot remover, or disinfectant, or a product labeled for application to both fabric and human skin.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. This term includes, but is not limited to, facial cleansing creams, semisolids, liquids, lotions, and substrate-impregnated forms. This term 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.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. This term does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FDA" means the United States Food and Drug Administration.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.

"Finish" or "finishing" means the maintaining and/or holding of previously styled hair for a period of time.

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

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

"Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent plasticizer content, by weight.

"Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

"Floor coating" means an opaque coating that is labeled and designed for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces which may be subject to foot traffic.

"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. This term 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 architectural coating rules at 40 CFR Parts 9 and 59 or N.J.A.C. 7:27-23.

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

"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. This term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths or gnats. This term does not include wasp and hornet insecticides, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fogger insecticide" means an insecticide designed to release all or most of its contents, as a fog or mist, into indoor areas during a single application.

"Footwear or leather care product" means a product designed or labeled to be applied to footwear, including both leather and non-leather foot apparel, or to other leather articles/components, to maintain, enhance, clean, protect, or modify the appearance, durability, fit, or flexibility of the footwear or leather article/component. This term does not include fabric protectant, general purpose adhesive, contact adhesive, vinyl/fabric/leather/polycarbonate coating, rubber and vinyl protectant, fabric refresher, products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than two millimeters thick.

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

"Fuel" means solid, liquid, or gaseous material used to produce useful heat by burning.

"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. This term does not include dusting aids, wood cleaners and products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

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

"General purpose adhesive" means a non-aerosol adhesive designed for use on a variety of substrates. This term does not include contact adhesives; construction, panel, and floor covering adhesives; adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials, but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

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

"General purpose degreaser" means a product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. This term does not include:

1. Engine degreasers, general purpose cleaners, adhesive removers, electronic cleaners, electrical cleaners, energized electrical cleaners or metal polish/cleaners;
2. Products used exclusively in solvent cleaning tanks or related equipment (that is, in tanks or equipment including, but 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); or
3. Products that are sold exclusively to establishments that manufacture or construct goods or commodities labeled "not for retail sale."

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

“Glass cleaner” means a product designed primarily to clean surfaces made of glass. This term does not include products designed solely to clean optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

“Graffiti remover” means a product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish, from a variety of non-cloth or non-fabric substrates. This term does not include paint remover or stripper, nail polish remover, or spot remover. Products labeled for dual use as both a paint stripper and graffiti remover are graffiti removers.

“Hair mousse” means a product that is a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

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

“Hair spray” means:

1. For products manufactured before January 1, 2009, a product designed primarily for the purpose of dispensing droplets of a resin on and into hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time; and

2. For products manufactured on or after January 1, 2009, a consumer product that is applied to styled hair, and is designed or labeled to provide sufficient rigidity to hold, retain and/or finish the style of the hair for a period of time. This term includes aerosol hair sprays, pump hair sprays, spray waxes, products that are both a styling and finishing product, and color, glitter, or sparkle hairsprays that make finishing claims. This term does not include spray products that are intended to aid in styling but do not provide finishing of a hairstyle.

“Hair styling gel” means a consumer product manufactured before January 1, 2009, that is a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

“Hair styling product” means a consumer product manufactured on or after January 1, 2009, that is designed or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling and/or sculpting of the hair. This term includes, but is not limited to, hair balm, clay,

cream, creme, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hairstyle, and leave-in volumizers, detanglers and/or conditioners that make styling claims. This term does not include hair mousse, hair shine, hair spray, or shampoo and/or conditioner that is rinsed from the hair prior to styling.

“Heavy-duty hand cleaner or soap” means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer’s ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. This term 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.

“Herbicide” means a pesticide designed to kill or retard a plant’s growth, but excludes:

1. Products that are for agricultural use; or
2. Restricted materials that require a permit for use and possession.

“High volatility organic compound” or “HVOC” means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20 degrees Celsius (C).

“Hospital or medical disinfectant” means an antimicrobial product registered with the EPA that qualifies to bear the name or claim “hospital or medical environment disinfectant” pursuant to EPA guidelines published pursuant to 7 U.S.C. § 136a(c)(2)(a), including, but not limited to, antimicrobial pesticides used in hospitals, doctor and dentist offices, or other medical environments.

“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.

“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.

“Household product” means a product that is designed to be used primarily inside or outside of living quarters or residences, including their immediate surroundings, that are occupied or intended for occupation by individuals and/or households. This term does not include a product that is designed to be used primarily in the maintenance or operation of an establishment.

“HVOC” (see “high volatility organic compound”).

“Innovative product exemption” or “IPE” means a determination that a particular consumer product will result in less VOC emissions as compared to a representative compliant consumer product or as compared to the reformulation of the particular product in order to comply with a VOC content limit due to some characteristic of the product formulation, design, delivery system, or other factor. Such determination must be in accordance with N.J.A.C. 7:27-24.4(j) and (k) for a chemically formulated consumer product, and in accordance with N.J.A.C. 7:27-24.8(e) and (f) for a portable fuel container, spout, or portable fuel container and spout, and be issued by:

1. CARB, pursuant to its antiperspirants and deodorants regulations and consumer products regulations (including all amendments and supplements) at 17 CCR 94503.5 or 94511 or pursuant to its portable fuels containers regulations (including all amendments and supplements) at 13 CCR 2467.4; or

2. The air pollution control agency of another state pursuant to its consumer product regulations, if those consumer product regulations are based on the Ozone Transport Commission (OTC) “Model Rule for Consumer Products” dated November 29, 2001, including subsequent revisions.

“Insecticide” means a pesticide designed for use against insects or other arthropods. This term does not include:

1. Products that are for agricultural use;
2. Products that are for use in structural pest control which require a commercial pesticide applicator licensed under N.J.A.C. 7:30-6;
3. Restricted materials that require a permit for use and possession; or
4. Solid fertilizers that also have insecticidal properties.

“Insecticide fogger” means an insecticide designed to release all or most of its content as a fog or mist into indoor areas during a single application.

“Institutional product” means a product that is designed to be used primarily in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit, or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. This term does not include a product that is designed to be used primarily inside or outside of living quarters or residences that are occupied or intended for occupation by individuals (that is, is a household product). It also does not include any product that is used as a raw material or other input into, or used exclusively in the manufacture or construction of the goods or commodities at the establishment.

“Institutional use” means, with respect to a product, use within the lines of, or on property of, an establishment, in the maintenance or operation of the establishment.

“Kerosene” means any light petroleum distillate that is commonly or commercially known, sold or represented as kerosene, that is used in space heating, cook stoves, and water heaters, and is suitable for use as a light source when burned in wick-fed lamps.

“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.

“Laminate repair/edgebanding adhesive” means an aerosol adhesive designed for:

1. The touch-up or repair of items laminated with high pressure laminates (for example, lifted edges, delaminates); or
2. 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 laminates” are sheet materials which consist of paper, fabric, or other core material that has been laminated at temperatures exceeding 265 degrees Fahrenheit (°F), and at pressures between 1,000 and 1,400 pounds per square inch (psi).

“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 or provides specialized performance.

“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. This term includes, but is not limited to, fabric finish, sizing, and starch.

“Lawn and garden insecticide” means an insecticide labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of N.J.A.C. 7:27-24.4(g), aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

“Liquid” means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90(2006), as supplemented or amended. This term does not include powders or other materials that are composed entirely of solid particles.

"Liquid product" means any product that is packaged and sold as a bulk liquid, including liquid delivered by pump sprayers.

"Low vapor pressure VOC" or "LVP-VOC" means a VOC that is a chemical compound (that is, a molecule of definite chemical formula and isomeric structure) or mixture (that is, a substrate comprised of two or more chemical compounds) that contains at least one carbon atom and meets one of the following conditions:

1. It has a vapor pressure less than 0.1 millimeters of mercury (mm Hg) at 20 degrees centigrade (°C), as determined by CARB Method 310;
2. Its vapor pressure and boiling point are unknown and it is:
 - i. A chemical compound with more than 12 carbon atoms; or
 - ii. A chemical mixture comprised solely of compounds with more than 12 carbon atoms as verified by formulation data;
3. It is a chemical compound with a boiling point greater than 216 degrees centigrade (°C), as determined by CARB Method 310; or
4. It is the weight percent of a chemical mixture that boils above 216 degrees centigrade (°C), as determined by CARB Method 310.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. This term does not include:

1. Automotive power steering fluids;
2. Products for use inside power generating motors, engines, or turbines, or their associated power-transfer gearboxes;
3. Two cycle oils or other products designed to be added to fuels;
4. Products for use on the human body or animals; or
5. Products that are sold exclusively to establishments which manufacture or construct goods or commodities and are labeled "not for retail sale."

