

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Climate, Air, & Energy, Deputy Commissioner  
625 Broadway, 14th Floor, Albany, New York 12233-1010  
P: (518) 402-2794 | F: (518) 402-9016  
[www.dec.ny.gov](http://www.dec.ny.gov)

March 2, 2021

Mr. Walter Mugdan  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007-1866

Dear Acting Administrator Mugdan:

On behalf of the Governor of the State of New York, I am submitting for approval by the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to incorporate revisions to Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 235 and attendant revisions to 6 NYCRR Part 200 as adopted on January 5, 2021.

The New York State Department of Environmental Conservation (DEC) has revised 6 NYCRR Part 235, "Consumer Products" to reduce volatile organic compound emissions, improve air quality, and promote regional product consistency. The revisions will help the state comply with federal Clean Air Act requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards and maintain regional product consistency in accordance with a memorandum of understanding dated June 3, 2010 among the Ozone Transport Commission (OTC) states. The revisions include the addition of new categories and the revision of others in order to make the New York regulation consistent with the OTC model rule and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, "Standards" was updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This action required that attendant revisions be made to 6 NYCRR Part 200, "General Provisions."

A public review process was held for the proposed SIP revisions. A "Notice of Proposed Rulemaking" that included information for three public hearings was published in the Environmental Notice Bulletin (ENB) and the New York State Register on February 12, 2020. Legislative public hearings on the proposed revisions to the regulations and the proposed subsequent submission as a SIP revision were scheduled to be held on April 14, 2020 in Albany; April 15, 2020 in Long Island City; and April 16, 2020 in Avon. However, Governor Cuomo signed Executive Order No. 202, "Declaring a Disaster Emergency in the State of New York" on March 7, 2020 because of the COVID-19 pandemic. Consequently, the scheduled hearings were cancelled, and the public comment period was extended by 30 days in order to allow the public sufficient time to submit written comments. The hearing cancellation and comment period extension notice was published in the April 1, 2020 ENB. No comments pertaining to the SIP

revision were received by the DEC during the comment period. Executive Order 202 remains in effect (by virtue of extension) as of the date of this letter.

The following documents are enclosed with this SIP revision:

1. Express Terms for 6 NYCRR Part 235, "Consumer Products" and 6 NYCRR Part 200, "General Provisions," as proposed on February 12, 2020;
2. Notice of proposed rulemaking, including public hearing information, as published in the ENB and New York State Register on February 12, 2020;
3. Newspaper proofs of publication for the proposed rulemaking;
4. Notice of public hearing cancellation as published in the ENB on April 1, 2020;
5. Assessment of Public Comments for all comments received on the proposed rulemaking;
6. Certificate of Adoption dated January 5, 2021;
7. Express Terms for 6 NYCRR Part 235 and 6 NYCRR Part 200 as adopted on January 5, 2021; and
8. Notice of Adoption published in the ENB and New York State Register on January 27, 2021.

If you have any questions or concerns, please contact Mr. Christopher LaLone, Acting Director, Division of Air Resources at (518) 402-8452.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Snyder", written in a cursive style.

Jared Snyder  
Deputy Commissioner  
Office of Climate, Air & Energy

Enclosures

c: R. Ruvo, EPA Region 2  
C. LaLone

## Express Terms

### 6 NYCRR Part 235, Consumer Products

#### Section 235-1.1 Applicability

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

#### Section 235-2.1 Definitions

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

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

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

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

where,

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

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

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

where,

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

where,

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

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

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

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

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

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

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

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

where,

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

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

(h) 'Adhesive' means any product that is used to bond one surface to another by attachment. 'Adhesive' does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For construction, panel, and floor covering adhesive and general purpose adhesive only, 'adhesive' also does not include units of product, less

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

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

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

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

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

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

(j) ‘Aerosol adhesive’ means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. ‘Aerosol adhesives’ include special purpose spray adhesives, mist spray adhesives and web spray adhesives.

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

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

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

- (1) home use;
- (2) use in structural pest control;
- (3) industrial; (or)

(4) institutional use. For the purposes of this definition only:

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

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

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



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

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

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

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

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

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

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

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

(v) 'Aromatic compound' means, for products manufactured on or after January 1, 2021, a carbon containing compound that contains one or more benzene or equivalent heterocyclic rings and has an initial boiling point less than or equal to 280 degrees Celsius. 'Aromatic compound' does not include compounds excluded from the definition of VOC in this section.

(w) 'Artist's Solvent/Thinner' means, for products manufactured on or after January 1, 2021, any liquid product, labeled to meet ASTM D4236 – 94 (March 1, 2005) Standard Practice for Labeling Art Materials for Chronic Health Hazards (see Table 1, Section 200.9 of this Title), packaged in a container equal to or less than 34 fluid ounces, and labeled to reduce the viscosity of, and or remove, art coating compositions or components.

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

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

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

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

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

[(z)] (ab) ‘Automotive instant detailer’ means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

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

[(ab)] (ad) ‘Automotive wax, polish, sealant or glaze’ means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle’s painted surfaces. ‘Automotive wax, polish, sealant or

glaze’ includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. ‘Automotive wax, polish, sealant or glaze’ does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

(ae) ‘Automotive windshield cleaner’ means, for products manufactured on or after January 1, 2021, a product labeled and packaged as an automotive windshield cleaner in the form of a moistened towelette and designed to be used on automotive windshields, automotive mirrors, and automotive headlights. The product must be labeled “for automotive use only.” ‘Automotive windshield cleaner’ does not include ‘automotive windshield washer fluid.’

[(ac)] (af) ‘Automotive windshield washer fluid’ means any liquid designed for use in a motor vehicle windshield washer system either as an anti-freeze or for the purpose of cleaning, washing, or wetting the windshield. ‘Automotive windshield washer fluid’ does not include fluids placed by the manufacturer in a new vehicle.

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

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

- (1) biological-type residues such as insect carcasses and tree sap; and

(2) road grime, such as road tar, roadway paint markings, and asphalt.

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

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

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

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

- (1) electrical starters and probes;
- (2) metallic cylinders using paper tinder;

- (3) natural gas;
- (4) propane; and
- (5) fat wood.

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

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

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

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

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

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

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

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

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

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

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

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

(2) is used in automotive applications that are:

- (i) automotive under the hood applications requiring heat, oil or gasoline resistance, or
- (ii) body-side molding, automotive weatherstrip or decorative trim.

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

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

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



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

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

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

[(av)] (ay) ‘Deodorant’ means [ :

(1) For products manufactured before January 1, 2010: any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

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

[(aw)] (az) ‘Deodorant body spray’ means a personal fragrance product with 20 percent or less fragrance, that is designed for application all over the human body to provide a scent. A ‘deodorant body spray’ product

that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla, is a “deodorant.”

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

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

- (1) products designed solely for use on human or animals;
- (2) products designed for agricultural use;
- (3) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; [and]
- (4) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes[.] ;
- (5) products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent, or veterinary establishments;
- (6) products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

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

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

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

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

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

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

(bf) 'Dual purpose air freshener/disinfectant' means, for products manufactured on or after January 1, 2021, an aerosol product that is represented on the product container for use as both a disinfectant and an air freshener, or is so represented on any sticker, label, packaging, or literature attached to the product container.

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

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

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

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

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

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

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

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

‘Energized electrical cleaner’ does not include electronic cleaner.

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

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

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

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

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

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

[(bj)] (bn) ‘Existing product’ means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale in the State of New York prior to January 1, 20[10]21, or any subsequently introduced identical formulation.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

[(bv)] (bz) 'Footwear or leather care product' means any product designed or labeled for use to be applied to footwear or to other leather articles/components, to maintain, enhance, clean, or modify the

appearance, durability, fit, or flexibility of the footwear or leather article/component. 'Footwear' includes both leather and non-leather apparel. 'Footwear or leather care product' does not include fabric protectant, general purpose adhesive, contact adhesive, vinyl/fabric/leather/polycarbonate coating, rubber and vinyl protectant, fabric refresher, products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than two millimeters thick.

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

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

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

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

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

- (1) contact adhesives;
- (2) construction, panel, and floor covering adhesives;
- (3) adhesives designed exclusively for application on one specific category of substrates (‘i.e.’, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or
- (4) adhesives designed exclusively for use on one specific category of articles (‘i.e.’, articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

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

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

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

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

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

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

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

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

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

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

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

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

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

[(cj)] (cn) ‘Hair styling gel’ means a consumer product manufactured before January 1, 2010, that is a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

[(ck)] (co) ‘Hair spray’ means:

[ (1) for products manufactured before January 1, 2010: a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time; and

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

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

[(cm)] (cq) ‘Heavy-duty hand cleaner or soap’ means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer’s ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. ‘Heavy-duty hand cleaner or soap’ does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

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

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

[(cs)] ‘High temperature coating’ means, for products manufactured on or after January 1, 2021, a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Celsius (400 degrees Fahrenheit).

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

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

(cv) ‘Industrial maintenance coating’ means, for products manufactured on or after January 1, 2021, a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats formulated for application to substrates, including floors, exposed to one or more of the following extreme environmental conditions listed below and labeled “For industrial use only,” “For professional use only,” “Not for residential use,” or “Not intended for residential use.”

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

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

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

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

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

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

(1) for agricultural use;

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

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

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



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

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

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

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

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

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

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

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

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

- (1) [sold] exclusively sold directly or through distributors to establishments which manufacture or construct goods or commodities; and
- (2) labeled [not for retail sale] exclusively for “use in the manufacturing process only”.

[(cz)] (df) ‘LVP content’ means the total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product’s total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) For products manufactured before January 1, 2021: any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. ‘Multi-purpose solvent’ includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. ‘Multi-purpose solvent’ does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

(2) For products manufactured on or after January 1, 2021: any liquid product designed or labeled to be used for dispersing, dissolving, or removing contaminants or other organic materials. ‘Multi-purpose solvent’ also includes:

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

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

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

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

(v) products labeled to prepare surfaces for painting.

(3) For the purposes of this definition only, for products manufactured on or after January 1, 2021, 'paint clean-up' means any liquid product labeled for cleaning oil-based or water-based paint, lacquer, varnish, or related coatings from, but not limited to, painting equipment or tools, plastics, or metals.

(4) For the purposes of this definition only, for products manufactured on or after January 1, 2021, 'multi-purpose solvent' does not include:

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

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

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

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

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

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

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

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

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

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

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

(1) for products manufactured before January 1, 2021, flooring of a mineral content which is not flexible. 'Nonresilient Flooring' includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

(2) For products manufactured on or after January 1, 2021, products formerly subject to this definition are subject to the provisions of the floor polish or wax category as defined in subdivision (bv) of this section.

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

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

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

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

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

[(dt)] (dz) ‘Paint’ means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used



for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

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

(eb) ‘Paint thinner’ means, for products manufactured on or after January 1, 2021, any liquid product used for reducing the viscosity of coating compositions or components that prominently displays the term paint thinner, lacquer thinner, thinner, or reducer on the front panel of its packaging. ‘Paint thinner’ does not include any of the following products:

(1) artist’s solvent/thinner;

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

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

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

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

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

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

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

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

[(dx)] (ee) ‘Pesticide’ means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of

substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term 'pesticide' will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) For products manufactured before January 1, 2021: any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. ‘Rubber [and]/vinyl protectant’ does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

(2) For products manufactured on or after January 1, 2021, any product labeled to protect, preserve or renew vinyl or rubber on vehicles, tires, luggage, furniture, and/or household products such as vinyl covers, clothing, and accessories. ‘Rubber/vinyl protectant’ does not include: products labeled to clean the wheel rim, such as aluminum or magnesium wheel cleaners; tire cleaners that do not leave an appearance-enhancing or protective substance on the tire; pigmented products designed or labeled to be used primarily for coloring; products used for construction, reconstruction, modification, structural maintenance or repair of rubber or vinyl substrates; or products, other than those labeled to be used on vehicle tires, qualifying as either clear coating or vinyl/fabric/leather/polycarbonate coating.

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

(ey) ‘Sanitizer’ means, for products manufactured on or after January 1, 2021, products that are labeled as a ‘sanitizer’, or labeled to reduce, but not necessarily eliminate, microorganisms in the air, on surfaces, or on inanimate objects, and whose label is registered as a ‘sanitizer’ under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. section 136 et seq.) (see Table 1, Section 200.9 of this Title). Products that are labeled as both a ‘sanitizer’ and a ‘disinfectant’ are considered disinfectants. ‘Sanitizer’ does not include:

- \_\_\_\_\_ (1) disinfectant;
- \_\_\_\_\_ (2) products labeled solely for use on humans or animals;
- \_\_\_\_\_ (3) products labeled solely for agricultural use;
- \_\_\_\_\_ (4) products labeled solely for use in swimming, therapeutic tubs, or hot tubs;
- \_\_\_\_\_ (5) products which are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;
- \_\_\_\_\_ (6) products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent or veterinary establishments;
- \_\_\_\_\_ (7) products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or
- \_\_\_\_\_ (8) products which are labeled as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet/urinal care products, metal polishers, carpet cleaners, or fabric refreshers that may also make sanitizing or anti-microbial claims on the label.

[(er)] (ez) ‘Sealant and caulking compound’ means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. ‘Sealant and caulking compound’ does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear/paintable/water resistant caulking compounds; floor seam sealers; products designed exclusively for

automotive uses; or sealers that are applied as continuous coatings. ‘Sealant and caulking compound’ also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only: ‘Removable caulking compounds’ means a compound which temporarily seals windows or doors for three- to six-month time intervals; and ‘clear/paintable/water resistant caulking compounds’ means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

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

[(et)] (fb) ‘Shaving cream’ means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair. ‘Shaving cream’ does not include shaving gel.

[(eu)] (fc) ‘Shaving gel’ means an aerosol product which dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other bodily hair. ‘Shaving gel’ does not include shaving cream.

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



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

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

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

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

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

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

[(ez)] (fh) ‘Solid’ means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D 4359-90 (2000)e1 (see Table 1, Section 200.9 of this Title).

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

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

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

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

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

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

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

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

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

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

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

[(fb)] (fj) ‘Spot remover’ means any product which is labeled for use in cleaning localized areas, or removing localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. ‘Spot remover’ does not include dry cleaning fluid, laundry pre-wash, or multi-purpose solvent.

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

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

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

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

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

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

[(fq)] 'Temporary hair color' means, for products manufactured on or after January 1, 2021, any product that applies color, glitter, or UV-active pigments to hair, wigs, or fur and is removable when washed. 'Temporary hair color' includes hair color mousses and products labeled to add texture or thickness to cover thinning/balding areas. 'Temporary hair color' does not include hair spray, hair styling product, or hair mousse.

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

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

[(fk)] (ft) 'Toilet/Urinal care product' means any product designed or labeled for use to clean and/or deodorize toilet bowls, toilet tanks, or urinals. Toilet bowls, toilet tanks, or urinals includes, but is not limited to, toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations, and toilets or urinals in vehicles such as buses, recreational motor homes, boats, ships, and aircraft. 'Toilet/Urinal care product' does not include bathroom and tile cleaner or general purpose cleaner.

[(fl)] (fu) 'Total maximum historical emissions (TMHE)' means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The [TMHE] 'TMHE' shall be calculated for each ACP product during each portion of a

compliance period for which the responsible ACP has failed to provide the required VOC content or enforceable sales records. The [TMHE] ‘TMHE’ shall be expressed to the nearest pound and calculated according to the following calculation:

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

where,

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

where,

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

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

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

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

[(fn)] (fv) ‘Type A propellant’ means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product’s packaging.

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

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

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

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

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

[(fs)] (gb) ‘VOC content’ means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to [section] sections 235-9.1(a) and (b) of this Part, and calculated according to the following equations:

For all products except for charcoal lighter material products:

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

where,

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

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

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

For charcoal lighter material products only:

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

Where,

Certified Emissions = the emissions level for products approved by director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(f) of this Part, as determined pursuant to

South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 28, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

and

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

---

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

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

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

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



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

[(fx)] (gh) ‘Wood cleaner’ means a product labeled for use to clean wooden materials including but not limited to decking, fences, flooring, logs, cabinetry, and furniture. ‘Wood cleaner’ does not include dusting aid, general purpose cleaners, furniture maintenance product, floor wax stripper, floor polish or wax, or products designed and labeled for use exclusively to preserve or color wood.