"Manufacturer" means a person who manufactures, imports, assembles, processes, produces, packages, repackages, or relabels a product. This term also includes any person for whom the product is manufactured, or by whom the product is distributed, if that person is identified as such on the product label and any person who hires another person to manufacture a product for compensation.

"Medicated astringent/medicated toner" means a product regulated as a drug by the FDA and that is applied to the skin for the purpose of cleaning or tightening pores. This term

includes, but is not limited to, clarifiers and substrate-impregnated products. This term 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.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than two millimeters of mercury (mm Hg) and less than or equal to 80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade (°C).

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

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that 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.

"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.

"Multi-purpose dry lubricant" means a lubricant that 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.

"Multi-purpose lubricant" means a product that is a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. This term does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. This term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. This term 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.

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails including, but not limited to, lacquers, enamels, acrylics, base coats and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nominal capacity" means, with respect to a portable fuel container, the volume that the manufacturer indicates is the maximum recommended filling level.

"Non-aerosol product" means a product that is not dispensed by a pressurized spray system.

"Non-carbon containing compound" means a compound that does not contain any carbon atoms.

"Nonresilient flooring" means flooring of a mineral content which is not flexible. This term includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

"Non-selective terrestrial herbicide" means a product that is a terrestrial herbicide, toxic to plants without regard to species.

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

"Oven cleaner" means a product designed to clean ovens and to remove dried food deposits from oven walls.

"Package" or "packaging" means the part or parts of a product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the functional item or material (such as a chemically formulated substance or mixture of substances) which is solely responsible for accomplishing the purposes for which the product was designed or intended. This term includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.

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

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. This term does not include multi-purpose solvents, paint brush cleaners, products designed and labeled ex-

clusively as graffiti removers, and hand cleaner products that claim to remove paints and other related coatings from skin.

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

"Permeation" means, with respect to a portable fuel container, the process by which individual fuel molecules may penetrate the walls and various assembly components of the portable fuel container directly to the outside ambient air.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Personal fragrance product" means a product that is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. This term does not include:

1. Deodorant;
2. Medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body;
3. Mouthwashes, breath fresheners and deodorizers;
4. Lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations;
5. Products designed exclusively for use on human genitalia;
6. Soaps, shampoos, and products primarily used to clean the human body; and
7. Fragrance products designed to be used exclusively on non-human animals.

"Pesticide" means a 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. This term does not include any substance, mixture of substances, or device which the EPA does not consider to be a pesticide in accordance with FIFRA.

"Pesticide device" means an instrument or contrivance, other than a firearm, designed for trapping, destroying, repelling, or mitigating any pest or any form of plant or animal life (other than a human or a bacterium, a virus

or other microorganism on or in living humans or other living animals). This term does not include equipment used for the application of pesticides if the equipment is sold separately from the pesticide.

“Plasticizer” means 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 E260-96(2006), as supplemented or amended, or from product formulation data.

“Polyolefin adhesive” means an aerosol adhesive designed to bond polyolefins to substrates.

“Polystyrene foam adhesive” means an aerosol adhesive designed to bond polystyrene foam to substrates.

“Portable fuel container” means a reusable container or vessel, with a nominal capacity of 10 gallons or less, designed or used primarily for receiving, transporting, storing or dispensing fuel (including kerosene), or a fuel blend. This term does not include a container or vessel permanently embossed or permanently labeled, as described in 49 CFR 172.407(a), as it existed on September 15, 2005, with language indicating said container or vessel is solely intended for use with non-fuel or non-kerosene products.

“Portable fuel container product category” means the category that best describes a spout and/or a portable fuel container with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the Department.

“Pressurized gas duster” means a pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of surfaces that cannot be cleaned with solvents. This term does not include a dusting aid.

“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. If a product and its packaging have more than one principal display panel, all requirements pertaining to the “principal display panel” shall pertain to each such “principal display panel.”

“Product brand name” means the name of the product exactly as it appears on the principal display panel of the product.

“Product form” for the purpose of complying with N.J.A.C. 7:27-24.6 only, means the applicable form which most accurately describes the product’s dispensing form to be indicated in the manufacturer’s records in abbreviated form, as follows:

A = aerosol product

S = solid

P = pump spray

L = liquid

SS = semisolid

O = other.

“Product line” means a group of products of identical form and function belonging to the same chemically formulated consumer product category(ies).

“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.

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

“Pump sprayer” 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.

“Reactive adhesive” means an adhesive that requires a hardener or catalyst in order for the bond to occur. This term includes, but is not limited to, epoxies, urethanes and silicones.

“Representative code” means a code that identifies a portable fuel container or portable fuel container and spout as subject to and complying with N.J.A.C. 7:27-24.8.

“Restricted materials” means pesticides classified as restricted use pesticides under N.J.A.C. 7:30-2.10 or classified for restricted use by EPA pursuant to section 136a(d) of FIFRA.

“Retail outlet” means any establishment at which products are sold, supplied, or offered for sale directly to consumers.

“Retailer” means any person who owns, leases, operates, manages, controls, or supervises a retail outlet.

“Roll-on product” means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

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

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

“Safety can” means a closed container that has a nominal capacity of five gallons or less, having a flash-arresting screen, spring-closing lid and spout cover and that is designed so that it will safely relieve internal pressure when exposed to fire.

“Sealant and caulking compound” means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. This term does not include roof cements and roof sealants, insulating foams, removable caulking compounds (that is, compounds which temporarily seal windows or doors for three to six month time intervals), clear/paintable/water resistant caulking compounds (that is, compounds which contain no appreciable level of opaque fillers or pigments, transmit most or all visible light through the caulk when cured, are paintable, and are immediately resistant to precipitation upon application), floor seam sealers, products designed exclusively for automotive uses, or sealers that are applied as continuous coatings.

“Semisolid” means a product that, when at room temperature, will not pour, but will spread or deform easily, including, but not limited to, gels, pastes, and greases.

“Shaving cream” means an aerosol product that 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 body hair. This term does not include shaving gel.

“Shaving gel” means an aerosol product that dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other body hair. This term does not include shaving cream.

“Silicone-based multi-purpose lubricant” means a product that is a lubricant which:

1. Is designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane;
2. Is designed and labeled for general purpose lubrication, or for use in a wide variety of applications; and
3. Is not designed and labeled exclusively to release manufactured products from molds.

“Single phase aerosol air freshener” means an aerosol air freshener which has the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

“Soft household surface sanitizer” means a product labeled to neutralize or eliminate odors on surfaces to which fabric refreshers are applied and listed in the definition of “fabric

refresher” above, whose label is registered as a sanitizer under FIFRA.

“Solid” means a substance or mixture of substances which is not capable of visually detectable flow as determined under ASTM D-4359-90(2006), as supplemented or amended. The substance or mixture of substances may be in a form either whole or subdivided (such as particles comprising a powder).

“Solvent cleaning machine” means any device or piece of equipment with a capacity greater than 7.6 liters (two gallons) that uses methylene chloride, perchloroethylene, or trichloroethylene to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of motor vehicle substrates or surfaces or miscellaneous metallic parts.

“South Coast Air Quality Management District Rule” means a rule issued by California’s South Coast Air Quality Management District (SCAQMD).

“Special purpose spray adhesive” means an aerosol adhesive that is a mounting adhesive, a flexible vinyl adhesive, a polystyrene foam adhesive, an automobile headliner adhesive, a polyolefin adhesive, a laminate repair/edge-banding adhesive, or an automotive engine compartment adhesive.

“Spill-proof spout” means any spout that complies with the certification requirements at N.J.A.C. 7:27-24.8 and with N.J.A.C. 7:27-24.9.

“Spill-proof system” means any configuration of portable fuel container and firmly attached spout that complies with the certification requirements at N.J.A.C. 7:27-24.8 and with N.J.A.C. 7:27-24.9.

“Spot remover” means a product labeled to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. This term does not include dry cleaning fluid, laundry pre-wash, or multi-purpose solvent.

“Spout” means, with respect to a portable fuel container, any device that can be firmly attached to the container and that serves as the conduit through which the contents of the portable fuel container may be poured out of the container, not including a device that can be used to lengthen the spout to accommodate necessary applications.

“Spray buff product” means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

“Stick product” means an antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

“Structural waterproof adhesive” 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).

“Styling” means the forming, sculpting, or manipulating of the hair to temporarily alter the hair’s shape.

“Target fuel tank” means any receptacle that receives fuel from the portable fuel container.

“Terrestrial” means to live on or grow from land.

“Tire sealant and inflation” means a pressurized product designed to temporarily inflate and seal a leaking tire.

“Toilet/urinal care product” means a product designed or labeled to clean and/or to deodorize toilet bowls, toilet tanks, or urinals, including, but not limited to, toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations, and toilet or urinals in vehicles such as buses, recreational motor homes, boats, ships, and aircraft. This term does not include bathroom and tile cleaner or general purpose cleaner.

“Type A propellant” means a compressed gas such as CO₂, N₂, N₂O, or compressed air, used as a propellant and either incorporated with the product or contained in a separate chamber within the product’s packaging.

“Type B propellant” means any halocarbon used as a propellant, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

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

“Undercoating” means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. This term includes, but is not limited to, rubberized, mastic, or asphaltic products.

“Usage directions” means the text or graphics on the product’s principal display panel, label, or accompanying literature that describes to the end user how or in what quantity the product is to be used.

“Variance” means a temporary exemption based on extraordinary economic hardship granted in accordance with N.J.A.C. 7:27-24.4(j) and (k) to a manufacturer of a chemically formulated consumer product, which temporary exemption relieves the manufacturer from meeting an applicable VOC content standard in Table 1 at N.J.A.C. 7:27-24.4(a), or granted in accordance with N.J.A.C. 7:27-24.8(e) and (f) to a manufacturer of a portable fuel container, spout, or portable fuel container and spout, which temporary exemption relieves the manufacturer from meeting the standards at N.J.A.C. 7:27-24.8.

“Vinyl/fabric/leather/polycarbonate coating” means a coating designed and labeled exclusively to coat vinyl, fabric, leather, or polycarbonate substrates.

“Volatile organic compound” or “VOC” means a volatile organic compound, as that term is defined by the EPA at 40 CFR 51.100(s), which is incorporated by reference herein, together with all amendments and supplements.

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

“Waterproofer” means a product designed and labeled exclusively to repel water from fabric or leather substrates. This term does not include fabric protectants.

“Wax” means a natural 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). This term includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

“Web spray adhesive” means any aerosol adhesive that is not a mist spray or special purpose spray adhesive.

“Wood cleaner” means a product labeled to clean wooden materials, including, but not limited to, decking, fences, flooring, logs, cabinetry, and furniture. This term does not include dusting aid, general purpose cleaner, furniture maintenance product, floor wax stripper, floor polish or wax, or products designed and labeled exclusively to preserve or color wood.

“Wood floor wax” means a wax-based consumer product for use solely on wood floors.

Administrative Correction.

See: 28 N.J.R. 851(a).

Administrative change.

See: 31 N.J.R. 639(b).

Amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Rewrote the section.

7:27-24.2 Applicability

(a) This subchapter applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures for sale in New Jersey any consumer product in (b) or (c) below and that is for use in New Jersey by a consumer or by a person who uses the product in providing a service. This subchapter also applies to any person who advertises any portable fuel container or spout for sale in New Jersey.

(b) This subchapter applies to the following consumer products, unless the product is excluded under (d) or (e) below:

1. A chemically formulated consumer product which belongs to any of the chemically formulated consumer products categories listed in Table 24A at N.J.A.C. 7:27-24.4(a); and

2. A portable fuel container and spout.

(c) Manufacturers of chemically formulated consumer products that are not covered by (b)1 above but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury), absolute or greater measured at standard conditions, shall comply with the recordkeeping requirements at N.J.A.C. 7:27-24.6(c) through (e) and (i). However, the manufacturers of such chemically formulated consumer products are not subject to the following requirements: N.J.A.C. 7:27-24.4; 24.5; 24.6(a), (b), (f) through (h) and (j); and 24.7.

(d) This subchapter does not apply to the following chemically formulated consumer products:

1. Any architectural coating. Architectural coatings are subject to the requirements of N.J.A.C. 7:27-23; and coating operations that are part of manufacturing processes are subject to the requirements of N.J.A.C. 7:27-16;

2. Any bait station insecticide, if the bait is not more than 0.5 ounces by weight;

3. Any insecticide that contains at least 98 percent by weight paradichlorobenzene;

4. Before January 1, 2009, any solid air freshener that contains at least 98 percent by weight paradichlorobenzene.

5. Any air freshener consisting entirely of one or more of the following:

i. Fragrance;

ii. Inorganic compounds;

iii. Compounds excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

iv. Any "low vapor pressure VOC," as that term is defined at N.J.A.C. 7:27-24.1;

6. Any of the following adhesives:

i. An adhesive sold in a package holding one fluid ounce or less;

ii. A contact adhesive that is a non-aerosol product and that is sold in units of product, less packaging, which consist of more than one gallon;

iii. Either of the following adhesives, provided that it is a non-aerosol product and that it is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces:

(1) A construction, panel, and floor covering adhesive; and

(2) A general purpose adhesive; and

iv. A contact adhesive – special purpose that is sold in units of product, less packaging, that contain more than eight fluid ounces;

7. Any sealant and caulking compound, if the compound is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces; and

8. Any hospital or medical disinfectant.

(e) This subchapter does not apply to the following types of portable fuel containers:

1. A safety can meeting the requirements of Federal regulations at 29 CFR 1910.106;

2. A portable fuel container if the container has a nominal capacity less than or equal to one quart;

3. A rapid refueling device with nominal capacity greater than or equal to four gallons, if the device:

i. Is designed for use in officially sanctioned off-highway motor sports, such as car racing and motorcycle competitions;

ii. Creates a leak-proof seal against a target fuel tank; or

iii. Is designed to operate in conjunction with a receiver permanently installed on the target fuel tank;

4. A portable fuel tank manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine; or

5. A closed-system portable fuel container that is used exclusively for fueling remote control model airplanes.

(f) N.J.A.C. 7:27-24.4(n) does not apply to a solvent cleaning machine or to liquid products that are designed, labeled, promoted and advertised (expressed or implied) solely for use in a solvent cleaning machine.

(g) The provisions at N.J.A.C. 7:27-24.4(a) and 24.8 do not apply to a consumer product that is manufactured in New Jersey, or that is sold in New Jersey by a manufacturer or a distributor, provided that:

1. The product is for shipment and use exclusively outside of New Jersey;

2. The manufacturer or distributor ensures that the product's shipping documentation includes a statement that the shipment is not for sale and use in New Jersey and gives its immediate shipping destination;

3. The manufacturer or distributor makes the shipping documentation available to the Department, upon written request, for any product it has shipped or received;

4. The manufacturer or distributor demonstrates, to the satisfaction of the Department, that it has taken reasonably prudent precautions to ensure that the product is not offered for sale, held for sale, sold, or otherwise supplied to a retail outlet or a consumer located in New Jersey; and

5. The manufacturer or a distributor does not offer for sale, hold for sale, sell, or otherwise supply any quantity of the product to a retail outlet located in New Jersey, and has not knowingly allowed or enabled another person to do so.

(h) No manufacturer shall be held liable for the sale of a consumer product that does not comply with the requirements of this subchapter to a consumer in New Jersey if:

1. The product was manufactured for use exclusively outside of New Jersey; and

2. The manufacturer meets each of the obligations listed in (g)2 through 5 above.

(i) A retailer who sells, offers for sale, or holds for sale in New Jersey a chemically formulated consumer product that violates the standards at N.J.A.C. 7:27-24.4 or a portable fuel container and/or spout that violates the certification requirements at N.J.A.C. 7:27-24.8(a) may demonstrate compliance with the applicable provisions of this subchapter, if the retailer provides any one or more of the following types of documentation with respect to its purchase of the consumer product, portable fuel container and/or spout in question:

1. Written communication between the retailer and the manufacturers and distributors that the retailer will accept only consumer products for sale in New Jersey that comply with N.J.A.C. 7:27-24;

2. Written agreements between the retailer and the manufacturers and distributors in which the manufacturers and distributors commit to supply to the retailer only consumer products that comply with N.J.A.C. 7:27-24; or

3. The retailer's use of invoices, purchase orders and other contractual and billing documents, which specify that the retailer will only accept consumer products that comply with N.J.A.C. 7:27-24.

Amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

In (a), inserted the second sentence; in (d)3, deleted "air freshener or any" following "Any" and substituted "that" for "which"; added new (d)4; recodified former (d)4 and (d)5 as (d)5 and (d)6; in (d)6ii, deleted "and" at the end; in (d)6iii(2), inserted "and" at the end; added (d)6iv; recodified former (d)6 and (d)7 as (d)7 and (d)8; in (e)1, substituted "CFR 1910.106" for "C.F.R. 1926"; in (e)3i, inserted "motor sports,

such as car racing and"; in (e)3iii, deleted "or" at the end; in (e)4, inserted "; or" at the end; added (e)5; added new (f); recodified former (f), (g) and (h) as (g), (h) and (i); in (h)2, substituted "(g)2" for "(f)2"; and rewrote (i).

7:27-24.3 General provisions

(a) Compliance with this subchapter does not exempt a manufacturer, distributor, or retailer of a product regulated under this subchapter from the obligation to also comply with any and all other applicable Federal and State laws and rules, including State fire codes, safety codes, and other safety regulations. Any finding by the Department that a manufacturer, distributor, or retailer of a product is in compliance with this section shall not be construed to be a determination of compliance with such other laws and rules.

(b) Upon the written request of the Department, any person who is subject to this subchapter shall:

1. Identify the distributor, manufacturer, or other person from whom the product identified in the written request was obtained; and

2. Make the shipping documentation for the product identified in the written request available to the Department for any product it has shipped or received.

(c) Except as provided at N.J.A.C. 7:27-24.5(b), any person who submits information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30.

(d) A non-electronic submittal required pursuant to this subchapter shall be sent to the following address:

Bureau of Air Quality Planning
New Jersey Department of Environmental
Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

(e) Any submittal to the Department, other than a registration or re-registration, shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information.

(f) In each written request by the Department for information, the Department shall specify the information to be reported and may specify the format in which it is to be reported.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Former N.J.A.C. 7:27-24.3, VOC content standards, recodified to N.J.A.C. 7:27-24.4.

7:27-24.4 Chemically formulated consumer products: standards

(a) Except as provided at N.J.A.C. 7:27-24.2 and in (c), (d) and (j) below, no person shall sell, offer for sale, hold for sale, distribute for sale, supply for sale, or manufacture for sale in New Jersey a chemically formulated consumer product

that belongs to a chemically formulated consumer product category listed in Table 1 below, that was manufactured on or after the operative date in Table 1 below, and that contains a VOC content in excess of the applicable limit specified in Table 1 below.

TABLE 1
VOC CONTENT LIMITS FOR CHEMICALLY FORMULATED CONSUMER PRODUCTS

Chemically Formulated Consumer Product Category	Form	Maximum Allowable VOC Content (percent by weight, ¹ unless otherwise indicated) ²		
		State Standard Operative Date 4/30/96-12/31/04 ³	State Standard Operative Date 1/1/05	State Standard Operative Date 1/1/09
Adhesive Remover:	Floor or wall covering			5
	Gasket or thread locking			50
	General purpose			20
	Specialty			70
Adhesives	Aerosol:	75		
	Mist spray		65	
	Web spray		55	
	Special purpose spray adhesives:			
	Mounting, automotive engine compartment, and flexible vinyl		70	
	Polystyrene foam and automotive headliner		65	
	Polyolefin and laminate repair/edgebanding			60
	Contact:	80	80	N/A ⁵
	Contact general purpose			55
	Contact special purpose			80
	Construction, panel, and floor covering	40	15	
General purpose	10	10		
Structural waterproof	(Reserved)	15		
Air fresheners	Single-phase aerosols	70	30	
	Double-phase aerosols	30	25	
	Liquids/pump sprays	18	18	
	Solids/semisolids		3	3
Antiperspirants	Aerosols	60 HVOC	40 HVOC 10 MVOC	
	Non-aerosols	0 HVOC	0 HVOC 0 MVOC	
Anti-static products, non-aerosol			11	
Automotive brake cleaners			45	
Automotive rubbing or polishing compounds			17	
Automotive waxes, polishes, sealants or glazes	Hard paste waxes		45	
	Instant detailers		3	
	All other forms		15	
Automotive windshield washer fluids			35	
Bathroom and tile cleaners	Aerosols	7	7	
	All other forms		15	
Bug and tar removers			40	
Carburetor or fuel-injection air intake cleaners	Aerosols	75	45	
	Non-aerosols	75	45	

Carpet and upholstery cleaners	Aerosols		7	
	Non-aerosols (dilutables)		0.1	
	Non-aerosols (ready-to-use)		3.0	
Charcoal lighter material			0.02 lb start ⁴	
Cooking sprays	Aerosols	18	18	
Deodorants	Aerosols	20 HVOC	0 HVOC	
			10 MVOC	
	Non-aerosols	0 HVOC	0 HVOC	
			0 HVOC	
Dusting aids	Aerosols	35	25	
	All other forms	7	7	
Electrical cleaners				45
Electronic cleaners				75
Engine degreasers	Aerosols	75	35	
	Non-aerosols	75	5	
Fabric protectants		75	60	
Fabric polishes/waxes	Products for flexible flooring materials	7	7	
	Products for nonresilient flooring	10	10	
	Wood floor wax	90	90	
Fabric refreshers	Aerosol			15
	Non-aerosol			6
Floor wax strippers	Non-aerosol:			
	For light or medium build-up		3	
	For heavy build-up		12	
Footwear or leather care products	Aerosol			75
	Solid			55
	Other forms			15
Furniture maintenance products	Aerosols	25	17	
	All other forms except solid or paste		7	
General purpose cleaners	Aerosols	10	10	
	Non-aerosols	10	4	
General purpose degreasers	Aerosols		50	
	Non-aerosols		4	
Glass cleaners	Aerosols	12	12	
	All other forms	8		
	Non-aerosols		4	
Graffiti removers	Aerosol			50
	Non-aerosol			30
Hair mousses		16	6	
Hair shines			55	
Hair sprays		80	55	
Hair styling gels		6	6	
Hair styling products	Aerosol and pump sprays			6
	All other forms			2
Heavy-duty hand cleaner or soaps			8	
Insecticides	Crawling bug:	40		
	Aerosols		15	
	All other forms		20	
	Flea and tick	25	25	
	Flying bug:	35		
	Aerosols		25	
	All other forms		35	
	Foggers	45	45	
	Lawn and garden:	20		
	Non-aerosols		3	
	All other forms		20	
	Wasp and hornet		40	

Laundry prewash	Aerosol/solids	22	22	
	All other forms	5	5	
Laundry starch products		5	5	
Metal polishes/cleansers			30	
Multi-purpose lubricants (excluding solid or semi-solid products)				50
Nail polish removers		85	75	
Non-selective terrestrial herbicide	Non-aerosols		3	
Oven cleaners	Aerosols/pump sprays	8	8	
	Liquids	5	5	
Paint removers or strippers			50	
Penetrants			50	
Rubber and vinyl protectants	Aerosols		10	
	Non-aerosols		3	
Sealants and caulking compounds			4	
Shaving creams		5	5	
Shaving gels				7
Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)			60	
Spot removers	Aerosols		25	
	Non-aerosols		8	
Tire sealants and inflators			20	
Toilet/urinal care products	Aerosol			10
	Non-aerosol			3
Undercoatings	Aerosols		40	
Wood cleaners	Aerosol			17
	Non-aerosol			4

Footnotes to Table:

¹ Weight is the product's total weight, exclusive of the packaging.

² The Federal VOC limits, which became operative December 10, 1998, are promulgated at 40 CFR 59, Subpart C, Table 1.

³ As of January 1, 2005, the State limits operative as of April 30, 1996 are no longer applicable.

⁴ See N.J.A.C. 7:27-24.4(i) for additional State requirements pertaining to charcoal lighter material.

⁵ On and after January 1, 2009, the contact adhesive category shall be not applicable and is replaced with two new categories, Contact general purpose and Contact special purpose.