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

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

(gk) ‘Zinc rich primer’ means, for products manufactured on or after January 1, 2021, a coating that:

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

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

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

## Section 235-3.1 Standards

(a) Except as provided in Subparts 235-4 (Exemptions), 235-5 (Innovative Products), 235-8 (Variances), and 235-11 (Alternative Control Plan) of this Part, no person shall sell, supply, offer for sale, or

manufacture for sale in the State of New York any consumer product manufactured on or after the corresponding date listed below in the Table of Standards (table) which contains VOCs in excess of the VOC content limits specified in the table:

Table of Standards

'Product Category'	'VOC Content Limit' (‘percent by weight’)		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	<u>Manufactured On or after January 1, 2021</u>
Adhesive Removers:			
Floor or Wall covering		5	
Gasket or Thread Locking		50	
General Purpose		20	
Specialty		70	
Adhesives:			
Mist Spray	65		
Web Spray	55		
Special Purpose Spray Adhesives:			
Mounting, Automotive Engine Compartment, and Flexible Vinyl	70		
Polystyrene Foam and Automotive Headliner	65		
Polyolefin and Laminate Repair/Edgebanding	60		
Construction, Panel, and Floor Covering	15		<u>7</u>
Contact	80*		
Contact General purpose		55	
Contact Special purpose		80	
General Purpose	10		
Structural Waterproof	15		
Air Fresheners:			
Single-Phase Aerosols	30		
Double-Phase Aerosols	25		
Liquids/Pump Sprays	18		
Solids/Gels	3		
<u>Dual Purpose Air Freshener / Disinfectant</u>			<u>60</u>
Antiperspirants:			
Aerosols	40 HVOC 10 MVOC		
Non-Aerosols	0 HVOC 0 MVOC		
Anti-static Product:			
<u>Aerosol</u>			<u>80</u>

Non-aerosol		11	
Automotive Brake Cleaner[s] or Brake Cleaner	45		<u>10</u>
Automotive Rubbing or Polishing Compound	17		
Automotive Wax, Polish, Sealant or Glaze:			
Hard Paste Waxes	45		
Instant Detailers	3		
All Other Forms	15		
Automotive Windshield Cleaner			<u>35</u>
Automotive Windshield Washer Fluids	35		
Bathroom and Tile Cleaners:			
Aerosols	7		
All Other Forms	5		<u>n/a</u>
Non-Aerosol			<u>1</u>
Bug and Tar Remover	40		
Carburetor or Fuel-Injection Air Intake Cleaners	45		<u>10</u>
Carpet and Upholstery Cleaners:			
Aerosols	7		
Non-Aerosols (Dilutables)	0.1		
Non-Aerosols (Ready-to-Use)	3		
Charcoal Lighter Material	see subdivision (f) of this section		
Cooking Spray:			
Aerosols	18		
Deodorants:			
Aerosols	0 HVOC 10 MVOC		
Non-Aerosols	0 HVOC 0 MVOC		
<u>Disinfectant:</u>			
Aerosols			<u>70</u>
Non-Aerosols			<u>1</u>
Dusting Aids:			
Aerosols	25		
All Other Forms	7		
Electrical Cleaner		45	
Electronic Cleaner		75	
Engine Degreasers:			
Aerosols	35		<u>10</u>
Non-Aerosols	5		
Fabric Protectants	60		
Fabric Refresher:			
Aerosols		15	
Non-Aerosols		6	
Floor Polishes/Waxes:			
Products for Flexible Flooring Materials	7		<u>1</u>
Products for Nonresilient Flooring	10		<u>1</u>

Wood Floor Wax	90		
Floor Wax Strippers:			
Non-Aerosols	See subdivision (h) of this section		
Footwear or Leather Care Product:			
Aerosol		75	
Solid		55	
Other forms		15	
Furniture Maintenance Products:			
Aerosols	17		
All Other Forms Except Solid or Paste	7		<u>n/a</u>
Non-Aerosol (Except Solid or Paste)			<u>3</u>
General Purpose Cleaners:			
Aerosols	10		<u>8</u>
Non-Aerosols	4		
General Purpose Degreasers:			
Aerosols	50		<u>10</u>
Non-Aerosols	4		
Glass Cleaners:			
Aerosols	12		
Non-Aerosols	4		
Graffiti Remover:			
Aerosol		50	
Non-Aerosols		30	
Hair Mousses	6		
Hairshines	55		
Hairsprays	55		
Hair Styling Gels	6		
Hair Styling Products:			
Aerosols and Pump Sprays		6	
All other forms		2	
Heavy-Duty Hand Cleaner or Soap	8		
Insecticides:			
Crawling Bug (Aerosol)	15		
Crawling Bug (All Other Forms)	20		
Flea and Tick	25		
Flying Bug (Aerosol)	25		
Flying Bug (All Other Forms)	35		
Foggers	45		
Lawn and Garden (All Other Forms)	20		
Lawn and Garden (Non-Aerosol)	3		
Wasp and Hornet	40		
Laundry Prewash:			
Aerosols/Solids	22		
All Other Forms	5		
Laundry Starch Products	5		<u>4.5</u>

Metal Polishes/Cleaners	30		
Multi-Purpose Lubricant (Excluding Solid or Semi-Solid Products)	50		
<u>Multi-Purpose Solvent</u>			<u>3</u>
Nail Polish Remover	75		<u>1</u>
Non-Selective Terrestrial Herbicide:			
Non-Aerosols	3		
Oven or Grill Cleaners:			
Aerosol/Pump Sprays	8		
Liquids	5		
Non-Aerosols			4
Paint Remover or Strippers	50		
<u>Paint Thinner</u>			<u>3</u>
Penetrants	50		
Rubber and Vinyl Protectants:			
Non-Aerosols	3		
Aerosols	10		
<u>Sanitizer:</u>			
<u>Aerosol</u>			<u>70</u>
<u>Non-Aerosol</u>			<u>1</u>
Sealants and Caulking Compounds	4		
Shaving Creams	5		
Shaving Gel		7	<u>4</u>
Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60		
Spot Removers:			
Aerosols	25		
Non-Aerosols	8		
<u>Temporary Hair Color:</u>			
<u>Aerosol</u>			<u>55</u>
Tire Sealants and Inflators	20		
Toilet/Urinal Care:			
Aerosol		10	
Non-Aerosol		3	
Undercoatings:			
Aerosols	40		
Wood Cleaner:			
Aerosol		17	
Non-Aerosol		4	

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

“n/a” not applicable

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

(c) ‘Products that are diluted prior to use’.

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

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

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

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

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

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

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

(1) ‘Regulatory standards’.

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

(‘a’) the manufacturer can demonstrate that they have been issued a currently effective certification by the CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, section 94509(h), of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title). This certification remains in effect

for the State of New York for as long as the CARB certification remains in effect. Any manufacture claiming such a certification on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the certification decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the certification;

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

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

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

(2) ‘Certification requirements’.

(i) No charcoal lighter material formulation shall be certified under this subsection unless the applicant for certification demonstrates to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation [satisfaction] that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality



Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 28, 1991 (the South Coast Air Quality Management District Rule 1174 Testing Protocol) (see Table 1, section 200.9 of this Title). The provisions relating to LVP-VOC in sections 235-2.1[(da)](dg) and 235-4.1(f) of this Part shall not apply to any charcoal lighter material subject to the requirements of this subdivision and subdivision (a) of this section.

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

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

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

(‘b’) the exact text and/or graphics that will appear on the charcoal lighter material’s principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was

used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) for that product, unless:

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

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

(‘c’) for a charcoal lighter material which meets the criteria specified in subclause (‘b’)(‘1’) of this subparagraph, the usage instructions provided to the director, Division of Air Resources, Department of Environmental Conservation shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) for that product; and

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

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

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

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

(i) any change in the usage directions; or

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

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

(g) 'Requirements for aerosol adhesives'.

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

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

adhesive, then the product shall be classified as either a web spray adhesive or a mist spray adhesive.

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

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

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

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

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

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

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

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

CFC-11 (trichlorofluoromethane);

CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane);

halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane);

halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane);

HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane);

HCFC-142b (1-chloro-1,1-difluoroethane);  
1,1,1-trichloroethane; and,  
carbon tetrachloride.

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

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

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

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

(2) [Sell-through of products. Contact adhesives, electronic cleaners, footwear or leather care products, and general purpose degreasers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2010, may be sold, supplied, or offered for

sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

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

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

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

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

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

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



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

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

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

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

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

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

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

[(2) Notification for products sold during the sell-through period. Any person who sells or supplies any solid air freshener or toilet/urinal care product that contains para-dichlorobenzene must notify the purchaser of the product in writing that the sell-through period for the product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

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

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

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

(1) Effective January 1, 2021, no person shall sell, supply, offer for sale, or manufacture for use in New York any bathroom and tile cleaner, construction, panel and floor covering adhesive or electronic cleaner labeled as "energized electronic equipment use only," general purpose cleaner, or

oven or grill cleaner that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

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

(p) ‘Requirements for paint thinner and multipurpose solvents’

(1) Except as provided below, effective January 1, 2021, no person shall sell, supply, offer for sale, or manufacture for use in New York any multi-purpose solvent or paint thinner that contains any of the following:

(i) methylene chloride, perchloroethylene, or trichloroethylene; or

(ii) greater than 1 percent Aromatic Compound content by weight.

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

## Section 235-4.1 Exemptions

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 235-5.1 Innovative products

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

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

granted an exemption by the CARB may seek an innovative products exemption in accordance with the following criteria:

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

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

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

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

where:

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

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

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

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

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

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

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

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

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

(3) A manufacturer shall apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for any exemption claimed under paragraph (1) of this subdivision. The application shall include the supporting documentation that demonstrates the emissions from the



innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the director, Division of Air Resources, Department of Environmental Conservation to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a manufacturer pursuant to this Subpart shall be handled in accordance with the procedures specified in applicable New York State confidentiality requirements.

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

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

exemption will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

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

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

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

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

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

#### Section 235-6.1 Administrative requirements

(a) 'Product dating'.

(1) Each manufacturer of a consumer product subject to Subpart 235-3 of this Part shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.

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

YY DDD = year year day day day

Where:

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

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

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

(4) The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without irreversibly disassembling any part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container without removing any product packaging.

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

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

(b) 'Additional product dating requirements'.

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

the director, Division of Air Resources, Department of Environmental Conservation [by the close of business December 31, 2010].

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

(3) No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

(4) Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential. (Note: If a manufacturer believes there is something in the date code explanation related to something other than the date of manufacture that the manufacturer believes to be confidential, then the manufacturer should modify the explanation prior to submitting it to the Department so that the date code explanation only includes non-confidential date code information.)

(c) [‘Most restrictive limit’.

(1) Products manufactured before January 1, 2010, and FIFRA-registered insecticides manufactured before January 1, 2011. Notwithstanding the definition of product category as defined in section 235-2.1(ec) of this Part, if anywhere on the principal display panel of any consumer product manufactured before January 1, 2010, or any FIFRA registered insecticide manufactured before June 1,

2011, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC content limit is specified in section 235-3.1(a) of this Part, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products, and insecticide foggers.

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

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

(1) In addition to the requirements specified in subdivision[s] (a) [and (c)] of this section, and Subpart 235-7 of this Part, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover[s], electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this Part shall ensure that all products clearly display the following information on each product container [which is manufactured on or after January 1, 2010]:

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

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

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

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

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

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

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

#### Section 235-7.1 Reporting requirements

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

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

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

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



- (4) the product category to which the consumer product belongs;
- (5) the applicable product form(s) listed separately;
- (6) an identification of each product brand name and form as a household product, i&i product, or both;
- (7) separate New York State sales in pounds per year, to the nearest pound, and the method used to calculate New York State sales for each product form;
- (8) for information submitted by multiple companies, an identification of each company which is submitting relevant data separate from that submitted by the responsible party. All information from all companies shall be submitted by the date specified in this subdivision;
- (9) for each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest 0.1 percent:
- (i) total Table B compounds;
  - (ii) total LVP-VOCs that are not fragrances;
  - (iii) total all other carbon-containing compounds that are not fragrances;
  - (iv) total all non-carbon-containing compounds;

(v) total fragrance;

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

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

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

(vii) total paradichlorobenzene;

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

(i) each Table B compound;

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

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

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

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

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

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

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

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

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

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

perchloroethylene or methylene chloride if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

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

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

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

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

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

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

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

#### Section 235-8.1 Variances

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

Division of Air Resources, Department of Environmental Conservation, the variance will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

The variance application shall set forth:

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

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

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

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

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

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

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

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

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

#### Section 235-9.1 Test methods

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

information will be handled in accordance with the confidentiality procedures specified in applicable New York State laws and regulations.

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

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

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

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

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

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

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

#### Section 235-10.1 Severability

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

#### Section 235-11.1 Alternative control plan for consumer products

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

(a) Any manufacturer of consumer products which have been granted an ACP agreement by the CARB under the provisions in sections 94540-94555 of Title 17 of the California Code of Regulations (see Table 1,



section 200.9 of this Title) shall be exempt from the Table of Standards in section 235-3.1(a) of this Part for the period of time that the CARB ACP agreement remains in effect provided that all ACP products within the CARB ACP agreement are contained in the Table of Standards in section 235-3.1(a) of this Part. Any manufacturer claiming such an ACP agreement on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the CARB ACP decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(‘b’) an identification of specific enforceable sales records to be provided to the director, Division of Air Resources, Department of Environmental Conservation for enforcing the provisions of this Part and the ACP agreement approving an ACP. The

enforceable sales records shall be provided to the director, Division of Air Resources, Department of Environmental Conservation no later than the compliance period dates specified in clause ('a') of this subparagraph; and

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

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

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

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

ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of New York during each compliance period; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The director, Division of Air Resources, Department of Environmental Conservation shall not approve an ACP submitted by a responsible ACP party if the director, Division of Air Resources, Department of Environmental Conservation determines, upon review of the responsible ACP party’s compliance history with past or current ACPs or the requirements for consumer products in Subparts 235-1 through 235-11 of this Part, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

(d) ‘ACP approval time frames’.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(f) 'Violations'.

(1) Any person who commits a violation of this Part is subject to the penalties specified in applicable New York State laws and regulations. Failure to meet any requirement of this Part or any condition of an applicable ACP agreement shall constitute a single, separate violation of this Part for

each day until such requirement or condition is satisfied, except as otherwise provided in paragraphs (2) through (8) of this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

where,

NEV = number of ACP limit violations

ACP Emissions = the ACP emissions for the compliance period

ACP Limit = the ACP limit for the compliance period

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

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

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

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

(g) 'Surplus reductions and surplus trading'.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) accurate documentation showing that the early reformulation(s) reduced the VOC content of the ACP product(s) to a level which is below the pre-ACP VOC content

of the product(s), or below the applicable VOC content limit(s) specified in section 235-3.1(a) of this Part, whichever is the lesser of the two;

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

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

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

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

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

where,

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

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

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

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

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

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

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

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

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

(h) ‘Reconciliation of shortfalls’.

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

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

(3) All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental

Conservation, by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

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

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

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

(i) product name;

(ii) product formulation;

(iii) product form;

(iv) product function;

(v) applicable product category(ies);

(vi) VOC content;

(vii) LVP content;

(viii) date-codes; or

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

(‘a’) the nature of the modification;

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

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

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

(2) Modifications that require director, Division of Air Resources, Department of Environmental Conservation pre-approval: The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement approving the ACP. Any such proposed modifications shall be fully described in writing and forwarded to the director, Division of Air Resources, Department of Environmental Conservation. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this Part. The



director, Division of Air Resources, Department of Environmental Conservation shall act on the proposed modifications using the procedure set forth in subdivision (d) of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as any proposed modification(s) is approved in writing by the director, Division of Air Resources, Department of Environmental Conservation.

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

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

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

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

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

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

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

(k) 'Cancellation of an ACP'.