(b) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, if the label, packaging, or accompanying literature specifically states that the consumer product should be diluted prior to use, the VOC content of the product shall be determined as follows:

1. If the label, packaging, or accompanying literature states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content of the product shall be determined only after the minimum recommended dilution has taken place. Such 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; and

2. If the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the VOC content of the product shall be determined only after the maximum recommended dilution has taken place.

(c) Notwithstanding the provisions of (a) above and the specifications of Table 1 above, for a consumer product with a label that is registered under FIFRA, the operative date of the applicable State standard is one year after the operative date specified in Table 1.

(d) Except as provided at (n) through (p), (t) and (u) below, a chemically formulated consumer product manufactured prior to the operative date specified for that product in Table 1 above, may be sold, supplied, or offered for sale after the specified operative date, if that product complies with the standards in effect at the time that product was manufactured, and if that product displays the date or date-code in accordance with the requirements at N.J.A.C. 7:27-24.5(d), (e) and (f).

(e) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, the VOC content of a consumer product shall not include the following:

1. Any low vapor pressure-VOC;
 2. Any fragrances, up to a combined level of two percent by weight, contained in the product, not including the weight of any packaging; and
 3. For an antiperspirant or deodorant, the following:
 - i. Any colorants contained in the product, up to a combined level of two percent by weight;
 - ii. With respect to the medium volatility organic compound (MVOC) content standards, ethanol; and
 - iii. 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 two mm Hg or less at 20 degrees Celsius.
- (f) If an aerosol adhesive could be classified in more than one chemically formulated consumer product category listed in Table 1, the standard for the category with the lowest applicable VOC limit applies.
- (g) If anywhere on the principal display panel of a consumer product manufactured before January 1, 2009, or any FIFRA-registered insecticide manufactured before January 1, 2010, any representation is made that the product may be used as, or is suitable for use as, a consumer product that belongs to more than one chemically formulated consumer product category in Table 1 at (a) above, then the lowest VOC content limit shall apply. However, this subsection does not apply to general purpose cleaners, antiperspirants, deodorants, and insecticide foggers.
- (h) If anywhere on the principal display panel of a consumer product manufactured on or after January 1, 2009, or any FIFRA-registered insecticide manufactured on or after January 1, 2010, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as, a consumer product that belongs to more than one chemically formulated consumer product category in Table 1 at (a) above, then the lowest VOC content limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirants, deodorants and insecticide foggers.
- (i) No person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, on or after January 1, 2005, a charcoal lighter material product, even if it conforms with the VOC content standards in (a) above, unless the following requirements are met:
1. CARB or the air pollution agency of another state has issued certification that attests that it is satisfied that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pounds of VOC per start;
 2. The certification is currently effective at the time of sale. The Department shall consider the certification to be in effect for as long as the issuing State agency considers the certification to remain in effect; and
 3. The product usage directions for the charcoal lighter material provided on the label, packaging, or accompanying literature are the same as those on which the certification is based.
- (j) A chemically formulated consumer product is exempt from (a) above and (n) below if:
1. The manufacturer of the product has been granted an IPE, ACP or variance for the product by either:
 - i. CARB, pursuant to its antiperspirants and deodorants, consumer products, alternative control plan or automotive consumer products regulations (including all amendments and supplements) at 17 CCR 94503.5, 94505, 94511, 94514, 94540 through 94555 or 93111, respectively; or
 - ii. By the air pollution control agency of another state that has adopted a consumer product rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions (accessible at the OTC's website at <http://www.otcair.org>); and
 2. The IPE, ACP, or variance is valid for use in New Jersey pursuant to (k) below.
- (k) An IPE, ACP, or variance in (j) above shall not be valid for use in New Jersey to comply with this subchapter unless:
1. The IPE, ACP, or variance is currently in effect (the Department shall consider an IPE, ACP, or variance to be in effect if the issuing agency deems the exemption to be in effect);
 2. The product (including its form) for which the IPE, ACP, or variance is being used to comply with this section meets the following:
 - i. The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit set in Table 1 above; and
 - ii. The VOC content limit promulgated for this product by the agency that issued the IPE, ACP, or variance, is equal to or more stringent than the most stringent applicable VOC content limit in Table 1 above;
 3. For a variance, the approval is based on the issuing agency's finding that:
 - i. Requiring the manufacturer's compliance with the standard would, because of reasons beyond the reasonable control of the applicant, result in extraordinary economic hardship for the manufacturer;
 - ii. The public interest in mitigating this hardship to the manufacturer outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and

iii. The manufacturer's proposed methods for achieving compliance with the standard can reasonably be implemented and will achieve compliance as expeditiously as possible;

4. For an IPE, the manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factor, the use of the product will result in less VOC emissions as compared to either the VOC emissions from a representative chemically formulated consumer product that complies with the VOC content limits specified in Table 1 above, or as compared to the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in Table 1 above;

5. Prior to relying on an IPE, ACP, or variance for compliance, the manufacturer has submitted to the Department, in accordance with (l) below, the following:

i. A statement that, for a specified chemically formulated consumer product that it manufactures, it intends to comply with this section under an IPE, ACP, or variance rather than meet the applicable VOC content standards in Table 1 above;

ii. The brand name of the consumer product, and the specific chemically formulated consumer product category in Table 1 above to which the product belongs, including its form(s) (if applicable);

iii. A copy of the document(s) setting forth the IPE, ACP, or variance; the issuing agency's approval; the issuing agency's conditions of its approval; the demonstration of (k)4 above if an IPE; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the IPE, ACP or variance; and

iv. A statement that the IPE, ACP, or variance, as well as the product for which the IPE, ACP, or variance is being used, conforms with (k)1 through 4 above, as applicable; and

6. The manufacturer has included in its electronic registration, submitted pursuant to N.J.A.C. 7:27-24.5(a), (b) and (c), indication that for the specified product it is complying with this section under an IPE, ACP or variance.

(l) Any submittal made pursuant to (k)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows:

1. For an IPE, "Attention: Consumer Product Innovative Product Exemption";

2. For an ACP, "Attention: Consumer Product Alternative Control Plan"; or

3. For a variance, "Attention: Consumer Product Variance."

(m) On and after January 1, 2005, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, an aerosol adhesive product that contains methylene chloride, perchloroethylene, or trichloroethylene, even if its VOC content conforms with the standards required pursuant to (a) above.

(n) Except as provided at N.J.A.C. 7:27-24.2(f), and at (o), (q) and (r) below, on and after January 1, 2009, no person shall sell, offer for sale, hold for sale, distribute for sale, supply for sale, or manufacture for sale in New Jersey any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner, graffiti remover or automotive consumer product that contains a chlorinated toxic air contaminant even if it meets the VOC content standards at (a) above.

(o) Any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner, graffiti remover or automotive consumer product that was manufactured before January 1, 2009 and contains a chlorinated toxic air contaminant may be sold, offered for sale, held for sale, distributed, or supplied through December 31, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with N.J.A.C. 7:27-24.5 and the product otherwise meets the VOC content standards at (a) above.

(p) On or after June 30, 2011, any person who sells or supplies for sale a consumer product identified in (o) above to a distributor or retailer must notify the distributor or retailer in writing that the product cannot be sold after December 31, 2011.

(q) The requirements of (n) through (p) above do not apply to any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner, graffiti remover that contains a chlorinated toxic air contaminant that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(r) For purposes of (n) above, an automotive consumer product contains a chlorinated toxic air contaminant if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of methylene chloride, perchloroethylene, or trichloroethylene, as determined by the test method specified in N.J.A.C. 7:27-24.7(b).

(s) On and after January 1, 2009, no person shall sell, supply for sale, offer for sale, or manufacture for use in New Jersey any solid air fresheners or toilet/urinal care products that contain paradichlorobenzene, except that solid air fresheners and toilet/urinal care products that contain paradichlorobenzene and were manufactured before January 1, 2009 may be sold, supplied, or offered for sale through

December 31, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with N.J.A.C. 7:27-24.5.

(t) On or after June 30, 2011, any person who sells or supplies for sale a solid air freshener or toilet/urinal care product that contains paradichlorobenzene to a distributor or retailer must notify the distributor or retailer in writing that the product cannot be sold after December 31, 2011.

Recodified from N.J.A.C. 7:27-24.3 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-2.4, Administrative requirements, recodified to N.J.A.C. 7:27-2.5.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Rewrote the section.

7:27-24.5 Chemically formulated consumer products: registration and labeling

(a) The manufacturer of a chemically formulated consumer product that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall register or re-register (for manufacturers who have submitted registration prior to June 6, 2004) with the Department as follows:

1. The registration or re-registration shall be submitted to the Department on the form provided by the Department at <http://www.state.nj.us/dep/baqp>, and shall be submitted electronically, by email, on diskette, or on CD-ROM, unless:

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

ii. The Department is satisfied that a hardship exists and approves a written request from the manufacturer to submit the information on paper pursuant to (c) below;

2. The registration or re-registration shall be submitted in accordance with the following schedule:

i. For a chemically formulated consumer product sold in New Jersey and not previously registered, the registration shall be submitted no later than the later of March 29, 2009, or within 90 days of selling the product in New Jersey.

3. If, subsequent to the submission of its registration, a manufacturer begins to manufacture a product for sale in New Jersey that belongs to a chemically formulated consumer product category that was not listed in the original registration, or if information provided in the registration changes, the manufacturer shall submit a revised registration including the new information within 90 days of the change; and

4. The registration or re-registration shall include the following information:

- i. The name of the manufacturer;
- ii. The full mailing address of the manufacturer;
- iii. The name and telephone number of a contact person;

iv. The chemically formulated consumer product category (as listed in Table 1 at N.J.A.C. 7:27-24.4) to which the manufacturer's product belongs or, if the manufacturer manufactures multiple products which belong to more than one chemically formulated consumer product category, a list of the chemically formulated consumer product categories to which the products belong (for example: adhesive, floor polish or wax, insecticide); and

v. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.4(i), the following:

- (1) Product brand name;
- (2) The chemically formulated consumer product category to which the product belongs;
- (3) The type of exemption; that is, IPE, ACP, or variance; and
- (4) The state that previously approved the IPE, ACP, or variance and the issuing state's approval date.

(b) Notwithstanding N.J.A.C. 7:27-24.3(c), any information submitted as part of the registration or re-registration pursuant to (a) above and (e) below may not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29.

(c) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submission of Consumer Product Registration";

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

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

(d) Except as provided at (f) below, a manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall clearly display, on each product package, the day, month, and year in which the product was manufactured, or a code indicating

such date (that is, a date-code). The date or date-code shall be located on the packaging, or inside the cover or cap, so that it is readily observable or obtainable without irreversibly disassembling any part of the packaging, such as by simply removing the cover or cap. Use of the following code to indicate the date of manufacture in compliance with the requirements of this subsection will exempt the manufacturer from the requirements of (e) below, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD

Where:

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

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

(e) If for any consumer product, the manufacturer uses a date-code other than the YY DDD format described at (d) above to comply with (d) above, the manufacturer shall submit an explanation of the date portion of the product code to the Department. The explanation shall be submitted with the electronic registration or re-registration, in accordance with the requirements of (a), (b) and (c) above.

(f) Subsection (d) above does not apply to a product if:

1. The product contains no VOC; or contains 0.10 percent VOC, or less, by weight;
2. The product is offered to consumers free of charge for the purpose of sampling the product; or
3. The product's label is registered under FIFRA.

(g) For any aerosol adhesive, adhesive remover, contact adhesive, electronic cleaner, electrical cleaner, and energized electrical cleaner products manufactured on or after the effective date for the product category specified in Table 1 at N.J.A.C. 7:27-24.4(a), the manufacturer shall ensure that:

1. The following information shall be clearly displayed on each product package:

- i. The name (as given in Table 1 at N.J.A.C. 7:27-24.4(a)) of the specific product category to which the product belongs (for example, automobile headliner adhesive) or, an abbreviation of the name of the category;
- ii. Except for an energized electrical cleaner, the applicable VOC content standard to which the product is subject, under Table 1 at N.J.A.C. 7:27-24.4(a), expressed as a percentage by weight; and
- iii. If the product is a special purpose spray adhesive, the applicable substrate and/or application that

qualifies the product as a special purpose spray adhesive, or an abbreviation of the substrate and/or application;

2. If abbreviation(s) are used, as allowed under (g)1i and iii above, an explanation of the abbreviation shall be submitted electronically with the electronic registration or re-registration; and

3. The information required under (g)1 above shall be displayed on the product packaging such that it is readily observable without removing or irreversibly disassembling any portion of the product packaging. Information may be displayed on the bottom of a container or package as long as it is clearly legible without removing any product packaging.

(h) For floor wax strippers which are non-aerosol products manufactured on or after January 1, 2005:

1. The manufacturer shall ensure that:

i. The label specifies a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent or less by weight; and

ii. If the floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label specifies a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent or less by weight; and

2. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required to be used on the label, as long as comparable terminology is used.

(i) No person shall erase, alter, deface, or otherwise remove or make illegible any information required to be displayed on any product packaging under (d), (g) or (h) above, prior to the final sale of the product to a consumer without the express authorization of the manufacturer.

Recodified in part from N.J.A.C. 7:27-24.4 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-24.5, Test methods, recodified to N.J.A.C. 7:27-24.7.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Rewrote (a)2i; deleted (a)2ii; rewrote (d); in (e), inserted "other than the YY DDD format described at (d) above" and substituted "date portion of the product code" for "date-code"; in (f)3, substituted "FIFRA" for "the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. § 136-136y)"; rewrote (g); and in (i), inserted "without the express authorization of the manufacturer".

7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting

(a) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall keep the following records:

1. The results of any testing performed to demonstrate compliance with a VOC content limit;

2. If compliance with a VOC content limit is demonstrated through calculation of the VOC content of the product pursuant to N.J.A.C. 7:27-24.7(b), the data and formulas used in the calculation, the calculations made, and the result of the calculation; and

3. Any information that may be required to be submitted to the Department pursuant to (b)3 below.

(b) The Department may require the manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(a) to submit information which may include the information in (b)1 through 3 below. If the manufacturer does not have or does not provide the information requested by the Department, the Department may require the reporting of this information by another person who has the information, including, but not limited to, a formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

1. The name, address, and telephone number of the manufacturer and the name and telephone number of the manufacturer's designated contact person;

2. Any claim of confidentiality asserted by the manufacturer pursuant to N.J.A.C. 7:27-24.3(c) for information required to be submitted to the Department regarding any of the manufacturer's products;

3. For any of the manufacturer's products subject to the standards in Table 1 at N.J.A.C. 7:27-24.4(a), the following information (if the product is sold in more than one form, this information shall be provided separately for each product form):

- i. The product brand name;
- ii. The product label;
- iii. The chemically formulated consumer product category to which the product belongs;
- iv. The form (if applicable) of the product, and a list of all the forms in which the product is sold;
- v. Identification of the product as a household product, institutional product, or both;
- vi. Sales of the product within the State, given to the nearest pound in pounds of product (not including the weight of packaging) per year, and the method used to calculate the sales;
- vii. For each product, the net percent by weight of the total product less packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1 percent):

- (1) Total VOC;

(2) Total of carbon-containing compounds specifically excluded from the definition of "VOC," as defined at N.J.A.C. 7:27-24.1;

(3) Total LVP-VOCs that are not fragrances;

(4) Total of all other carbon-containing compounds that are not fragrances;

(5) Total of all non-carbon-containing compounds;

(6) Total fragrances; and

(7) Total paradichlorobenzene;

viii. For each product containing greater than two percent by weight fragrance:

(1) The percent of fragrance that are LVP-VOCs; and

(2) The percent of fragrance that are all other carbon-containing compounds; and

ix. For a product that is an antiperspirant or deodorant and that contains greater than two percent by weight colorant, the following:

(1) Total LVP-VOCs in the colorant; and

(2) Total of all other carbon-containing compounds in the colorant;

x. For each product, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(1) Each compound specifically excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

(2) Each LVP-VOC that is not a fragrance; and

xi. If the product includes a propellant, the following:

(1) The weight of the propellant, given as a percentage of the weight of the product sold, not including packaging, rounded to the nearest one-tenth of a percent (0.1 percent); and

(2) Identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

(c) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(c) shall maintain calendar year records of products containing greater than five percent by weight VOC, having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury) absolute or greater, measured at standard conditions, produced by that manufacturer for sale in New Jersey. Different forms of a product that have VOC contents within a range of five percent by weight may be combined as a single type of product for the purpose of this recordkeeping,

provided the maximum weight percent and maximum weight per unit within the product category is recorded. For each product the following calendar year records shall be maintained:

1. The number of units produced;
2. The product's VOC content by weight per unit and percent weight; and
3. The approximate number of units sold in New Jersey.