(1) An ACP shall remain in effect until:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## 6 NYCRR Part 200, General Provisions

### Express Terms

(Sections 200.1 through 200.8 remain unchanged)

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

235-2.1(g)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (Feb. 28, 1991)	††††
<u>235-2.1(w)</u>	<u>ASTM, D4236-94 (March 1, 2005)</u>	<u>****</u>
235-2.1 [(ay)] <u>(bb)</u>	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et. seq. (January 2, 2001)	**
235-2.1 [(bl)] <u>(bp)</u>	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136, et. seq. (January 2, 2001)	**
235-2.1 [(cx)] <u>(dd)</u>	ASTM, D4359-90(2000)el (2000)	****
235-2.1 [(da)] <u>(dg)</u> (1)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-2.1 [(da)] <u>(dg)</u> (3)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-2.1 [(da)] <u>(dg)</u> (4)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
<u>235-2.1(ey)</u>	<u>Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136, et. seq. (January 2, 2001)</u>	<u>**</u>
235-2.1 [(ez)] <u>(fh)</u>	ASTM, D4359-90(2000)el (2000)	****
235-2.1 [(fa)] <u>(fi)</u> (2)	ASTM, E 260-96 (2001)	****
235-2.1 [(fe)] <u>(fm)</u>	Department of Defense Federal Specification MMM-A-181D (Type 1, Grade A)  40 CFR Part 59, Subpart C (July 1, 2001)	††††  *
235-2.1 [(fs)] <u>(gb)</u>	South Coast Air Quality Management District, Rule 1174, Ignition Method	††††

	Compliance Certification Protocol (February 28, 1991)	
235-3.1(b)	Title 17, California Code of Regulations, Section 93000 (Amended July 21, 1999)	***
235-3.1(e)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq. (January 2, 2001)	**
235-3.1(f)(1)(i)(‘a’)	Title 17, California Code of Regulations, Section 94509(h) (Amended May 25, 2000)	***
235-3.1(f)(2)(i)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(ii)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘a’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘b’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘c’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(4)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(g)(1)	California Health and Safety Code section 41712(h)(2)	†
235-4.1(g)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq. (January 2, 2001)	**
235-5.1(a)	Title 17, California Code of Regulations, Section 94511 (Amended May 25, 2000)	***
235-5.1(a)	Title 17, California Code of Regulations, Section 94503.5 (Amended October 26, 2000)	***



235-5.1(b)	Title 17, California Code of Regulations, Section 94511 (Amended May 25, 2000)	***
	Title 17, California Code of Regulations, Section 94503.5 (Amended October 26, 2000)	***
235-9.1(a)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-9.1(b)(2)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-9.1(c)	ASTM, D 4359-90(2000)el (2000)	*****
235-9.1(d)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-9.1(e)	ASTM D 86-90 (September 28, 1990)	*****
235-11.1(a)	Title 17, California Code of Regulations, Sections 94540-94555 (March 23, 1995)	***
235-11.1(b)	Title 17, California Code of Regulations, Sections 94540-94555 (March 23, 1995)	***



**For further information, contact:**

Steve Yarrington  
NYS DEC - Division of Air Resources  
625 Broadway  
Albany, NY 12233-3254  
Phone: (518) 402-8403  
E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

---

**Notice of Proposed Rulemaking  
6 NYCRR Part 235, Consumer Products  
6 NYCRR Part 200, General Provisions**

**Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:**

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

Part 235 will also be submitted to the United State Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan (SIP) for New York State.

Documents pertaining to this [rulemaking](#) can be found on the Department's website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

**Written comments on the proposed rule may be submitted until 5:00 p.m. on April 21, 2020.** For further information, contact: Kenneth A. Newkirk, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3250, Phone (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Requests for information and comments related to the SIP revision may be obtained from Robert D. Bielawa, NYS DEC -Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov) **Written statements may be submitted until 5:00 pm on April 21, 2020.**

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

**Date:** 4/14/2020  
**Time:** 11:00 a.m.  
**Location:** NYS DEC  
625 Broadway, Public Assembly Room 129A/B  
Albany, NY 12233

**Date:** 4/15/2020  
**Time:** 11:00 a.m.  
**Location:** 1 Hunter's Point Plaza  
47-40 21st Street, Room 834 NYSDOT  
Long Island City, NY 11101

**Date:** 4/16/2020  
**Time:** 11:00 a.m.  
**Location:** 6274 Avon-Lima Road (Routes 5 and 20), Conference Room  
Avon, NY 14414-9516

NYS DEC will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 7, 2020, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

**For further information, contact:**

Kenneth A. Newkirk  
NYS DEC - Division of Air Resources  
625 Broadway  
Albany, NY 12233-3250  
Phone (518) 402-8396  
E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

---

## **Notice of New York State Department of Environmental Conservation Program Policy**

### **DAR-10: NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis**

This guide sets forth the New York State Department of Environmental Conservation (NYS DEC) Division of Air Resources' recommended air dispersion modeling procedures for conducting ambient air quality impact analyses. These procedures summarize significant aspects of the United States Environmental Protection Agency's (US EPA) approved methodologies, as referenced in 40 CFR Part 51, Appendix W, "Guideline on Air Quality Models"; hereinafter also referred to as "US EPA's Modeling Guidelines". Additional specific recommendations are provided herein to augment US EPA methods or interpret New York specific regulations. This document replaces the DAR -10 guidance issued on May 9, 2006 and includes the latest regulatory guidance and compliance methodologies.

This policy outlines NYS DEC's recommended techniques and procedures to be used in dispersion modeling analyses submitted to support air permit applications and other air quality impact analyses required by NYS DEC. Consultation with NYS DEC staff is necessary for any modeling techniques which vary from the guidance contained in this document. The NYS DEC's approach specific to the evaluation of toxic air contaminants is contained in policy document DAR-1, but the modeling techniques and requirements described here apply. A list of pertinent federal and New York State statutes and regulations which provide a basis for the Division of Air Resources' (DAR) air quality impact analysis requirements is provided in Appendix A of this document.

The full text and pdf printable version of this [policy](http://www.dec.ny.gov/regulations/propregulations.html#public) can be found at: <http://www.dec.ny.gov/regulations/propregulations.html#public>.

**Written comments on the proposed guidance may be submitted until 5:00 p.m. March 13, 2020.**

#### **For further information, contact:**

Elvira Brankov  
NYS DEC - Division of Air Resources  
625 Broadway  
Albany, NY 12233-3250  
Phone: (518) 402-8402  
E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

---

## **Notice of Pre-Proposal Webinar on Statewide Greenhouse Gas Emission Limit Rulemaking**

The New York State Department of Environmental Conservation (NYS DEC) will host an informational webinar to provide the public the opportunity to learn and ask questions about the rulemaking to establish statewide greenhouse gas emission limits per Article 75 of the Environmental Conservation Law, as amended by the Climate Leadership and Community Protection Act (Chapter 106 of the Laws of 2019).

### **This webinar will be offered on two dates.**

**Date:** Friday, February 14, 2020

**Time:** 11:30 a.m. to 12:30 p.m.

**Date:** Friday, February 28, 2020

**Time:** 11:30 a.m. to 12:30 p.m.

Instructions and Information: [Log-on instructions for this webinar as well as the pre-proposal draft terms](http://www.dec.ny.gov/energy/99223.html) for 6 NYCRR Part 496 will be available on NYS DEC's Climate Change Mitigation website: <http://www.dec.ny.gov/energy/99223.html>.

#### **Written comments:**

The public is invited to submit written comments on the potential rulemaking as follows:

- By email to: [climatechange@dec.ny.gov](mailto:climatechange@dec.ny.gov) ; please include "Part 496 Emission Limit" in the subject line of the email.
- By mail to NYS DEC, Office of Climate Change, 625 Broadway 9th Floor, Albany, NY 12233-1030.

the reduction of ozone forming pollutants. The regulation ensures a fair and level playing field for all GDF owners and/or operators as well as for all manufacturers, contractors and testers of gasoline dispensing equipment.

5. Rural area participation: Rural areas will not be adversely affected by the proposed changes. The changes proposed apply to GDF owners and/or operators throughout the entire state. The Department held public meetings for industry stakeholders to present a draft of the proposed regulatory changes at various locations throughout the state. These locations were convenient for persons from rural areas to participate. The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. There will be a public comment period in which interested parties can submit written comments.

#### **Job Impact Statement**

1. Nature of impact: The Department of Environmental Conservation (Department) proposes to repeal and replace 6 NYCRR Part 230 to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. Part 200 will be revised to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

The Department proposes to adopt EPA's federal requirements for GDFs outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C). These requirements include the mandated use of federal "enhanced" Stage I vapor recovery systems at large GDFs with annual gasoline throughputs of 1,200,000 gallons or more, submerged filling, dual-point vapor control systems, improved performance testing and best management practices. Incorporation of these federal requirements into state regulation will bring consistency to the regulated community. Beyond what Subpart 6C requires, federal Stage I vapor recovery system requirements are also proposed for medium-sized GDFs located in the New York City Metropolitan Area (NYMA) with annual gasoline throughputs between 800,000 and 1,200,000 gallons per year. The NYMA is designated as a "serious" nonattainment area under the 2008 ozone National Ambient Air Quality Standard (NAAQS) and as "moderate" nonattainment for the 2015 ozone NAAQS. The required decommissioning of all Stage II vapor recovery systems is being proposed due to equipment incompatibility with On-board Refueling Vapor Recovery (ORVR) systems found on most vehicles. More frequent performance testing is also being proposed to ensure vapor-tight recovery systems.

This rulemaking is not expected to have any adverse impacts on jobs or employment opportunities in New York State. Adoption of the federal standards for high throughput GDFs along with removal of Stage II vapor recovery systems and an increased testing frequency will require owners and/or operators to purchase, install and maintain gasoline dispensing site equipment as well as perform more frequent performance tests. This will require the manufacturing of additional equipment components and the hiring of contractors to perform the necessary upgrades. It will also provide increased job opportunities to accommodate the need for more frequent testing at a larger number of GDFs throughout the State.

2. Categories and numbers affected: This rulemaking will affect approximately 7,277 GDFs to varying degrees, all of which may need services from gasoline dispensing equipment manufacturers, contractors or testers. The greatest impact will be on the 851 medium-sized GDFs located in the NYMA. These medium-sized facilities will be subject to the federal Stage I vapor recovery, dual-point vapor control systems, and improved performance testing requirements under the proposed provisions of new Part 230. Additionally, many GDFs may be minimally affected by the federal best management practice requirements of the Subpart 6C regulation that are proposed to be incorporated in new Part 230. The new submerged filling requirements should not impact any facilities as the current New York State Fire Code requires all gasoline storage tanks with capacities greater than 60 gallons to meet the proposed Part 230 requirements. The requirements for Stage II decommissioning will affect approximately 3,387 GDFs and an estimated 20 companies contracted to do performance tests. In terms of job creation, the proposed rule changes will have a positive impact based on the great number of GDFs affected and the services anticipated.

3. Regions of adverse impact: The Department does not expect that employment will be adversely impacted in any region of the state due to this proposed rulemaking. Most GDFs already must comply with much of the proposed rulemaking due to existing federal requirements. The need for services from manufacturers, contractors and testers involved in the gasoline dispensing equipment industry will increase in all areas of New York State.

4. Minimizing adverse impact: Specific compliance periods have been factored into this proposed rulemaking to minimize the impacts associated with the need for increased services from manufacturers, testers, and

contractors involved in the gasoline dispensing equipment industry. The Department is providing a 6-month compliance period for GDFs that become subject to the federal vapor recovery requirements as a result of the proposed rule changes. Discussions with manufacturers, contractors and testers have determined this compliance period to be sufficient. Several gasoline dispensing equipment manufacturers already manufacture the necessary equipment and many contractors are already familiar with the installation requirements. Additionally, many of the major performance test companies are also familiar with the new test requirements. The Department, therefore, does not anticipate any adverse impacts on those employed in the manufacturing, installation or testing of gasoline dispensing equipment as a result from the adoption of these proposed rule changes. The Department believes that this rule will have a positive economic impact on all GDFs due to better containment of vapors and reduced product loss. Although GDF owners will have to pay for the removal of Stage II equipment, most of the 3,387 applicable GDFs should save approximately \$2,000 annually by eliminating their yearly maintenance costs.

5. Self-employment opportunities: The proposed regulation will provide opportunities for new employment for individuals or companies that decide to install, repair, or test gasoline dispensing equipment. The need for increased services by contractors and testers will benefit employment in New York State. Many of these services will be provided by self-employed individuals.

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

## **PROPOSED RULE MAKING HEARING(S) SCHEDULED**

### **Consumer Products**

**I.D. No.** ENV-06-20-00019-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Parts 200 and 235 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** Consumer Products.

**Purpose:** Reduce Volatile Organic Compound emissions from Consumer Products - those products used in the average household.

**Public hearing(s) will be held at:** 11:00 a.m., April 14, 2020 at Department of Environmental Conservation, 625 Broadway, Public Assembly Room 129A/B, Albany, NY; 11:00 a.m., April 15, 2020 at Department of Transportation, One Hunter's Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY; 11:00 a.m., April 16, 2020 at Department of Environmental Conservation, 6274 Avon-Lima Rd., Rtes. 5 and 20, Conference Rm., Avon, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/proproregulations.html#public>):** The Division of Air Resources is proposing to revise 6 NYCRR Part 235, "Consumer Products" (Part 235) to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional product consistency. The proposed revisions will help the state attain federal National Ambient Air Quality Standards, and work toward regionally consistent regulations amongst the Ozone Transport Commission (OTC) states.

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

Changes throughout the proposal include a January 1, 2021 compliance date for the new VOC limits on new and reformulated products in the regulation. Likewise, changes were made in the definitions section to provide transitional language, where necessary, for those categories of products that were redefined or revised, to cite which emission standards apply before or after the compliance date of the regulation.

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

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

'Product Category'	'VOC Content Limit' ('percent by weight')		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	Manufactured on or after January 1, 2021
Adhesives:			
Construction, Panel, and Floor Covering	15		7
Air Fresheners:			
Dual Purpose Air Freshener / Disinfectant			60
Anti-static Product:			
Aerosol			80
Non-aerosol		11	
Automotive Brake Cleaner[s] or Brake Cleaner	45		10
Automotive Windshield Cleaner			35
Bathroom and Tile Cleaners:			
All Other Forms	5		n/a
Non-Aerosol			1

'Product Category'	'VOC Content Limit' ('percent by weight')		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	Manufactured on or after January 1, 2021
Carburetor or Fuel-Injection Air Intake Cleaners	45		10
Disinfectant:			
Aerosols			70
Non-Aerosols			1
Engine Degreasers:			
Aerosols	35		10
Floor Polishes/Waxes:			
Products for Flexible Flooring Materials	7		1
Products for Nonresilient Flooring	10		1
Furniture Maintenance Products:			
Aerosols	17		
All Other Forms Except Solid or Paste	7		n/a
Non-Aerosol (Except Solid or Paste)			3
General Purpose Cleaners:			
Aerosols	10		8
General Purpose Degreasers:			
Aerosols	50		10
Laundry Starch Products	5		4.5
Multi-Purpose Solvent			3
Nail Polish Remover	75		1
Oven or Grill Cleaners:			
Aerosol/Pump Sprays	8		
Liquids	5		
Non-Aerosols			4
Paint Thinner			3
Sanitizer:			
Aerosol			70



'Product Category'	'VOC Content Limit' ('percent by weight')		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	Manufactured on or after January 1, 2021
Non-Aerosol			1
Shaving Gel		7	4
Temporary Hair Color:			
Aerosol			55

**Text of proposed rule and any required statements and analyses may be obtained from:** Kenneth Newkirk, P.E., Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8396, email: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** April 21, 2020.

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

**Summary of Regulatory Impact Statement (Full text is posted at the following State website:** <http://www.dec.ny.gov/regulations/propregulations.html#public>);

#### 1. INTRODUCTION

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

#### 2. STATUTORY AUTHORITY

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

#### 3. LEGISLATIVE OBJECTIVES

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

#### 4. NEEDS AND BENEFITS

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

##### A. Background

The Department estimates that 164,200 tons of VOCs were released in the state during 2014 from consumer products and architectural and industrial maintenance coatings.<sup>1</sup> It is essential that the Department adopt stringent consumer product emissions limitations to protect human health and the environment. The current version of the consumer products regulations in New York State is based on a 1996 version of regulations effective in California as required by Section 183 of the Clean Air Act. 42 USC 7511b.

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

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

The proposed revisions include adding new categories and revising others. New categories include: "Artist's Solvent/Thinner," "Paint Thinners and Multi-Purpose Solvents," and "Dual Purpose Air Freshener/Disinfectant." Revised categories include the definitions of "Air Freshener" and "Sanitizer" in order to include a category of "Dual Purpose Air Freshener/Disinfectant," and revising the definition of "Oven Cleaner" to become "Oven or Grill Cleaner." A new definition of "Zinc Rich Primer" is also included in the proposed rule. Each of these actions will make the New York regulation consistent with the CARB and OTC state regulations. The Table of Standards (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. The proposed revisions will also provide adequate lead time to manufacturers to comply with the rule and will not be applied retroactively.

#### B. Benefits

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

#### 5. COSTS

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

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

#### 6. LOCAL GOVERNMENT MANDATES

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

#### 7. PAPERWORK

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

#### 8. DUPLICATION

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

#### 9. ALTERNATIVES

DEC considered four alternatives to the proposed rule:

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

2) New York could adopt some, but not all, of the proposed amendments. Given the regional nature of consumer product sales and distribution, and





### 3. COSTS

The Depa

#### 4. MINIMIZING ADVERSE IMPACT

The rule is designed to minimize any a

## 5. RURAL AREA PARTICIPATION

The Department developed the reg

Additionally, the Department will conduct public hearings in various locations around the state in order to serve all areas, including rural, and provide the opportunity to participate in the rule making process. Because the regulation applies consistently throughout the state, adoption or modification of procedural rules will be consistent throughout the state.