(d) Records sufficient to provide the information required pursuant to (a)1 and 2 above shall be maintained by each manufacturer for five years after each calendar year for which the data is collected. Records sufficient to provide the information required pursuant to (a)3, (b) and (c) above shall be maintained by each manufacturer for three years after each calendar year for which the data is collected.

(e) Within 90 days of receipt of a written request by the Department, each manufacturer or distributor of a chemically formulated consumer product subject to this subchapter shall submit the requested information specified in (a), (b) or (c) above to the Department.

(f) A person who holds for sale, offers for sale, or sells any chemically formulated consumer product subject to this subchapter shall, within 30 days of receipt of a written request, identify the distributor, manufacturer, or other person from whom the consumer product was obtained to the Department.

(g) Within 30 days of a receipt of the Department's written request, the manufacturer of a charcoal lighter material product shall submit to the Department:

1. Documentation for the product's certification issued by CARB or the air pollution agency of another state in accordance with N.J.A.C. 7:27-24.4(h); and
2. Any conditions of approval established by the agency that issued the certification.

(h) If the Department requests in writing that any manufacturer of a chemically formulated consumer product test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product, the manufacturer shall submit the test report to the Department within 60 days of the manufacturer's receipt of the written request.

(i) For any record required to be kept or reported in accordance with this section, or that is used or relied on in accordance with this subchapter, no person shall create, alter, falsify, or otherwise modify such record, in such a way that the record does not accurately reflect the information it purports to present (for instance, the amount of product produced, the constituents used to manufacture a product, or the chemical composition of the individual product).

(j) IPE, ACP, and variance documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27-24.4(k)5 and (l).

Administrative Correction.

See: 28 N.J.R. 851(a).

Recodified in part from N.J.A.C. 7:27-24.4 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-24.6, Federal supersession, is repealed.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Rewrote the introductory paragraph of (b); in (b)3vi, deleted "and" at the end; in (b)3vii(2) and (b)3x(1), inserted "specifically"; in (b)3xi, (b)3xi(1) and (b)3xi(2), substituted "propellant" for "propellent"; and in (j), updated the N.J.A.C. references.

7:27-24.7 Chemically formulated consumer products: testing

(a) Upon the written request of the Department, any manufacturer of a chemically formulated consumer product subject to the requirements of this subchapter shall test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product (or in the case of charcoal lighter material, its emissions per start) or the amount of a chlorinated toxic air contaminant the product contains. Such testing shall be performed utilizing the test methods in (b) through (g) below, as applicable.

(b) Testing to determine compliance with the VOC content limits at N.J.A.C. 7:27-24.4(a) or the prohibition of chlorinated toxic air contaminants at N.J.A.C. 7:27-24.4(n) shall be performed using:

1. CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, as supplemented or amended, which is incorporated by reference herein. For purposes of determining compliance with N.J.A.C. 7:27-24.4(l) through (o), Sections 3.5 and 3.7 of CARB Method 310 shall be used and the term "VOC" in those sections shall be interpreted as meaning "chlorinated toxic air contaminant"; or

2. An alternative method that is shown to accurately determine the concentration of VOCs or chlorinated toxic air contaminants in a product. Such methods must first be approved in writing by the Department and EPA.

(c) Compliance with a VOC content limit at N.J.A.C. 7:27-24.4(a) may also be demonstrated through calculation of the VOC content of a consumer product from records of the amounts of constituents used to make the product (excluding packaging), pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a chemically formulated consumer product keeps, for each day of production, accurate records of the amount and chemical

composition of the individual product constituents. These records must be kept for at least five years;

2. For the purposes of this subsection, the VOC content of a product shall be calculated according to the following equation:

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

where,

- A = total net weight of a unit of product (excluding any packaging);
 B = total weight of all VOCs in the constituents used to make the product, per unit;
 C = total weight of VOCs exempted under N.J.A.C. 7:27-24.4(e), per unit; and

3. If the calculations for VOC content based on product records appear to demonstrate compliance with the VOC limits, but these calculations are contradicted by the results of product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the calculations based on product records and may be used to establish a violation of the requirements of the VOC content limits set forth in this subchapter.

(d) Testing to determine whether a product is a liquid or a solid shall be performed using ASTM D4359-90(2006), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid," as supplemented or amended, which is incorporated by reference herein.

(e) Testing to determine compliance with the standards for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including subsequent revisions, which is incorporated by reference herein.

(f) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-07b, as supplemented or amended, which is incorporated by reference herein.

(g) Testing to determine whether a material is a "plasticizer" may be determined using ASTM Method E260-96(2006), as supplemented or amended, which is incorporated by reference herein.

(h) The Department may require any manufacturer that is required to perform testing pursuant to (a) above to provide to the Department product samples that are duplicates of the samples tested.

(i) Test methods can be obtained as follows:

1. ASTM test methods can be purchased from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585; Fax (610) 832-9555; or

ASTM test methods can be purchased from the ASTM website at <http://www.ASTM.org>;

2. SCAQMD test methods can be purchased from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934; Telephone (909) 396-2162;

3. CARB Method 310 is available on the web at <http://www.arb.ca.gov/testmeth/cptm/cptm.htm>.

Recodified from N.J.A.C. 7:27-24.5 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-24.7, Civil or criminal penalties, recodified to N.J.A.C. 7:27-24.12.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

In (a), inserted "or the amount of a chlorinated toxic air contaminant the product contains"; rewrote (b); in (d), substituted "(2006" for "(reapproved June, 2000)" and substituted "as supplemented or amended" for "including subsequent revisions"; in (d) and (f), substituted "as supplemented or amended" for "including subsequent revisions"; in (f), substituted "D86-07b" for "D86-90 (Sept. 28, 1990)"; and in (g), substituted "E260-96(2006), as supplemented or amended" for "E260-91, including subsequent revisions".

7:27-24.8 Portable fuel containers and spill-proof spouts: certification requirements

(a) Except as provided at N.J.A.C. 7:27-24.2(e) and (c) and (d) below, no person shall sell, offer for sale, hold for sale, advertise for sale, distribute for sale, supply for sale, or manufacture for sale in New Jersey on or after January 28, 2009, any portable fuel container, spout, or any portable fuel container and spout that has not been exempted from CARB or the EPA's certification requirements at 13 CCR 2467.3, 2467.4 and 2467.6 and 40 CFR 59.660 through 59.663, respectively, or has not been certified for use and sale by the manufacturer as follows:

1. For CARB certification, the product must be covered by a CARB Executive Order issued pursuant to 13 CCR 2467 through 2467.9; or

2. For EPA certification, the product must be covered by an EPA certificate of conformity issued pursuant to its portable fuel container certification program at 40 CFR 59.600 through 699.

(b) Certification criteria, including all test procedures for determining certification and compliance with the standards applicable to portable fuel containers, spouts, or portable fuel containers and spouts, produced on or after January 28, 2009, that are manufactured for sale, advertised for sale, sold, or offered for sale in New Jersey, or that are introduced, delivered or imported into New Jersey for introduction into commerce and that are subject to any of the standards prescribed in this subchapter, and documents incorporated by reference therein, are as follows:

1. For CARB certification, in "CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof

Spouts," as supplemented or amended. CP-501 is available at <http://www.arb.ca.gov> or from contacting CARB, at:

1001 "T" Street
P.O. Box 2815
Sacramento, CA 95812
(916) 322-3260
or at webmaster@arb.ca.gov; and

2. For EPA certification, in 40 CFR Part 59, Subpart F, generally, and for testing specifically, 40 CFR 59.653, each as supplemented or amended.

(c) Notwithstanding the provisions of (a) above, a portable fuel container or spout or both portable fuel container and spout manufactured before January 28, 2009, may be sold, offered for sale, held for sale, distributed, or supplied for sale until December 29, 2009, if it is labeled or designated for use solely with kerosene and the date of manufacture or a date-code representing the date of manufacture is clearly displayed on the portable fuel container or spout and on the packaging (if any) in which it is sold. The date of manufacture or date-code shall be located so that it is readily observable without disassembling any part of the packaging (if any). If the manufacturer uses a date-code to comply with this subsection, the manufacturer shall electronically register the product, including an explanation of the date-code, in accordance with the requirements at N.J.A.C. 7:27-24.10(a).