## 6. INITIAL REVIEW

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

<sup>1</sup> See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document "MOU\\_adoption\\_of\\_new\\_regional\\_controls\[1\]\[1\].pdf"](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20%22MOU_adoption_of_new_regional_controls[1][1].pdf%22)

### *Job Impact Statement*

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) proposes to revise 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The proposed revisions will help the State comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states<sup>1</sup>. The proposed revisions include adding new categories and revising others in order to make the New York regulation consistent with the OTC model rule and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

## 1. NATURE OF IMPACT

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

## 2. CATEGORIES AND NUMBERS AFFECTED

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

### 3. REGIONS OF ADVERSE IMPACT

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

#### 4. MINIMIZING ADVERSE IMPACT

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

## 5. SELF-EMPLOYMENT OPPORTUNITIES

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

## 6. INITIAL REVIEW

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

<sup>1</sup> See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document "MOU\\_adoption\\_of\\_new\\_regional\\_controls\[1\]\[1\].pdf"](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20MOU_adoption_of_new_regional_controls[1][1].pdf)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**

## New Source Review Requirements for Proposed New Major Facilities and Major Modifications to Existing Facilities

**I.D. No.** ENV-06-20-00020-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Parts 200 and 231 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** New Source Review requirements for proposed new major facilities and major modifications to existing facilities.

**Purpose:** To conform to Federal NSR rule requirements and related court rulings, correct typographical errors, and clarify rule language.

**Public hearing(s) will be held at:** 11:00 a.m., April 14, 2020 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 11:00 a.m., April 15, 2020 at Department of Transportation, One Hunter's Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY; 11:00 a.m., April 16, 2020 at Department of Environmental Conservation, 6274 Avon-Lima Rd., Rtes. 5 and 20, Conference Rm., Avon, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#>**

**public):** The Department of Environmental Conservation (Department) is proposing to amend Parts 200 and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled “General Provisions” and “New Source Review of New and Modified Facilities” respectively.

The Part 200 amendments will incorporate by reference updated versions of 40 Code of Federal Regulations (CFR) Part 51 Appendix W: Guideline on Air Quality Models of the EPA and the list of Global Warming Potentials found in 40 CFR Part 98 Table A-1.

Existing Subparts 231-1 and 231-2 will be revised to correct typographical errors.

Existing Subpart 231-3 will be revised for clarification and to correct typographical errors.

Existing Subpart 231-4 will be revised to clarify definitions of Baseline actual emissions, Baseline area, Minor facility baseline date, Net emission increase, Nonattainment contaminant, Regulated NSR contaminant, and Source reduction. Definitions for “CO2 equivalent” and “Subject to regulation” will be added and inserted alphabetically. Subpart 231-4 will also be revised to correct a typographical error.

Existing Subpart 231-5 will be revised to remove references to inter-pollutant trading ratios to offset direct emissions of particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors and replace references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

Existing Subpart 231-6 will be revised to remove references to inter-pollutant trading ratios to offset direct emissions of PM-2.5 precursors, replace references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis, and correct typographical errors.

Existing Subpart 231-7 will be revised to clarify the requirement to establish the potential to emit of contaminants in a permit condition and correct typographical errors.

Existing Subpart 231-8 will be revised to remove the ability to use the netting provisions for greenhouse gases and correct typographical errors.

Existing Subpart 231-9 will be revised to clarify the reporting and



## AFFIDAVIT OF PUBLICATION

---


STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the Albany Times Union for Miller advertising Agency, Inc; located in New York, NY, and that the NYS Dept. of Environmental Conservation –Notice of Public Hearing advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date: February 12, 2020

  
Ambika Mohan

Subscribed to and Sworn before me

This 23rd day of June, 2020

  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022



## AFFIDAVIT OF PUBLICATION

---


STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the **Buffalo News** for Miller advertising Agency, Inc; located in New York, NY, and that the **NYS Dept. of Environmental Conservation –Notice of Public Hearing** advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date: February 12, 2020

  
Ambika Mohan

Subscribed to and Sworn before me

This 23rd day of June, 2020

  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022





## AFFIDAVIT OF PUBLICATION

---


STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the Glens Falls Post Star for Miller advertising Agency, Inc; located in New York, NY, and that the NYS Dept. of Environmental Conservation –Notice of Public Hearing advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date: February 12, 2020

  
Ambika Mohan

Subscribed to and Sworn before me

This 23rd day of June, 2020

  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022



015 GENERAL HELP WANTED

015 GENERAL HELP WANTED

015 GENERAL HELP WANTED

001 LEGAL NOTICES

001 LEGAL NOTICES

001 LEGAL NOTICES

# FT/PT SALES: Avg.\$30+ per hour

Locally-based marketing firm seeking friendly folks to staff low-pressure in-store sales promotions on behalf of local newspaper publishers.

Our existing team consists of a wide range of career salespeople, entrepreneurs, small business owners, & semi-retired professionals.

- Be Your Own Boss!!! Work when YOU want!!!
- Full Time or Part Time or Seasonal
- Daytime/Evening/Weekend Locations Available
- Local, Regional, & National Partnership Opportunities
- Paid Weekly
- No startup costs
- No telemarketing
- No door-to-door

Qualifications:

- Professional Appearance & Positive Attitude
- Minimum 2 years sales, mgmt, or customer service
- Strong Communication Skills
- Basic Background Check

**CALL NOW:**  
**833-725-3769**  
(Leave a message anytime on ext. 2)

Real Media Solutions Inc.  
Visit us online: [www.realmediasolutions.com](http://www.realmediasolutions.com)

001 LEGAL NOTICES

**NOTICE OF SALE**  
SUPREME COURT COUNTY OF WASHINGTON, WILMINGTON SAVINGS FUND SOCIETY, FSB, DOING BUSINESS AS CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR BCAT FOR BCAT 2014-4TT, Plaintiff, vs. THE UNKNOWN HEIRS-AT-LAW, NEXT OF KIN, DISTRIBUTEES, EXECUTORS, ADMINISTRATORS, TRUSTEES, DEVISEES, LEGATEES, ASSIGNEES, LIENORS, CREDITORS, AND SUCCESSORS IN INTEREST, AND GENERALLY ALL PERSONS HAVING OR CLAIMING, UNDER, BY OR THROUGH THE DECEDENT MARY ANN WOOD, ET AL., Defendant(s).  
Pursuant to an Order Discharging the Guardian ad Litem and Military Attorney, Confirming Referee Report and Judgment of Foreclosure and Sale dated December 10, 2019, I, the undersigned Referee will sell at public auction at the Washington County Supreme Court, 383 Broadway, Fort Edward, NY on March 3, 2020 at 3:00 p.m., premises known as 12 Bridge Street, Fort Edward, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Incorporated Village of Fort Edward, County of Washington and State of New York, Section 171.5, Block 1 and Lot 12. Approximate amount of judgment is \$169,952.58 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index # 25802/2016.  
Robert A. Regan, Esq., Referee  
Knuckles, Komosinski & Manfro, LLP, 565 Taxter Road, Suite 590, Elmsford, NY 10523, Attorneys for Plaintiff  
Cash will not be accepted.  
**PUB: JANUARY 29, FEBRUARY 5, 12, 19, 2020**

**Sealed bids** will be received as set forth in instructions to bidders until 10:30 A.M. on Thursday, March 05, 2020 at the NYSDOT, Contract Management Bureau, 50 Wolf Rd, 1st Floor, Suite 1CM, Albany, NY 12232 and will be publicly opened and read. Bids may also be submitted via the internet using [www.bids.com](http://www.bids.com). A certified cashier's check payable to the NYSDOT for the sum specified in the proposal or a bid bond, form CONR 391, representing 5% of the bid total, must accompany each bid. NYSDOT reserves the right to reject any or all bids.  
Electronic documents and Amendments are posted to [www.dot.ny.gov/doing-business/opportunities](http://www.dot.ny.gov/doing-business/opportunities). The Contractor is responsible for ensuring that all Amendments are incorporated into its bid. To receive notification of Amendments via e-mail you must submit a request to be placed on the Planholders List at [www.dot.ny.gov/doing-business/opportunities](http://www.dot.ny.gov/doing-business/opportunities). Amendments may have been issued prior to your placement on the Planholders list.  
NYS Finance Law restricts communication with NYSDOT on procurements and contract can only be made with designated persons. Contact with non-designated persons or other involved Agencies will be considered a serious matter and may result in disqualification. Contact Robert Kitcher (518)457-2124.  
Contracts with 0% Goals are generally single operation contracts, where subcontracting is not expected, and may present direct bidding opportunities for Small Business Firms, including, but not limited to D /W/MBEs.  
The New York State Department of Transportation, in accordance with the Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title IV Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written Department solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability and handicap and income status in consideration for an award.  
**BIDDERS SHOULD BE ADVISED THAT AWARD OF THESE CONTRACTS MAY BE CONTINGENT UPON THE PASSAGE OF A BUDGET APPROPRIATION BILL BY THE LEGISLATURE AND GOVERNOR OF THE STATE OF NEW YORK.**  
Please call (518)457-2124 if a reasonable accommodation is needed to participate in the letting.  
Region 01: New York State Department of Transportation  
50 Wolf Rd, Albany, NY 12232  
D264218, PIN 121807, FA Proj RPS0-1218-073, Warren Co., Asphalt Concrete Milling and Resurfacing and Cold Recycling Asphalt Concrete on NY Route 9L in the Town of Queensbury, Bid Deposit: 5% of Bid (~ \$75,000.00), Goals: DBE: 8.00%  
**PUB: FEBRUARY 5, 12, 2020**

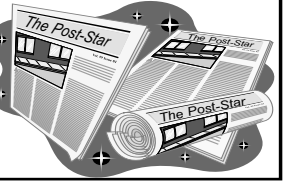
001 LEGAL NOTICES

**NOTICE TO BIDDERS**  
NOTICE IS HEREBY GIVEN, that the Undersigned, on behalf of the Essex County Board of Supervisors, will accept sealed bids at the Office of the Purchasing Agent until 2:00 P.M. on March 4, 2020 for Elevator Maintenance.  
The bids shall be opened publicly and read aloud on March 4, 2020 at 2:00 P.M. at the Office of the Purchasing Agent, 7551 Court Street, Elizabethtown, New York 12932.  
Please contact the Purchasing Office at (518) 873-3330 for additional information concerning the bidding. Specifications and standard proposals for the proposed work may be obtained at the above address, or on the County's website at: <https://www.co.essex.ny.us/bidders/publicbids.aspx>.  
All bids submitted in response to this notice shall be marked "SEALED BID – ELEVATOR MAINTENANCE" clearly on the outside of the envelope with the bidder's name and address.  
Essex County affirmatively states that in regard to any contract entered into pursuant to these instructions, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or Vietnam Era veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.  
Dated: February 10, 2020  
Linda M. Wolf, CPA  
Purchasing Agent  
Essex County Government Center  
7551 Court Street – PO Box 217  
Elizabethtown, New York 12932  
**PUB: FEBRUARY 12, 2020**

**PUBLIC NOTICE**  
**TOWN OF FORT ANN**  
Notice is hereby given that the Town Board of the Town of Fort Ann, Washington County, at a regular meeting held on February 10, 2020, duly adopted, subject to permissive referendum, a resolution, an abstract of which is as follows:  
RESOLUTION AUTHORIZING THE TOWN OF FORT ANN TO NEGOTIATE AN AGREEMENT WITH WASHINGTON COUNTY FOR APPRAISAL SERVICES, EXEMPTION SERVICES, AND ASSESSMENT SERVICES  
The Town Board of the Town of Fort Ann, duly convened at regular session, having adopted a resolution authorizing the Town to negotiate with Washington County a shared services agreement for agreement for appraisal services, exemption services and assessment services in accordance with section 1537 of the NYS Real Property Tax Law. The resolution so adopted by the Town Board of the Town of Fort Ann is subject to permissive referendum in accordance with NYS Town Law Section 90.  
Barbara J. Winchell  
Fort Ann Town Clerk  
**PUB: FEBRUARY 12, 2020**

**STATE OF NEW YORK SUPREME COURT**  
**COUNTY OF WARREN**  
**NOTICE OF SALE**  
Index No. EF2018-65728  
RJI NO. 56-1-2018-0552  
PETER SHABAT  
Plaintiff  
-against-  
MICHAEL SWAN, ADMINISTRATOR CTA OF THE ESTATE OF STEPHEN C. BRITTON, WORKERS' COMPENSATION BOARD OF THE STATE OF NEW YORK, JAY K. WASSERMAN, DDS, NEW YORK STATE DEPARTEMTN OF TAXATION AND FINANCE, Defendants.  
Pursuant to a Judgement of Foreclosure and Sale duly made in the above action on the 3rd day of January, 2020, I, the undersigned Referee will sell at public auction at the main entrance of the Warren County Municipal Center, 1340 State Route 9, Lake George, New York, on February 21, 2020 at 3:00 PM, premises known as Off Michelli Road All that certain plot piece or parcel of land, with the buildings and improvements erected, situate, lying and being in the Town of Lake George, County of Warren and State of New York, Section 264.08 Block 2 Lot 11. Approximate amount of Judgement \$240,647.04 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index No. EF2018-65728. Robert Gregor, Referee.  
Matte & Nenninger, P.C. Attorney for Plaintiff, 444 Glen Street, Glens Falls, NY 12801.  
518-793-3843  
Dated: January 16, 2020  
/s/ Robert Gregor  
Robert Gregor, Referee  
MATTE & NENNINGER, P.C.  
Attorneys for the Plaintiff  
444 Glen Street  
Glens Falls, New York 12801  
**PUB: JANUARY 22, 29, FEBRUARY 5, 12, 2020**

### Go right to the source...



001 LEGAL NOTICES

**SUPREME COURT - COUNTY OF WASHINGTON**  
CITIMORTGAGE, INC., Plaintiff - against- JOPSEPH W. DENNISON AND MEGAN EDWARDS, et al Defendant(s). Pursuant to a Judgment of Foreclosure and Sale entered herein and dated November 29, 2019, I, the undersigned Referee will sell at public auction at the Washington County Courthouse, 383 Broadway, Fort Edward, NY on February 26, 2020 at 12:30 p.m. premises situate on the west side of County Route 12 in the Town of Granville, County of Washington and State of New York, bounded and described as follows: BEGINNING at a point at the northwest corner of the lands now or formerly of Candy J. Hurlburt (Book 789; Page 25); RUNNING THENCE North West 254.02 feet; North West 109.21 feet; North West 10+ feet; THENCE in a northeasterly direction, along the southern edge of the Mettowee River, as it winds and turns, a distance of 394+ feet THENCE South East 10+ feet, North East 372.12 feet; South East 19.59 feet; South West 105.36 feet; South East 25.59 feet; South West 239.13; South West 113.36 feet; THENCE South West 106.00 feet; RUNNING THENCE North West 156.50 feet.  
Section: 97 Block: 3 Lot: 48  
Said premises known as 17 COUNTRY ROUTE 12, GRANVILLE, NY  
Approximate amount of lien \$92,693.51 plus interest & costs.  
Premises will be sold subject to provisions of filed Judgment and Terms of Sale.  
If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagee, the Mortgagee or the Mortgagee's attorney.  
Index Number 28552/2018.  
JESSE ASHDOWN, ESQ., Referee  
David A. Gallo & Associates LLP  
Attorney(s) for Plaintiff  
99 Powerhouse Road, First Floor, Roslyn Heights, NY 11577  
File# 4722.2019  
**PUB: JANUARY 22, 29, FEBRUARY 5, 12, 2020**

## BUY IT SELL IT

In THE  
**POST-STAR**  
poststar.com  
*Classifieds*

### "I found my APARTMENT in the Post-Star."



### CLASSIFIEDS - THE ULTIMATE NETWORK FOR PEOPLE SERVICES

When there's an item you want to buy or sell, There's a special place that could serve you well. So open our pages and plug into the source. We're talking about our Classifieds section, of course!

### NOTICE OF PUBLIC HEARING

#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Notice is hereby given that the New York State Department of Environmental Conservation (NYSDEC) will hold a legislative Public Hearing on three separate proposals:

1: Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed repeal and replacement of 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles," with a revised regulation applicable to all gasoline transport vehicles and all gasoline dispensing sites that have gasoline storage tanks larger than 250 gallons: 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles."

The Department proposes to repeal and replace 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles" to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, the Department also proposes to revise 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from the proposed replacement of Part 230 and the revision to Part 200 are necessary to help the state demonstrate attainment of both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). This proposal will affect approximately 7,500 gasoline dispensing sites in New York State. In addition, the Department proposes to submit the new Part 230 as well as the revisions to Part 200 to EPA as a revision to the State Implementation Plan (SIP) for New York State.

2: Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation hereby gives notice of the following:

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 231, "New Source Review (NSR) for New and Modified Facilities," and 200, "General Provisions" (collectively, Part 231), in order to conform to federal NSR rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included into New York's SIP.

In accordance with EPA's June 1, 2016 SIP approval letter and related court rulings, the Department is revising Part 231 to conform to changes in the federal NSR rule, including changes to NSR applicability based on emissions of greenhouse gases (GHGs) and certain monitoring and impact assessment requirements for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5). On May 5, 2011, the Department petitioned EPA Region 2 to designate all of New York State in attainment with the 2006 PM-2.5 National Ambient Air Quality Standards, and EPA correspondingly approved the petition in a final rulemaking on December 31, 2012. While the entire State is currently in attainment for PM-2.5, this proposed rulemaking will update the PM-2.5 nonattainment provisions in Part 231 where needed and keep them in the rule in the event that a portion of New York State becomes classified as nonattainment for PM-2.5 in the future.

The Department is also revising Part 231 to address EPA's comments relating to the listed Global Warming Potentials, references to dispersion modeling guidance, and the use of oxides of nitrogen offsets for ozone and PM-2.5. Lastly, this proposed rule will make clarifying changes and fix minor typographical errors. Once the rule is adopted, the revisions will be submitted to EPA for approval into New York's SIP.

3: Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed revisions of 6 NYCRR Part 235, "Consumer Products."

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

Part 235 will also be submitted to EPA as a revision to the State Implementation Plan (SIP) for New York State (NYS).

Hearings for the proposed rules and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
4/14/2020	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
4/15/2020	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101
4/16/2020	11:00 am	6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Room, Avon, NY 14414-9516

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 7, 2020, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information on Part 230 may be obtained from Denise Prunier, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Information on Part 231 may be obtained from Steve Yarrington, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3254, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Information on Part 235 may be obtained from Kenneth A. Newkirk, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Requests for information and comments related to the SIP revisions may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

The proposed regulation may be obtained from any of the following Department offices:

**REGION 1** - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee  
**REGION 2** - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich  
**REGION 3** - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert  
**REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Ben Potter  
**REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant  
**REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs  
**REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter  
**REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng  
**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

005 HAPPY ADS

005 HAPPY ADS

005 HAPPY ADS

## Wednesday, February 12, 2020

# GOREN BRIDGE

**WITH BOB JONES**  
©2020 Tribune Content Agency, LLC

### NO EXCUSE

Neither vulnerable, East deals

**NORTH**  
♥ A J 9  
♦ Q 7 6  
♦ A 8 6  
♣ 10 8 4 2

**WEST**  
♠ 7 6 5 4 2  
♥ K J 4  
♦ J 4  
♣ 9 6 3

**EAST**  
♠ K  
♥ 9 8 5  
♦ K Q 10 7 3  
♣ A Q J 7

**SOUTH**  
♥ A 10 8 3  
♦ A 10 3 2  
♦ 9 5 2  
♣ K 5

The bidding:  

<b>EAST</b>	<b>SOUTH</b>	<b>WEST</b>	<b>NORTH</b>
1♦	Pass	Pass	Dbl
2♣	2♦	Pass	2NT
Pass	3♥	All pass	

Opening lead: Jack of ♦

South found himself in a terrible contract which was caused primarily by North's balancing double. A bid of one no trump in the balancing seat, sometimes called the pass out seat, shows a balanced hand with 11-14 points and usually a stopper in the enemy suit. It is an adjustment to normal bidding that allows you to compete on deals like this one.

The alternative, which is to let the opponents play at the one level, is not appealing. One no trump would have been a better choice for North than double.

South was an experienced player who went by the expert's creed: "The fact that your contract is hopeless is no excuse for going down in it". South ducked the opening diamond lead but won the diamond continuation with dummy's ace. He led a club from the board, and East stepped up with his ace, cashed a diamond, and led a low club to South's king. South led a low heart to dummy's queen as West ducked his king. A heart to the ace and another heart cleared the trumps. West won and shifted to a low spade. South called for dummy's ace, and when that felled the king from East, South claimed the balance and made his contract. Well done!

How did South know to rise with dummy's ace of spades? West, who had passed his partner's opening bid, had shown up with the king and jack of hearts. He couldn't hold the king of spades as well, so playing the ace was the only hope.

(Bob Jones welcomes readers' responses sent in care of this paper. Please send your e-mail responses to [tcaditors@tribpub.com](mailto:tcaditors@tribpub.com))

## DON'T MISS THE ULTIMATE PUZZLE BOOK

JUMBLE® • CROSSWORD PUZZLES  
SUDOKU • HITORI • SCRABBLEGRAMS  
CODE-CRACKER • COLORING PAGES & MORE!

### BRAIN BUSTERS

THE ULTIMATE PUZZLE BOOK



COMING 02.12.20

THE POST-STAR  
poststar.com

JUMBLE® • CROSSWORD PUZZLES • SUDOKU • HITORI • WORD SALSA  
SCRABBLEGRAMS • CODE-CRACKER • COLORING PAGES & MORE!



## AFFIDAVIT OF PUBLICATION

---


STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the New York Post for Miller advertising Agency, Inc; located in New York, NY, and that the NYS Dept. of Environmental Conservation –Notice of Public Hearing advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date: February 12, 2020

  
Ambika Mohan

Subscribed to and Sworn before me

This 23rd day of June, 2020

  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022

# Conforto: Ex-Astros welcome

By MIKE PUMA

PORT ST. LUCIE — Michael Conforto isn't about to dwell on who might have been involved in the Astros' illegal sign-stealing scheme and the implications.

J.D. Davis and Jake Marisnick both played for the Astros in 2017 when electronic surveillance was used by the team to steal catchers' signs, but both are Mets now and Conforto doesn't want either to feel unwelcomed in the clubhouse.

"Our involvement with it was Carlos [Beltran] and we have kind of moved on from that, but I don't see us dwelling on that at all," Conforto said Tuesday. "I think J.D. and Jake, they are our guys now and moving forward they are going to be part of a winning season this year."

## METS NOTES

"There's not going to be any animosity toward them. When you are in a team setting, any of these guys that are in here now they are our guys and that's the way winning teams are. They bring their guys in and we're one winning group. They will probably talk about it, but there won't be anything more from there."

➤ New manager **Luis Rojas** acknowledged **Jacob deGrom** will "probably" be the Mets' Opening Day starter but wouldn't go beyond naming the two-time defending NL Cy Young Award winner to the rotation. DeGrom, **Noah Syndergaard**, **Marcus Stroman**, **Steven Matz**, **Rick Porcello** and **Michael Wacha** give the Mets six starting pitchers for five rotation spots.

"It probably won't be a surprise that Jake is probably Opening Day," Rojas said, "but we are not defining roles right now of two, three, four, five or sixth starter so we're not there yet."

➤ **Yoenis Cespedes** has been running and hitting, but Rojas indicated it's too early to say if the veteran outfielder might be a possibility to start the season with the Mets. Cespedes has missed the past 1 ½ seasons, after undergoing surgery on both heels then sustaining multiple ankle fractures on his ranch trying to elude a wild boar.

# McAdoo hits Jax-pot

Ben McAdoo is back in the big leagues.

The former Giants head coach — fired after going 13-15 over two seasons with Big Blue — will join the Jaguars as a quarterbacks coach, according to multiple reports.

McAdoo, 42, was hard-pressed to find work for the past two seasons but found some traction after this past season, having interviewed for a spot on the Browns' and Panthers' staffs and being in the running for the Jags' offensive coordinator gig. The job went to ex-Redskins head coach Jay Gruden instead.

A history coaching Aaron Rodgers and Eli Manning should give McAdoo some credibility as he works with upstart Gardner Minshew, the rookie QB who garnered plenty of attention with his heroics after stepping in for Nick Foles last season.

— Michael Blinn

## NOTICES

### LEGAL NOTICES

STATE OF CONNECTICUT  
SUPERIOR COURT  
JUVENILE MATTERS  
ORDER OF NOTICE

NOTICE TO: Richard Delacruz,  
father of a male child born  
on 6/6/11 to Amanda G.

A petition has been filed seeking:

Commitment of minor child(ren) of the above named or vesting of custody and care of said child(ren) of the above named in a lawful, private or public agency or a suitable and worthy person.

The petition, whereby the court's decision can affect your parental rights, if any, regarding minor child(ren) will be heard on 3/18/20 at 12:00 p.m. at SCJM, 7 Kendrick Ave., 3rd fl., Waterbury, CT 06702

Therefore, ORDERED, that notice of the hearing of this petition be given by publishing this Order of Notice once, immediately upon receipt in the New York Post, a newspaper having a circulation in the town/city of New York.

Honorable Barbara Aaron  
Pranvera Cirraga, OC  
2/7/2020

*RIGHT TO COUNSEL: Upon proof of inability to pay for a lawyer, the court will provide one for you at court expense. Any such request should be made immediately at the court office where your Hearing is to be held.*

STATE OF CONNECTICUT  
Superior Court/Juvenile Matters  
ORDER OF NOTICE

NOTICE TO: **Carlos Vega, father of a male child born on 7/17/2002, to Bernice S. in San Sebastian, PR where said child were born.**

Of parts unknown.

A petition/motion has been filed seeking:

Commitment of minor child of the above named or vesting of custody and care of said child of the above named in a lawful, private or public agency or a suitable and worthy person. The petition, whereby the court's decision can affect your parental rights, if any, regarding the minor child will be heard on: **3/10/2020 at: 10:00 a.m. at: Superior Court for Juvenile Matters, 239 Whalley Avenue, New Haven, CT 06511.**

**Hearing on an Order of Temporary Custody will be heard on 2/14/2020 at: 10:00 a.m. at: 239 Whalley Ave., New Haven, CT 06511.**

It is therefore, ORDERED, that notice of the hearing of this petition/motion be given by publishing this Order of Notice once, immediately upon receipt, in the: **New York Post** a newspaper having a circulation in the town/city of: **New York**

**Hon. Bernadette Conway., Judge, Kathryn A. Coppola, 2/7/2020**

*Right to Counsel: Upon proof of inability to pay for a lawyer, the court will make sure that an attorney is provided to you by the Chief Public Defender. Request for an attorney should be made immediately in person, by mail, or by fax at the court office where your hearing is to be held.*

### PET PLACE

### DOGS

**POMERANIAN PUPPIES**  
Adorable males and females, toy or teacup sizes, shots and papers.  
Call 718-614-3968

**SHIH-TZU PUPPIES**  
Beautiful Males & Females  
Price to Sell  
Call 718-887-5433

**YORKIE PUPPIES**  
ADORABLE, pure bred, toy & teacup sizes.  
Call 718-306-4136

### LEGAL NOTICES

Notice of formation of Wonscape International LLC, a domestic LLC. Articles of Organization filed with the Secretary of State of New York (SSNY) on June 14, 2018 with N.Y.S. Office location: Nassau County. SSNY is designated as agent upon whom process against the LLC may be served. SSNY shall mail process to: The LLC, 366 North Broadway Suite 405, Jericho, NY 11753 Purpose: Any lawful purpose.

Sell your home in the NYP Classifieds  
Call 212-930-8100 to place your ad

## NOTICE OF PUBLIC HEARING NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Notice is hereby given that the New York State Department of Environmental Conservation (NYSDEC) will hold a legislative Public Hearing on three separate proposals:

1: Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed repeal and replacement of 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles," with a revised regulation applicable to all gasoline transport vehicles and all gasoline dispensing sites that have gasoline storage tanks larger than 250 gallons: 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles."

The Department proposes to repeal and replace 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles" to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, the Department also proposes to revise 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from the proposed replacement of Part 230 and the revision to Part 200 are necessary to help the state demonstrate attainment of both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). This proposal will affect approximately 7,500 gasoline dispensing sites in New York State. In addition, the Department proposes to submit the new Part 230 as well as the revisions to Part 200 to EPA as a revision to the State Implementation Plan (SIP) for New York State.

2: Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation hereby gives notice of the following:

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 231, "New Source Review (NSR) for New and Modified Facilities," and 200, "General Provisions" (collectively, Part 231), in order to conform to federal NSR rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included into New York's SIP.

In accordance with EPA's June 1, 2016 SIP approval letter and related court rulings, the Department is revising Part 231 to conform to changes in the federal NSR rule, including changes to NSR applicability based on emissions of greenhouse gases (GHGs) and certain monitoring and impact assessment requirements for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5). On May 5, 2011, the Department petitioned EPA Region 2 to designate all of New York State in attainment with the 2006 PM-2.5 National Ambient Air Quality Standards, and EPA correspondingly approved the petition in a final rulemaking on December 31, 2012. While the entire State is currently in attainment for PM-2.5, this proposed rulemaking will update the PM-2.5 nonattainment provisions in Part 231 where needed and keep them in the rule in the event that a portion of New York State becomes classified as nonattainment for PM-2.5 in the future.

The Department is also revising Part 231 to address EPA's comments relating to the listed Global Warming Potentials, references to dispersion modeling guidance, and the use of oxides of nitrogen offsets for ozone and PM-2.5. Lastly, this proposed rule will make clarifying changes and fix minor typographical errors. Once the rule is adopted, the revisions will be submitted to EPA for approval into New York's SIP.

3: Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed revisions of 6 NYCRR Part 235, "Consumer Products."

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

Part 235 will also be submitted to EPA as a revision to the State Implementation Plan (SIP) for New York State (NYS).

Hearings for the proposed rules and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
4/14/2020	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
4/15/2020	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101
4/16/2020	11:00 am	6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Room, Avon, NY 14414-9516

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by, April 7, 2020, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information on Part 230 may be obtained from Denise Prunier, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Information on Part 231 may be obtained from Steve Yarrington, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3254, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Information on Part 235 may be obtained from Kenneth A. Newkirk, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Requests for information and comments related to the SIP revisions may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

The proposed regulation may be obtained from any of the following Department offices:

- REGION 1** - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee
- REGION 2** - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich
- REGION 3** - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert
- REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Ben Potter
- REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12865, Attention: James Coutant
- REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs
- REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter
- REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng
- REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

## New York State Consolidated Annual Performance and Evaluation Report Public Comment Period Notice

In accordance with the provisions of the National Affordable Housing Act, the State of New York is making a draft of its Consolidated Annual Performance and Evaluation Report (CAPER) for program year 2019 available for public comment. The CAPER analyzes New York States' progress in implementing its HUD-approved Annual Action Plan for 2019. **The public is invited to review the draft New York State CAPER and to offer comments on the document.** The draft 2019 CAPER, as published for public comment, will be available during the public comment period on the New York State Homes and Community Renewal (HCR) website at [www.nyschr.org](http://www.nyschr.org). In addition, copies can be requested by e-mail at [HCRConPln@nyschr.org](mailto:HCRConPln@nyschr.org) or by telephoning 1-518-486-3452. **The public comment period will begin on Wednesday, February 26, 2020 and end on Wednesday, March 11, 2020.** Written comments must be postmarked no later than March 11, 2020 and addressed to Rachel Yerdon, NYS HCR, Hampton Plaza, 38-40 State Street, Albany, NY 12207. E-mail comments must be sent by that date and e-mailed to: [HCRConPln@nyschr.org](mailto:HCRConPln@nyschr.org).

## AFFIDAVIT OF PUBLICATION

---


STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the Rochester Democrat & Chronicle for Miller advertising Agency, Inc; located in New York, NY, and that the NYS Dept. of Environmental Conservation –Notice of Public Hearing advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date: February 12, 2020

  
Ambika Mohan

Subscribed to and Sworn before me

This 23rd day of June, 2020

  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022



## AFFIDAVIT OF PUBLICATION

---


STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the Syracuse Post Standard for Miller advertising Agency, Inc; located in New York, NY, and that the NYS Dept. of Environmental Conservation –Notice of Public Hearing advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date: February 11, 2020

  
Ambika Mohan

Subscribed to and Sworn before me

This 23rd day of June, 2020

  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022



Legals/Public Notices

Other Legals

NOTICE OF PUBLIC HEARING  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Notice is hereby given that the New York State Department of Environmental Conservation (NYSDEC) will hold a legislative Public Hearing on three separate proposals:

1. Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed repeal and replacement of 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles," with a revised regulation applicable to all gasoline transport vehicles and all gasoline dispensing sites that have gasoline storage tanks larger than 250 gallons: 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles."

The Department proposes to repeal and replace 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles" to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, the Department also proposes to revise 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from the proposed replacement of Part 230 and the revision to Part 200 are necessary to help the state demonstrate attainment of both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). This proposal will affect approximately 7,500 gasoline dispensing sites in New York State. In addition, the Department proposes to submit the new Part 230 as well as the revisions to Part 200 to EPA as a revision to the State Implementation Plan (SIP) for New York State.

2. Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation hereby gives notice of the following:

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 231, "New Source Review (NSR) for New and Modified Facilities," and 200, "General Provisions" (collectively, Part 231), in order to conform to federal NSR rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included into New York's SIP.

In accordance with EPA's June 1, 2016 SIP approval letter and related court rulings, the Department is revising Part 231 to conform to changes in the federal NSR rule, including changes to NSR applicability based on emissions of greenhouse gases (GHGs) and certain monitoring and impact assessment requirements for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5). On May 5, 2017, the Department petitioned EPA Region 2 to designate all of New York State in attainment with the 2006 PM-2.5 National Ambient Air Quality Standards (NAAQS), and EPA correspondingly approved the petition in a final rulingmaking on December 31, 2012. While the entire State is currently in attainment for PM-2.5, this proposed rulemaking will update the PM-2.5 nonattainment provisions in Part 231 where needed and keep them in the rule in the event that a portion of New York State becomes classified as nonattainment for PM-2.5 in the future.