(d) The provisions of (a) and (c) above do not apply to a spout, portable fuel container, or portable fuel container and spout if:

1. The spout, portable fuel container, or portable fuel container and spout has been exempted or granted an IPE or variance by CARB, the EPA, or by the air pollution control agency of another state that has adopted a portable fuel container rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Portable Fuel Container Spillage Control" dated March 6, 2001, including subsequent revisions accessible at the OTC's website at <http://www.otcair.org>; and

2. The IPE or variance is valid for use in New Jersey pursuant to (e) below.

(e) The IPE or variance in (d) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE or variance is currently in effect (the Department shall consider an IPE or variance in effect if the issuing agency deems the IPE or variance to be in effect);

2. The product for which the IPE or variance is being claimed is the same product for which the IPE or variance was issued by the issuing agency;

3. For an IPE, the manufacturer has demonstrated to the issuing agency by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative

VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its portable fuel container product category as determined from applicable testing;

4. For a variance, the requirements at N.J.A.C. 7:27-24.4(j)3 are met; and

5. The manufacturer has submitted to the Department, in accordance with (f) below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this section under an IPE or variance rather than meet the applicable standards;

ii. The product brand name;

iii. A copy of the document(s) setting forth the IPE or variance, the issuing agency's approval, the issuing agency's conditions of approval, the manufacturer's documentation demonstrating compliance with the IPE or variance conditions, and any documents from the issuing agency that subsequently modify or terminate its conditions of approval;

iv. If an IPE, the demonstration of (e)3 above;

v. If a variance, documents that substantiate the manufacturer's claim of extraordinary economic hardship;

vi. The name of the state that previously approved the IPE or variance and the issuing-state's approval date; and

vii. A statement that the IPE or variance, as well as the product for which the IPE or variance is being used, conforms with (e)1 through 4 above.

(f) Any submittal pursuant to (e)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows: "Attention: Portable Fuel Container Innovative Product Exemption" or "Attention: Portable Fuel Container Variance," whichever is applicable.

(g) Compliance with the certification requirements in this subchapter does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable Federal and State statutes and regulations such as State fire codes, safety codes, and other safety regulations.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Section was "Portable fuel containers and spill-proof spouts: standards". Rewrote (a) and (b); in (c), deleted "and (b)", substituted "January 28, 2009" for "January 1, 2005" and "December 29, 2009" for "January 1, 2006", inserted "it is labeled or designated for use solely with kerosene and", and updated the N.J.A.C. reference; in the introductory paragraph of (d), deleted ", (b)" and substituted "do" for "shall"; rewrote (d)1; and added (g).

7:27-24.9 Portable fuel containers and spill proof spouts: labeling

(a) On and after January 1, 2005, a manufacturer of a spout, a portable fuel container, or a portable fuel container and spout that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b) shall clearly label the product as follows:

1. The following shall be displayed on a portable fuel container or on a portable fuel container and spout:

i. The phrase "Spill-Proof System" to mean that the product meets the applicable requirements at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the product's date of manufacture; and

iii. A representative code identifying the Executive Order Number issued by CARB or the number issued by the EPA for the portable fuel container or portable fuel container and spout;

2. The phrase "Not Intended for Refueling On-Road Motor Vehicles" in type 34 point or greater shall be displayed on a portable fuel container or on a portable fuel container and spout, spill-proof spout, or label, and on any accompanying package if, due to its design or other feature, the portable fuel container and spout cannot be used to refuel an on-road motor vehicle; and

3. The following shall be displayed on a spout's accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label:

i. The phrase "Spill-Proof Spout" to connote that, when used with a compatible fuel container, the spout meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the spout's date of manufacture;

iii. A representative code identifying the Executive Order Number issued by CARB or the number issued by the EPA for the spout; and

iv. The make, model number, and size of only those portable fuel container(s) the spout is designed to accommodate and can demonstrate compliance with N.J.A.C. 7:27-24.8.

(b) Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with the applicable standards in N.J.A.C. 7:27-24.8 may not display the phrase "Spill-Proof Spout" or "Spill-Proof System" on the portable fuel container or spout on any sticker affixed thereto, on any label, or on any accompanying package.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

In (a)1i, substituted "requirements" for "standards"; rewrote (a)1iii and (a)2; in (a)3iii, inserted "identifying the Executive Order Number issued by CARB or the number issued by the EPA for the spout"; in (a)3iv, deleted "; and" at the end; deleted (a)4; and in (b), deleted the comma following the N.J.A.C. reference.

7:27-24.10 Portable fuel containers and spill proof spouts: recordkeeping and reporting

(a) If the manufacturer of a spout, a portable fuel container, or a portable fuel container and spout uses a date-code on a product or its packaging, the manufacturer shall electronically register or re-register the product with the Department by following the procedure at N.J.A.C. 7:27-24.5(a)1 and 2, (b) and (c), and by following (b) through (e) below.

(b) The registration or re-registration shall include the following information:

1. The name of the manufacturer;
2. The full mailing address of the manufacturer;
3. The name and telephone number of a contact person;
4. Whether the product is a spout, portable fuel container, or portable fuel container and spout;
5. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.8(d), the following:
 - i. The name of the product;
 - ii. Whether the product is a spout, a portable fuel container, or a portable fuel container and spout; and
 - iii. The type of exemption;
6. An explanation of the date-code; and
7. An explanation of the representative code.

(c) The registration shall be submitted in accordance with the following schedule:

1. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey and not previously registered, the registration shall be submitted no later than the later of March 29, 2009, or within 90 days of selling the product in New Jersey.

(d) Each manufacturer subject to registration shall re-register the product within 90 days after any change in coding of the date-code or representative code.

(e) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the en-

velope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Portable Fuel Container Registration";

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

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

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Deleted former (a) and (b); recodified former (c) as (a); in (a), inserted "of a spout, a portable fuel container, or a portable fuel container and spout", substituted "(b)" for "(d)" and "(e)" for "(g)"; recodified former (d) through (g) as (b) through (e); rewrote (c)1; and deleted (c)2.

7:27-24.11 (Reserved)

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Repealed by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

Section was "Portable fuel containers and spill-proof spouts: testing".

7:27-24.12 Penalties and other requirements imposed for failure to comply

(a) Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A-3 and to applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f).

(b) If a chemically formulated consumer product subject to this subchapter does not comply with the applicable VOC or chlorinated toxic air contaminant content requirements at N.J.A.C. 7:27-24.4, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable VOC or chlorinated toxic air contaminant content requirements at N.J.A.C. 7:27-24.4;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration to the satisfaction of the Department that the product to be sold will meet the applicable VOC and chlorinated toxic air contaminant content requirements at N.J.A.C. 7:27-24.4.

(c) If a spout, portable fuel container, or portable fuel container and spout subject to this subchapter fails to comply with the applicable requirements at N.J.A.C. 7:27-24.8, the Department may issue an order requiring the product's manufacturer to demonstrate to the satisfaction of the Department that the product in fact complies with the applicable requirements at N.J.A.C. 7:27-24.8 by producing evidence of CARB or EPA certification or the issuance of an IPE, ACP, or variance for the product, or recall its non-complying product from all retail outlets in New Jersey within 30 days of the issuance of the order.

Recodified from N.J.A.C. 7:27-24.7 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).

In the introductory paragraph of (b) and in (b)1i, inserted "or chlorinated toxic air contaminant", in (b)3, inserted "and chlorinated toxic air contaminant"; and rewrote (c).

SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

Authority

N.J.S.A. 13:1B-3, 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

Source and Effective Date

R.1989 d.123, effective February 21, 1989.

See: 20 N.J.R. 1631(a), 21 N.J.R. 483(a).

Subchapter Historical Note

Public Notice: Pre-publication meeting on proposal. See: 24 N.J.R. 2128(a).

Law Review and Journal Commentaries

New Rules Establish Clean Air Act Standards. Richard M. Hluchan and Terrie-Anne Duda, 132 N.J.L.J. No. 8, S10 (1992).

7:27-25.1 Definitions

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