The Department is also revising Part 231 to address EPA's comments relating to the listed Global Warming Potentials, references to dispersion modeling guidance, and the use of oxides of nitrogen options for ozone and PM-2.5. Lastly, this proposed rule will make clarifying changes and fix minor typographical errors. Once the rule is adopted, the revisions will be submitted to EPA for approval into New York's SIP.

3. Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed revisions of 6 NYCRR Part 235, "Consumer Products."

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

Part 235 will also be submitted to EPA as a revision to the State Implementation Plan (SIP) for New York State (NYS).

Hearings for the proposed rules and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
4/14/2020	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
4/15/2020	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDDT, Long Island City, NY 11101
4/16/2020	11:00 am	6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Room, Avon, NY 14414-9516

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by, April 7, 2020, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement to be included in the record are invited to speak. Oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information on Part 230 may be obtained from Denise Prunier, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Information on Part 231 may be obtained from Steve Yarrington, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3254, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Information on Part 235 may be obtained from Kenneth A. Newkirk, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

Requests for information and comments related to the SIP revisions may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm April 21, 2020.

The proposed regulation may be obtained from any of the following Department offices:

**REGION 1** - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee

**REGION 2** - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblisch

**REGION 3** - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert

**REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Ben Potter

**REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

**REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs

**REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter

**REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

Other Legals

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at 1-877-BANK-NYS (1-877-226-5697) or visit the department's website at: <http://www.dfs.ny.gov>. YOUR RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

ANSWER WITH THE COURT. THE OBJECT of the above captioned action is to foreclose a Mortgage to secure \$116,348.00 and interest, recorded in the Onondaga County Clerk's Office on November 17, 2008 in Book 15676 at page 0940 and as Instrument No. 702599, covering premises known as 802 Drexler Street, Liverpool, New York 13088 - SBL #083-04-10.0. The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above. The Plaintiff also seeks a deficiency judgment against the Defendants and any other persons secured by said Mortgage which is not satisfied by the proceeds of the sale of said premises. To the above named Defendants, the foregoing Supplemental Summons with Notice is served upon you by publication pursuant to an Order of the Hon. Kevin G. Young of the Supreme Court of the State of New York, County of Onondaga, dated January 15, 2020. Dated January 15, 2020. McCalla, Raymer, Leibert, Pierce, LLC /s/ Kyle Jacobs, Esq. 420 Lexington Avenue, Suite 840 New York, New York 10170 P. 347-286-7409 F. 347-286-7414 HELLO HOMEOWNERS IN FORECLOSURE New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT. You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney



# NEWSDAY AFFIDAVIT OF PUBLICATION

MILLER ADVERTISING  
220 WEST 42ND STREET, 12TH FLOOR  
NEW YORK, NY 10036

STATE OF NEW YORK)

Legal Notice No.

0021565925

:SS.:

COUNTY OF SUFFOLK)

Darryl Murphy of Newsday Media Group., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday Media Group, the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

Wednesday      February 12, 2020      Nassau, Suffolk and Queens

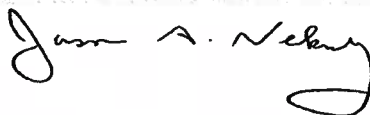
**SWORN** to before me this

12 Day of February, 2020.



---

Jason A. Neknez  
Notary Public – State of New York  
No. 01NE6219108  
Qualified in Suffolk County  
My Commission Expires 03/22/2022









Department of  
Environmental  
Conservation

## New DEC Hearing Notices for 4/1/2020

### New Permit Hearing Notices for April 1, 2020: None

---

### New Rulemaking Hearing Notices for April 1, 2020: None

---

## Notice of Extension of Public Comment Period and Cancellation of Public Hearings

Due to the unprecedented nature of Covid-19, Governor Cuomo has issued a PAUSE Order directing non-essential meetings/gatherings to be suspended or cancelled. See Executive Order 202 and subsequent additions. **As a result, at this time the New York State Department of Environmental Conservation (NYS DEC) is cancelling the previously scheduled public hearings for the following proposed rulemakings and extending the comment periods for these rulemakings for 30 days.**

Notice is hereby given that the hearing for revisions to 6 NYCRR Part 248 Use of Ultra Low Sulfur Diesel and Best Available Retrofit Technology for Heavy Duty Vehicles, scheduled for April 10, 2020, at 11:00 a.m. at NYS DEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233 is cancelled, and that the public comment period for this rulemaking is extended until Friday, May 15, 2020.

**Comments may be submitted by mail to:** James Bologna, NYS DEC - Division of Air Resources, 625 Broadway, Albany, New York 12233-3250, Phone: (518) 402-8292, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Notice is hereby given that the hearing for revisions to 6 NYCRR Part 225-1 Fuel Composition and Use- Sulfur-in-Fuel , scheduled for April 10, 2020 at 11:00 a.m. at NYS DEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233 is cancelled, and that the public comment period for this rulemaking is extended until Friday, May 15, 2020.

**Comments may be submitted by mail to:** Mike Jennings, NYS DEC - Division of Air Resources,, 625 Broadway, Albany, New York 12233-3250, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Notice is hereby given that the hearings for revisions to 6 NYCRR 230 Gasoline Dispensing Sites and Transport Vehicles scheduled for 4/14/2020 at 11:00 a.m. at NYS DEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233, 4/15/2020 at 11:00 a.m. at 1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101, and 4/16/2020 at 11:00 a.m. at 6274 Avon-Lima Rd. (Routes 5 and 20), Conference Room, Avon, NY 14414-9516 are cancelled, and the public comment period for this rulemaking is extended until Thursday, May 21, 2020.

**Comments may be submitted by mail to:** Denise Prunier, NYS DEC - Division of Air Resources,, 625 Broadway, Albany, New York 12233-3250, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Notice is hereby given that the hearings for revisions to 6 NYCRR 231 New Source Review for New and Modified Facilities scheduled for 4/14/2020 at 11:00 a.m. at NYS DEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233, 4/15/2020 at 11:00 a.m. at 1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101, and 4/16/2020 at 11:00 a.m. at 6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Room, Avon, NY 14414-9516 are cancelled, and the public comment period for this rulemaking is extended until Thursday, May 21, 2020.

**Comments may be submitted by mail to:** Steve Yarrington, NYS DEC - Division of Air Resources,, 625 Broadway, Albany, New York 12233-3254, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Notice is hereby given that the hearings for revisions to 6 NYCRR 235 Consumer Products scheduled for 4/14/2020 at 11:00 a.m. at NYS DEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233, 4/15/2020 at 11:00 a.m. at 1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101, and 4/16/2020 at 11:00 a.m. at 6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Room, Avon, NY 14414-9516 are cancelled, and the public comment period for this rulemaking is extended until Thursday, May 21, 2020.

**Comments may be submitted by mail to:** Kenneth A. Newkirk, NYS DEC - Division of Air Resources,, 625 Broadway, Albany, New York 12233-3250, Phone: (518) 402-8438, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)



Assessment of Public Comments  
6 NYCRR Part 235, Consumer Products, and  
6 NYCRR Part 200, General Provisions

Comments received from February 12, 2020 through 5:00 P.M., May 21, 2020

**General:**

Comment 1: Supports the adoption of regionally consistent consumer products regulations based on the OTC Model Rule. (Commenter 1)

Comment 2: Supports the proposed new or revised VOC limits. (Commenter 1)

Response to Comments 1 and 2: The Department thanks you for your support of this rulemaking.

Comment 3: The Department is not focusing on the largest emission sources and should pay attention to other emission sectors. (Commenter 2)

Response to Comment 3: The Department is addressing numerous emission sources in several ways in order to reduce ozone, including by regulating products that contain ozone precursor pollutant emissions. Difficulty in reaching the ozone standard requires that all sectors be addressed, and that reductions be obtained from all sources of volatile organic compounds, including consumer products. Recent research by the National Oceanic and Atmospheric Administration, in 2018, has indicated that the use of volatile chemical products (VCPs) – including pesticides, coatings, printing inks, adhesives, cleaning agents, and personal care products – now constitutes half of VOC emissions in industrialized cities.

**Effective Date:**

Comment 4: There is insufficient time from the publication date of the final rule and the January 1, 2021 effective date of the regulation, considering the need for product manufacturers and distributors to comply with the regulation. (Commenter 1)

Response to Comment 4: The Department based these Part 235 revisions on a model rule developed cooperatively with the Ozone Transport Commission. While products regulated in Part 235 are currently available for sale in California and various east coast states, the Department recognizes that manufacturers and distributors may still require additional time in order to address distribution issues and provide compliant products to retail outlets. The Department is revising the rule to change the compliance date to January 1, 2022.

**Technical Corrections:**

Comment 5: The Department should make the following technical correction to Section 235-3.1(e) in the final regulation – “(e) ‘Products registered under FIFRA’. For those consumer products that are registered under the Federal Insecticide, ... in this Subpart is January 1, ~~2014~~ 2022.” (Commenter 1)

Response to Comment 5: The Department has made this technical correction. Because the compliance deadline has been changed from January 1, 2021 to January 1, 2022 (see Response to comment 4), this date has also been changed (to January 1, 2023). The commenter correctly pointed out that the date for products registered under FIFRA should be one year beyond the general compliance deadline.

### **Sell Through of Products:**

Comment 6: The Department should revise Section 235-3.1(o) to provide a reasonable sell-through limitation for the five product categories that are subject to new regulatory requirements.” Commenter recommends the following revisions to Section 235-3.1(o)(1) in the final regulation:

“(1) ~~Effective January 1, 2021,~~ no person shall sell, supply, ...or grill cleaner manufactured on or after January 1, 2021, that contains...” (Commenter 1)

Response to Comment 6: After reviewing comments and hearing legitimate concerns from manufacturers, the Department is revising the rule to include a sell through provision to allow manufacturers to sell existing stock of products that were manufactured before the compliance date (also revised, now January, 1, 2022). Also, see response to Comment 4.

Commenter #1 – HCPA – The Household and Commercial Products Association

Commenter #2 - Jim Murray [adkmurray@yahoo.com](mailto:adkmurray@yahoo.com)



## OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation

625 Broadway, 14th Floor, Albany, New York 12233-1010

P: (518) 402-8545 | F: (518) 402-8541

www.dec.ny.gov

### STATE OF NEW YORK

### DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#### CERTIFICATE OF ADOPTION

**AGENCY ACTION:** 6 NYCRR Part 235, "Consumer Products"; and Part 200, "General Provisions".

Pursuant to the provisions of Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), I, Basil Seggos, Commissioner of the Department of Environmental Conservation (DEC), hereby certify that the amendments to 6 NYCRR Part 235, "Consumer Products" and 6 NYCRR Part 200, "General Provisions" be adopted to read as on the attached original and certify that this is the original thereof, as adopted by me on 11/5/21, to be effective 30 days after filing with the Department of State.

I further certify that prior notice, as required under the State Administrative Procedure Act, was published in the State Register on February 12, 2020 under Notice No. ENV-06-20-00019-P. I also further certify that due to the unprecedented nature of COVID-19, Governor Cuomo issued a PAUSE Order directing non-essential meetings/gatherings to be suspended or cancelled. See Executive Order 202 and subsequent additions. As a result, the Department cancelled all previously scheduled public hearings for this proposed rulemaking and extended the comment period for this rulemaking for 30 days. Notice of cancellation of hearings and extension of public comment period was given in the April 1, 2020 Environmental Notice Bulletin and the State Register.



Basil Seggos  
Commissioner  
Department of Environmental Conservation

DATED: 11/5/21

Albany, New York



Department of  
Environmental  
Conservation





Revised Express Terms  
6 NYCRR Part 235, Consumer Products

Section 235-1.1 Applicability

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

Section 235-2.1 Definitions

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

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

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

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

where,

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

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

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

where,

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

where,

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

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

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

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

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

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

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

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

where,

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

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

(h) ‘Adhesive’ means any product that is used to bond one surface to another by attachment. ‘Adhesive’ does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For construction, panel, and floor covering adhesive and general purpose adhesive only, ‘adhesive’ also does not include units of product, less

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

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

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

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

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

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

(j) ‘Aerosol adhesive’ means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. ‘Aerosol adhesives’ include special purpose spray adhesives, mist spray adhesives and web spray adhesives.

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

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

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

- (1) home use;
- (2) use in structural pest control;
- (3) industrial; (or)

(4) institutional use. For the purposes of this definition only:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

[(z)] (ab) ‘Automotive instant detailer’ means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

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

[(ab)] (ad) ‘Automotive wax, polish, sealant or glaze’ means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle’s painted surfaces. ‘Automotive wax, polish, sealant or

glaze’ includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. ‘Automotive wax, polish, sealant or glaze’ does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

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

[(ac)] (af) ‘Automotive windshield washer fluid’ means any liquid designed for use in a motor vehicle windshield washer system either as an anti-freeze or for the purpose of cleaning, washing, or wetting the windshield. ‘Automotive windshield washer fluid’ does not include fluids placed by the manufacturer in a new vehicle.

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

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

- (1) biological-type residues such as insect carcasses and tree sap; and

(2) road grime, such as road tar, roadway paint markings, and asphalt.

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

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

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

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

- (1) electrical starters and probes;
- (2) metallic cylinders using paper tinder;

- (3) natural gas;
- (4) propane; and
- (5) fat wood.

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

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

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

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

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

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

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

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

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

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

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

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

(2) is used in automotive applications that are:

- (i) automotive under the hood applications requiring heat, oil or gasoline resistance, or
- (ii) body-side molding, automotive weatherstrip or decorative trim.

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

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

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

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

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

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

[(av)] (ay) ‘Deodorant’ means [ :

(1) For products manufactured before January 1, 2010: any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

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

[(aw)] (az) ‘Deodorant body spray’ means a personal fragrance product with 20 percent or less fragrance, that is designed for application all over the human body to provide a scent. A ‘deodorant body spray’ product

that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla, is a “deodorant.”

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

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

- (1) products designed solely for use on human or animals;
- (2) products designed for agricultural use;
- (3) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; [and]
- (4) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes[.] ;
- (5) products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent, or veterinary establishments;
- (6) products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

‘Energized electrical cleaner’ does not include electronic cleaner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(bv)] (bz) 'Footwear or leather care product' means any product designed or labeled for use to be applied to footwear or to other leather articles/components, to maintain, enhance, clean, or modify the

appearance, durability, fit, or flexibility of the footwear or leather article/component. 'Footwear' includes both leather and non-leather apparel. 'Footwear or leather care product' does not include fabric protectant, general purpose adhesive, contact adhesive, vinyl/fabric/leather/polycarbonate coating, rubber and vinyl protectant, fabric refresher, products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than two millimeters thick.

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

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

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

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



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

- (1) contact adhesives;
- (2) construction, panel, and floor covering adhesives;
- (3) adhesives designed exclusively for application on one specific category of substrates (‘i.e.’, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or
- (4) adhesives designed exclusively for use on one specific category of articles (‘i.e.’, articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

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

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

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

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

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

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

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

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

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

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

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

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

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

[(cj)] (cn) ‘Hair styling gel’ means a consumer product manufactured before January 1, 2010, that is a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

[(ck)] (co) ‘Hair spray’ means:

[ (1) for products manufactured before January 1, 2010: a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time; and

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

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

[(cm)] (cq) ‘Heavy-duty hand cleaner or soap’ means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer’s ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. ‘Heavy-duty hand cleaner or soap’ does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

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

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

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

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

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

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

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

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

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

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

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

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

(1) for agricultural use;

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

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

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

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

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

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

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

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

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

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

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

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

- (1) [sold] exclusively sold directly or through distributors to establishments which manufacture or construct goods or commodities; and
- (2) labeled [not for retail sale] exclusively for “use in the manufacturing process only”.

[(cz)] (df) ‘LVP content’ means the total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product’s total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) products labeled to prepare surfaces for painting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(dt)] (dz) ‘Paint’ means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used

for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

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

(eb) ‘Paint thinner’ means, for products manufactured on or after January 1, 2022, any liquid product used for reducing the viscosity of coating compositions or components that prominently displays the term paint thinner, lacquer thinner, thinner, or reducer on the front panel of its packaging. ‘Paint thinner’ does not include any of the following products:

(1) artist’s solvent/thinner;

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

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

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

(i) the ‘principle display panel’ of the product displays, in a font size as large as, or larger than, the font size of all other words on the panel (not including the font size used for the company name, brand name, or logo), language that the product is to be used exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings, and

(ii) no representation is made anywhere on the product container or packaging, or any label or sticker attached thereto, that the product is suitable for use or may be used for any other purpose except the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings.

[(dv)] (ec) 'Penetrant' means a lubricant designed and labeled for use primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. 'Penetrant' does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled for use primarily to loosen bonded parts.

[(dw)] (ed) 'Personal fragrance product' means any product which is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. 'Personal fragrance product' does not include:

- (1) deodorant;
- (2) medicated products designed [primary] primarily to alleviate fungal or bacteria growth on feet or other areas of the body;
- (3) mouthwashes, breath fresheners and deodorizers;
- (4) lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations;
- (5) products designed exclusively for use on human genitalia;
- (6) soaps, shampoos, and products primarily to clean the human body; and
- (7) fragrance products designed to be used exclusively on non-human animals.

[(dx)] (ee) 'Pesticide' means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of



substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term 'pesticide' will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

[(dy)] (ef) 'Pre-ACP VOC content' means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the application for a proposed ACP is submitted to the director, Division of Air Resources, Department of Environmental Conservation, based on either the data on the product obtained from the March 12, 1991 CARB Consumer Products Survey, or other accurate records available to the director, Division of Air Resources, Department of Environmental Conservation, whichever yields the lowest VOC content for the product.

[(dz)] (eg) 'Pressurized gas duster' means a pressurized product labeled for use to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of surfaces that cannot be cleaned with solvents. 'Pressurized gas duster' does not include dusting aid.

[(ea)] (eh) 'Principal display panel or panels' means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the [principal display panel] 'principal display panel' shall pertain to all such [principal display panel] 'principal display panels'.

[(eb)] (ei) 'Product brand name' means the name of the product exactly as it appears on the principal display panel of the product.

[(ec)] (ej) ‘Product category’ means the applicable category which best describes the product as listed in this Subpart and in the Table of Standards in Subpart 235-3.1(a) of this Part.

[(ed)] (ek) ‘Product form’ means for the purpose of complying with Subparts 235-7.1(a)(5) and 235-7.1(d)(2)(iii) of this Part only, the applicable form which most accurately describes the product’s dispensing form as follows:

- (1) A = “Aerosol product”;
- (2) S = “Solid”;
- (3) P = “Pump spray”;
- (4) L = “Liquid”;
- (5) SS = “Semisolid”; and
- (6) O = “Other”.

[(ee)] (el) ‘Product line’ means a group of products of identical form and function belonging to the same product category(ies).

[(ef)] (em) ‘Propellant’ means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

[(eg)] (en) ‘Pump spray’ means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

[(eh)] (eo) ‘Reconcile or reconciliation’ means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

[(ei)] (ep) ‘Reconciliation of shortfalls plan’ means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the director, Division of Air resources, Department of Environmental Conservation pursuant to section 235-11.1(c)(1)(vii)(‘j’) of this Part.

[(ej)] (eq) ‘Responsible party’ means the company, firm or establishment which is listed on the product’s label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was manufactured for or distributed by, as noted on the label.

[(ek)] (er) ‘Responsible ACP party’ means the company, firm or establishment which is listed on the ACP product’s label. If the label lists two or more companies, firms, or establishments, the [responsible ACP party] ‘responsible ACP party’ is the party which the ACP product was manufactured for or distributed by, as noted on the label.

[(el)] (es) ‘Restricted materials’ means pesticides established as [restricted materials] ‘restricted materials’ under applicable Part 325 of this Title.

[(em)] (et) ‘Retailer’ means any person who sells, supplies, or offers consumer products for sale directly to consumers.

[(en)] (eu) ‘Retail outlet’ means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

[(eo)] (ev) ‘Roll-on product’ means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

[(ep)] (ew) ‘Rubber [and]/vinyl protectant’ means

(1) For products manufactured before January 1, 2022: any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. ‘Rubber [and]/vinyl protectant’ does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

(2) For products manufactured on or after January 1, 2022, any product labeled to protect, preserve or renew vinyl or rubber on vehicles, tires, luggage, furniture, and/or household products such as vinyl covers, clothing, and accessories. ‘Rubber/vinyl protectant’ does not include: products labeled to clean the wheel rim, such as aluminum or magnesium wheel cleaners; tire cleaners that do not leave an appearance-enhancing or protective substance on the tire; pigmented products designed or labeled to be used primarily for coloring; products used for construction, reconstruction, modification, structural maintenance or repair of rubber or vinyl substrates; or products, other than those labeled to be used on vehicle tires, qualifying as either clear coating or vinyl/fabric/leather/polycarbonate coating.

[(ea)] (ex) ‘Rubbing alcohol’ means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

(ey) ‘Sanitizer’ means, for products manufactured on or after January 1, 2022, products that are labeled as a ‘sanitizer’, or labeled to reduce, but not necessarily eliminate, microorganisms in the air, on surfaces, or on inanimate objects, and whose label is registered as a ‘sanitizer’ under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. section 136 et seq.) (see Table 1, Section 200.9 of this Title). Products that are labeled as both a ‘sanitizer’ and a ‘disinfectant’ are considered disinfectants. ‘Sanitizer’ does not include:

- \_\_\_\_\_ (1) disinfectant;
- \_\_\_\_\_ (2) products labeled solely for use on humans or animals;
- \_\_\_\_\_ (3) products labeled solely for agricultural use;
- \_\_\_\_\_ (4) products labeled solely for use in swimming, therapeutic tubs, or hot tubs;
- \_\_\_\_\_ (5) products which are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;
- \_\_\_\_\_ (6) products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent or veterinary establishments;
- \_\_\_\_\_ (7) products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or
- \_\_\_\_\_ (8) products which are labeled as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet/urinal care products, metal polishers, carpet cleaners, or fabric refreshers that may also make sanitizing or anti-microbial claims on the label.

[(er)] (ez) ‘Sealant and caulking compound’ means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. ‘Sealant and caulking compound’ does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear/paintable/water resistant caulking compounds; floor seam sealers; products designed exclusively for

automotive uses; or sealers that are applied as continuous coatings. ‘Sealant and caulking compound’ also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only: ‘Removable caulking compounds’ means a compound which temporarily seals windows or doors for three- to six-month time intervals; and ‘clear/paintable/water resistant caulking compounds’ means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

[(es)] (fa) ‘Semisolid’ means a product that, at room temperature, will not pour, but will spread or deform easily, including, but not limited to gels, pastes, and greases.

[(et)] (fb) ‘Shaving cream’ means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair. ‘Shaving cream’ does not include shaving gel.

[(eu)] (fc) ‘Shaving gel’ means an aerosol product which dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other bodily hair. ‘Shaving gel’ does not include shaving cream.

[(ev)] (fd) ‘Shortfall’ means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. ‘Shortfall’ does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation.

[(ew)] (fe) ‘Silicone-based multi-purpose lubricant’ means any lubricant which is:

(1) designed and labeled for use to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

(2) designed and labeled for use for general purpose lubrication, or for use in a wide variety of applications.

‘Silicone-based multi-purpose lubricant’ does not include products designed and labeled for use exclusively to release manufactured products from molds.

[(ex)] (ff) ‘Single phase aerosol air freshener’ means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

[(ey)] (fg) ‘Small business’ means any business that is independently owned and operated, and employs 100 or fewer individuals.

[(ez)] (fh) ‘Solid’ means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D 4359-90 (2000)e1 (see Table 1, Section 200.9 of this Title).

[(fa)] (fi) ‘Special purpose spray adhesive’ means an aerosol adhesive that meets any of the following definitions:

(1) ‘Mounting adhesive’ means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(2) 'Flexible vinyl adhesive' means an aerosol adhesive designed to bond flexible vinyl to substrates. 'Flexible vinyl' means a non-rigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A 'plasticizer' is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E 260-96 (2001) (see Table 1, Section 200.9 of this Title) or from product formulation data.

(3) 'Polystyrene foam adhesive' means an aerosol adhesive designed to bond polystyrene foam to substrates.

(4) 'Automobile headliner adhesive' means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(5) 'Polyolefin adhesive' means an aerosol adhesive designed to bond polyolefins to substrates.

(6) 'Laminate repair/edgebanding adhesive' means an aerosol adhesive designed for:

(i) the touch-up or repair of items laminated with high pressure laminates ('e.g.', lifted edges, delaminates, etc.); or

(ii) for the touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition: 'high pressure laminate' means sheet materials which consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265[°F] degrees Fahrenheit, and at pressures between 1,000 and 1,400 psi.

(7) 'Automotive engine compartment adhesive' means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200[°] - 275[°F] degrees Fahrenheit.



[(fb)] (fj) ‘Spot remover’ means any product which is labeled for use in cleaning localized areas, or removing localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. ‘Spot remover’ does not include dry cleaning fluid, laundry pre-wash, or multi-purpose solvent.

[(fc)] (fk) ‘Spray buff product’ means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

[(fd)] (fl) ‘Stick product’ means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

[(fe)] (fm) ‘Structural waterproof adhesive’ means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A) (see Table 1, Section 200.9 of this Title). This definition is as per the Federal Consumer Products Regulation 40 CFR part 59, subpart C (see Table 1, Section 200.9 of this Title).

[(ff)] (fn) ‘Surplus reduction’ means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in section 235-11.1(g)(3) of this Part, ‘surplus reduction’ does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation.

[(fg)] (fo) ‘Surplus trading’ means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

[(fh)] (fp) 'Table B compound' means any carbon-containing compound listed as an exception to the definition of VOC as defined in Part 200 of this Title.

[(fq)] 'Temporary hair color' means, for products manufactured on or after January 1, 2022, any product that applies color, glitter, or UV-active pigments to hair, wigs, or fur and is removable when washed. 'Temporary hair color' includes hair color mousses and products labeled to add texture or thickness to cover thinning/balding areas. 'Temporary hair color' does not include hair spray, hair styling product, or hair mousse.

[(fi)] (fr) 'Terrestrial' means to live on or grow from land.

[(fj)] (fs) 'Tire sealant and [inflation] inflator' means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

[(fk)] (ft) 'Toilet/Urinal care product' means any product designed or labeled for use to clean and/or deodorize toilet bowls, toilet tanks, or urinals. Toilet bowls, toilet tanks, or urinals includes, but is not limited to, toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations, and toilets or urinals in vehicles such as buses, recreational motor homes, boats, ships, and aircraft. 'Toilet/Urinal care product' does not include bathroom and tile cleaner or general purpose cleaner.

[(fl)] (fu) 'Total maximum historical emissions (TMHE)' means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The [TMHE] 'TMHE' shall be calculated for each ACP product during each portion of a

compliance period for which the responsible ACP has failed to provide the required VOC content or enforceable sales records. The [TMHE] ‘TMHE’ shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

where,

$$MHE = \left( \frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

where,

Highest VOC Content = the maximum VOC content which the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement.

Highest Sales = the maximum one-year gross New York State sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing Data Days = the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.

[(fn)] (fv) ‘Type A propellant’ means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product’s packaging.

[(fn)] (fw) ‘Type B propellant’ means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

[(fo)] (fx) ‘Type C propellant’ means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

[(fp)] (fy) ‘Undercoating’ means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. ‘Undercoating’ includes, but is not limited to, rubberized, mastic, or asphaltic products.

[(fq)] (fz) ‘Usage directions’ means the text or graphics on the product’s principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

[(fr)] (ga) ‘Vinyl/Fabric/Leather/Polycarbonate coating’ means a coating designed and labeled for use exclusively to coat vinyl, fabric, leather, or polycarbonate plastic substrates.

[(fs)] (gb) ‘VOC content’ means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to [section] sections 235-9.1(a) and (b) of this Part, and calculated according to the following equations:

For all products except for charcoal lighter material products:

$$\text{VOC Content} = \frac{((B - C) \times 100)}{A}$$

where,

A = net weight of unit (excluding container and packaging)

B = total weight of all VOC per unit, as defined in Part 200 of this Title

C = total weight of all exempted VOCs per unit, as specified in Subpart 235-4 of this Part

For charcoal lighter material products only:

$$\text{VOC Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate'}}$$

Where,

Certified Emissions = the emissions level for products approved by director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(f) of this Part, as determined pursuant to

South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 28, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

and

Certified Use Rate = the usage level for products approved by the director, Division of Air Resources, Department of Environmental Conservation under section 235-3.1(f) of this Part, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 28, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound certified product used per start.

---

(gc) ‘Volatile Organic Compound’ or ‘VOC’ as defined in section 200.1 of this title.

[(ft)] (gd) ‘Wasp and hornet insecticide’ means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

[(fu)] (ge) ‘Waterproofer’ means a product designed and labeled for use exclusively to repel water from fabric or leather substrates. ‘Waterproofer’ does not include fabric protectants.

[(fv)] (gf) ‘Wax’ means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). ‘Wax’ includes, but is not limited to, substances derived from the secretions of plants and animals such as caruba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

[(fw)] (gg) ‘Web spray adhesive’ means any aerosol adhesive which is not a mist spray adhesive or a special purpose spray adhesive.

[(fx)] (gh) ‘Wood cleaner’ means a product labeled for use to clean wooden materials including but not limited to decking, fences, flooring, logs, cabinetry, and furniture. ‘Wood cleaner’ does not include dusting aid, general purpose cleaners, furniture maintenance product, floor wax stripper, floor polish or wax, or products designed and labeled for use exclusively to preserve or color wood.

[(fy)] (gi) ‘Wood floor wax’ means wax-based products for use solely on wood floors.

[(fz)] (gj) ‘Working day’ means any day, [between] Monday through Friday, inclusive, except for days that are Federal holidays.

(gk) ‘Zinc rich primer’ means, for products manufactured on or after January 1, 2022, a coating that:

(1) contains at least 65 percent metallic zinc powder or zinc dust by weight of total solids; and

(2) is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings; and

(3) is intended for professional use only and is labeled “For Professional Use Only,” “For Industrial Use Only,” “Not for residential use,” or “Not intended for residential use.”

## Section 235-3.1 Standards

(a) Except as provided in Subparts 235-4 (Exemptions), 235-5 (Innovative Products), 235-8 (Variances), and 235-11 (Alternative Control Plan) of this Part, no person shall sell, supply, offer for sale, or

manufacture for sale in the State of New York any consumer product manufactured on or after the corresponding date listed below in the Table of Standards (table) which contains VOCs in excess of the VOC content limits specified in the table:

Table of Standards

'Product Category'	'VOC Content Limit' (‘percent by weight’)		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	<u>Manufactured On or after January 1, 2022</u>
Adhesive Removers:			
Floor or Wall covering		5	
Gasket or Thread Locking		50	
General Purpose		20	
Specialty		70	
Adhesives:			
Mist Spray	65		
Web Spray	55		
Special Purpose Spray Adhesives:			
Mounting, Automotive Engine Compartment, and Flexible Vinyl	70		
Polystyrene Foam and Automotive Headliner	65		
Polyolefin and Laminate Repair/Edgebanding	60		
Construction, Panel, and Floor Covering	15		<u>7</u>
Contact	80*		
Contact General purpose		55	
Contact Special purpose		80	
General Purpose	10		
Structural Waterproof	15		
Air Fresheners:			
Single-Phase Aerosols	30		
Double-Phase Aerosols	25		
Liquids/Pump Sprays	18		
Solids/Gels	3		
<u>Dual Purpose Air Freshener / Disinfectant</u>			<u>60</u>
Antiperspirants:			
Aerosols	40 HVOC 10 MVOC		
Non-Aerosols	0 HVOC 0 MVOC		
Anti-static Product:			
<u>Aerosol</u>			<u>80</u>



Non-aerosol		11	
Automotive Brake Cleaner[s] or Brake Cleaner	45		<u>10</u>
Automotive Rubbing or Polishing Compound	17		
Automotive Wax, Polish, Sealant or Glaze:			
Hard Paste Waxes	45		
Instant Detailers	3		
All Other Forms	15		
Automotive Windshield Cleaner			<u>35</u>
Automotive Windshield Washer Fluids	35		
Bathroom and Tile Cleaners:			
Aerosols	7		
All Other Forms	5		<u>n/a</u>
Non-Aerosol			<u>1</u>
Bug and Tar Remover	40		
Carburetor or Fuel-Injection Air Intake Cleaners	45		<u>10</u>
Carpet and Upholstery Cleaners:			
Aerosols	7		
Non-Aerosols (Dilutables)	0.1		
Non-Aerosols (Ready-to-Use)	3		
Charcoal Lighter Material	see subdivision (f) of this section		
Cooking Spray:			
Aerosols	18		
Deodorants:			
Aerosols	0 HVOC 10 MVOC		
Non-Aerosols	0 HVOC 0 MVOC		
<u>Disinfectant:</u>			
Aerosols			<u>70</u>
Non-Aerosols			<u>1</u>
Dusting Aids:			
Aerosols	25		
All Other Forms	7		
Electrical Cleaner		45	
Electronic Cleaner		75	
Engine Degreasers:			
Aerosols	35		<u>10</u>
Non-Aerosols	5		
Fabric Protectants	60		
Fabric Refresher:			
Aerosols		15	
Non-Aerosols		6	
Floor Polishes/Waxes:			
Products for Flexible Flooring Materials	7		<u>1</u>
Products for Nonresilient Flooring	10		<u>1</u>

Wood Floor Wax	90		
Floor Wax Strippers:			
Non-Aerosols	See subdivision (h) of this section		
Footwear or Leather Care Product:			
Aerosol		75	
Solid		55	
Other forms		15	
Furniture Maintenance Products:			
Aerosols	17		
All Other Forms Except Solid or Paste	7		<u>n/a</u>
Non-Aerosol (Except Solid or Paste)			<u>3</u>
General Purpose Cleaners:			
Aerosols	10		<u>8</u>
Non-Aerosols	4		
General Purpose Degreasers:			
Aerosols	50		<u>10</u>
Non-Aerosols	4		
Glass Cleaners:			
Aerosols	12		
Non-Aerosols	4		
Graffiti Remover:			
Aerosol		50	
Non-Aerosols		30	
Hair Mousses	6		
Hairshines	55		
Hairsprays	55		
Hair Styling Gels	6		
Hair Styling Products:			
Aerosols and Pump Sprays		6	
All other forms		2	
Heavy-Duty Hand Cleaner or Soap	8		
Insecticides:			
Crawling Bug (Aerosol)	15		
Crawling Bug (All Other Forms)	20		
Flea and Tick	25		
Flying Bug (Aerosol)	25		
Flying Bug (All Other Forms)	35		
Foggers	45		
Lawn and Garden (All Other Forms)	20		
Lawn and Garden (Non-Aerosol)	3		
Wasp and Hornet	40		
Laundry Prewash:			
Aerosols/Solids	22		
All Other Forms	5		
Laundry Starch Products	5		<u>4.5</u>

Metal Polishes/Cleaners	30		
Multi-Purpose Lubricant (Excluding Solid or Semi-Solid Products)	50		
<u>Multi-Purpose Solvent</u>			<u>3</u>
Nail Polish Remover	75		<u>1</u>
Non-Selective Terrestrial Herbicide:			
Non-Aerosols	3		
Oven or Grill Cleaners:			
Aerosol/Pump Sprays	8		
Liquids	5		
Non-Aerosols			4
Paint Remover or Strippers	50		
<u>Paint Thinner</u>			<u>3</u>
Penetrants	50		
Rubber and Vinyl Protectants:			
Non-Aerosols	3		
Aerosols	10		
<u>Sanitizer:</u>			
Aerosol			<u>70</u>
Non-Aerosol			<u>1</u>
Sealants and Caulking Compounds	4		
Shaving Creams	5		
Shaving Gel		7	<u>4</u>
Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60		
Spot Removers:			
Aerosols	25		
Non-Aerosols	8		
<u>Temporary Hair Color:</u>			
Aerosol			<u>55</u>
Tire Sealants and Inflators	20		
Toilet/Urinal Care:			
Aerosol		10	
Non-Aerosol		3	
Undercoatings:			
Aerosols	40		
Wood Cleaner:			
Aerosol		17	
Non-Aerosol		4	

\* VOC standard will expire on December 31, 2009 because category will be split into two categories.

“n/a” not applicable

(b) No person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any antiperspirant or deodorant which contains any compound that has been identified by the CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, section 93000 (see Table 1, section 200.9 of this Title) as a toxic air contaminant.

(c) ‘Products that are diluted prior to use’.

(1) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content limits specified in the Table of Standards in this Subpart shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this Subpart, minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(2) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the VOC content limits specified in the Table of Standards in this Subpart shall apply to the product only after the maximum recommended dilution has taken place.

(d) ‘Sell-through of products.’ [(1)] Sell-through period. Notwithstanding the provisions of [subdivision] subdivisions (a) or (g) of this section, a consumer product manufactured prior to the effective date specified for that product in the Table of Standards may be sold, supplied, or offered for sale after each of the specified effective dates. This subdivision shall not apply to:

[(i)] (1) any consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part, or

[(ii)] (2) Solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene; these products are subject to the one-year sell-through period specified in subdivision (n) of this section.

(e) ‘Products registered under FIFRA’. For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. section 136, et. seq.) (see Table 1, section 200.9 of this Title), the effective date of the VOC content limits specified in Table of Standards in this Subpart is January 1, [2011] 2023.

(f) ‘Requirements for charcoal lighter materials’. The following requirements shall apply to all charcoal lighter material products as defined in section 235-2.1[(ai)] (al) of this Part:

(1) ‘Regulatory standards’.

(i) No person shall sell, supply, or offer for sale after January 1, 2005 any charcoal lighter material product unless at the time of the transaction:

(‘a’) the manufacturer can demonstrate that they have been issued a currently effective certification by the CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, section 94509(h), of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title). This certification remains in effect

for the State of New York for as long as the CARB certification remains in effect. Any manufacture claiming such a certification on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the certification decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the certification;

(‘b’) the manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to paragraph (2) of this subdivision;

(‘c’) the charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to paragraph (2) of this subdivision; and

(‘d’) the product usage directions for the charcoal lighter material are the same as those provided to the director, Division of Air Resources, Department of Environmental Conservation pursuant to subparagraph (2)(iii) of this subdivision.

(2) ‘Certification requirements’.

(i) No charcoal lighter material formulation shall be certified under this subsection unless the applicant for certification demonstrates to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation [satisfaction] that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality

Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 28, 1991 (the South Coast Air Quality Management District Rule 1174 Testing Protocol) (see Table 1, section 200.9 of this Title). The provisions relating to LVP-VOC in sections 235-2.1[(da)](dg) and 235-4.1(f) of this Part shall not apply to any charcoal lighter material subject to the requirements of this subdivision and subdivision (a) of this section.

(ii) The director, Division of Air Resources, Department of Environmental Conservation may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title).

(iii) A manufacturer or distributor of charcoal lighter material may apply to the director, Division of Air Resources, Department of Environmental Conservation for certification of a charcoal lighter material formulation in accordance with this paragraph. The application shall be in writing and shall include, at a minimum, the following:

(‘a’) the results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see Table 1, section 200.9 of this Title).

(‘b’) the exact text and/or graphics that will appear on the charcoal lighter material’s principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was

used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) for that product, unless:

(‘1’) the charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes; or

(‘2’) the charcoal lighter material is already incorporated into the charcoal, such as certain bag light, instant light or match light products.

(‘c’) for a charcoal lighter material which meets the criteria specified in subclause (‘b’)(‘1’) of this subparagraph, the usage instructions provided to the director, Division of Air Resources, Department of Environmental Conservation shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) for that product; and

(‘d’) any physical property data, formulation data, or other information required by the director, Division of Air Resources, Department of Environmental Conservation for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to this paragraph.



(iv) Within 30 days of receipt of an application, the director, Division of Air Resources, Department of Environmental Conservation shall advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the director, Division of Air Resources, Department of Environmental Conservation shall advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

(v) If the director, Division of Air Resources, Department of Environmental Conservation finds that an application meets the requirements of this paragraph, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this section are met. The director, Division of Air Resources, Department of Environmental Conservation shall act on a complete application within 90 days after the application is deemed complete.

(3) Notice of modifications. For any charcoal lighter material for which certification has been granted pursuant to paragraph (2) of this subdivision, the applicant for certification shall notify the director, Division of Air Resources, Department of Environmental Conservation in writing within 30 days of:

(i) any change in the usage directions; or

(ii) any change in product formulation, test results, or any other information submitted pursuant to paragraph (2) of this subdivision which may result in VOC emissions greater than 0.020 pound of VOC per start.

(4) 'Revocation of certification'. If the director, Division of Air Resources, Department of Environmental Conservation determines that any certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title) and the statistical analysis procedures contained therein, the director, Division of Air Resources, Department of Environmental Conservation shall revoke or modify the certification in accordance with Part 621 of this Title and the procedures therein as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

(g) 'Requirements for aerosol adhesives'.

(1) As specified in California Health and Safety Code section 41712(h)(2) (see Table 1, section 200.9 of this Title) (or applicable New York State laws and regulations), the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in Subparts 235-4, 235-5, and 235-8 of this Part, no person shall sell, supply, offer for sale, use or manufacture for sale in the State of New York any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

(2) (i) In order to qualify as a special purpose spray adhesive the product must meet one or more of the definitions for special purpose spray adhesive specified in subdivision 235-2.1[(fa)](fi) of this Part, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one of the definitions for special purpose spray

adhesive, then the product shall be classified as either a web spray adhesive or a mist spray adhesive.

(ii) If a product meets more than one of the definitions specified in section 235-2.1[(fa)](fi) of this Part for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive under subparagraph (i) of this paragraph, then the VOC content limit for the product shall be the lowest applicable VOC content limit specified in the Table of Standards in this Subpart.

(3) Effective January 1, 2005, no person shall sell, supply, offer for sale, or manufacture for use in the State of New York any aerosol adhesive which contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(4) All aerosol adhesives must comply with the labeling requirements specified in section 235-6.1(d) of this Part.

(h) 'Requirements for floor wax strippers'. No person shall sell, supply, offer for sale, or manufacture for use in the State of New York any floor wax stripper unless the following requirements are met:

(1) The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent by weight or less.

(2) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent by weight or less.

(3) The terms light build-up, medium build-up or heavy build-up are not specifically required, as long as comparable terminology is used.

(i) 'Products containing ozone-depleting compounds'. For any consumer product for which VOC content limits are specified in the Table of Standards under this Subpart, no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any consumer product which contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane);

CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane);

halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane);

halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane);

HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane);

HCFC-142b (1-chloro-1,1-difluoroethane);  
1,1,1-trichloroethane; and,  
carbon tetrachloride.

(j) The requirements of subdivision (i) of this section shall not apply to any existing product formulation that complies with the Table of Standards of this Subpart or any existing product formulation that is reformulated to meet the Table of Standards of this Subpart, provided the ozone depleting compound content of the reformulated product does not increase.

(k) The requirements of subdivision (i) of this section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01 percent by weight of the product.

(l) 'Requirements for contact adhesives, electronic cleaners, footwear or leather care products, and general purpose degreasers.'

(1) Except as provided below in paragraph[s] (2) [and (4)] of this subdivision, [effective January 1, 2010,] no person shall sell, supply, offer for sale, or manufacture for use in the State of New York any contact adhesive, electronic cleaner, footwear or leather care product, or general purpose degreaser that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(2) [Sell-through of products. Contact adhesives, electronic cleaners, footwear or leather care products, and general purpose degreasers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2010, may be sold, supplied, or offered for

sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

(3) Notification for products sold during the sell-through period. Any person who sells or supplies a consumer product identified above in paragraph (1) of this subdivision must notify the purchaser of the product in writing that the sell-through period for that product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

(i) the product is sold or supplied to a distributor or retailer; and

(ii) the product is sold or supplied on or after June 30, 2010.

(4)] Impurities. The requirements of paragraph[s] (1) [and (3)] of this subdivision shall not apply to any ‘contact adhesive,’ ‘electronic cleaner,’ ‘footwear or leather care product,’ or ‘general purpose degreaser’ containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(m) ‘Requirements for adhesive removers, electrical cleaners, and graffiti removers.’

(1) Except as provided below in paragraph[s] (2) [and (4)] of this subdivision, [effective January 1, 2010], no person shall sell, supply, offer for sale, or manufacture for use in the State of New York any adhesive remover, electrical cleaner, or graffiti remover that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(2) [Sell-through of products. Adhesive removers, electrical cleaners, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2010, may be sold, supplied, or offered for sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

(3) Notification for products sold during the sell-through period. Any person who sells or supplies a consumer product identified above in paragraph (1) of this subdivision must notify the purchaser of the product in writing that the sell-through period for that product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

(i) the product is sold or supplied to a distributor or retailer; and

(ii) the product is sold or supplied on or after June 30, 2010.

(4)] Impurities. The requirements of paragraph[s] (1) [and (3)] of this subdivision shall not apply to any adhesive remover, electrical cleaner, or graffiti remover containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(n) 'Requirements for solid air fresheners and toilet/urinal care products.'

[(1) Effective January 1, 2010, no] No person shall sell, supply, offer for sale, or manufacture for use in the State of New York any solid air fresheners or toilet/urinal care products that contain para-dichlorobenzene, except that solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene and were manufactured before January 1, 2010, may be sold, supplied, or offered for sale until January 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 235-6.1(a) of this Part.

[(2) Notification for products sold during the sell-through period. Any person who sells or supplies any solid air freshener or toilet/urinal care product that contains para-dichlorobenzene must notify the purchaser of the product in writing that the sell-through period for the product will end on January 1, 2011, provided, however, that this notification must be given only if both of the following conditions are met:

(i) the product is sold or supplied to a distributor or retailer; and

(ii) the product is sold or supplied on or after June 30, 2010.]

(o) 'Requirements for bathroom and tile cleaners, construction, panel and floor covering adhesives, electronic cleaners labeled as "energized electronic equipment use only," general purpose cleaners, and oven or grill cleaners.'

(1) No person shall sell, supply, offer for sale, or manufacture for use in New York any bathroom and tile cleaner, construction, panel and floor covering adhesive or electronic cleaner labeled as "energized electronic equipment use only," general purpose cleaner, or oven or grill cleaner



manufactured on or after January 1, 2022, that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

(2) Impurities. The requirements of paragraph (o)(1) of this subdivision shall not apply to any bathroom and tile cleaner, construction, panel and floor covering adhesive, electronic cleaner labeled as “energized electronic equipment use only,” general purpose cleaner, or oven or grill cleaner containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

(p) ‘Requirements for paint thinner and multipurpose solvents’

(1) Except as provided below, effective January 1, 2022, no person shall sell, supply, offer for sale, or manufacture for use in New York any multi-purpose solvent or paint thinner that contains any of the following:

- (i) methylene chloride, perchloroethylene, or trichloroethylene; or
- (ii) greater than 1 percent Aromatic Compound content by weight.

(2) Impurities. The requirements of paragraph (1) of this subdivision do not apply to any multi-purpose solvent or paint thinner that contain methylene chloride; perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01 percent by weight.

## Section 235-4.1 Exemptions

(a) This Part shall not apply to any consumer product manufactured in the State of New York for shipment and use outside of the State of New York.

(b) The provisions of this Part shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of New York a consumer product that does not comply with the VOC content limits specified in section 235-3.1(a) of this Part, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the State of New York, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the State of New York. This subdivision does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the State of New York.

(c) The medium volatility organic compound (MVOC) content limits specified in section 235-3.1(a) of this Part for antiperspirants or deodorants, shall not apply to ethanol.

(d) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to fragrances up to a combined level of two percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of two percent by weight contained in any antiperspirant or deodorant.

(e) The requirements of section 235-3.1(a) of this Part for antiperspirants or deodorants shall not apply to those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20[°C] degrees Celsius.

(f) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to any LVP-VOC.

(g) The requirements of section 235-6.1(a) of this Part shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. section 136, 'et. seq.') (see Table 1, section 200.9 of this Title).

(h) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under Part 200 of this Title or exempted under subdivision (f) of this section.

(i) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to [air fresheners and] insecticides containing at least 98 percent paradichlorobenzene.

[(1) Until January 1, 2010, the VOC limits specified in section 235-3.1(a) of this Part shall not apply to solid air fresheners containing at least 98 percent para-dichlorobenzene. On or after January 1, 2010, the provisions of section 235-3.1(n) of this Part apply to solid air fresheners containing para-dichlorobenzene.]

(j) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to adhesives sold in containers of one fluid ounce or less.

(k) The VOC content limits specified in section 235-3.1(a) of this Part shall not apply to bait station insecticides. For the purpose of this Subpart, 'bait station insecticides' are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.

#### Section 235-5.1 Innovative products

(a) Any manufacturer of consumer products which have been granted an innovative product exemption by the CARB under the innovative products provisions in section 94511, or 94503.5 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) shall be exempt from the Table of Standards in section 235-3.1(a) of this Part for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in the Table of Standards in section 235-3.1(a) of this Part. Any manufacturer claiming such an exemption on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the CARB innovative product exemption decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the exemption. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the innovative product exemption will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

(b) Manufacturers of consumer products that have been granted an innovative products exemption under the innovative products provisions in section 94511, or 94503.5 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) based on California specific data, or that have not been

granted an exemption by the CARB may seek an innovative products exemption in accordance with the following criteria:

(1) The director, Division of Air Resources, Department of Environmental Conservation shall exempt a consumer product from the VOC content limits specified in section 235-3.1(a) of this Part if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(i) the VOC emissions from a representative consumer product which complies with the VOC content limits specified in section 235-3.1(a) of this Part; or

(ii) the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC content limits specified in section 235-3.1(a) of this Part. VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \text{VOC}_{STD} \div \text{VOC}_{NC}$$

where:

$E_R$  = the VOC emissions from the non-complying representative product, had it been reformulated.

$E_{NC}$  = the VOC emissions from the non-complying representative product in its current formulation.

$\text{VOC}_{STD}$  = the VOC content limit specified in the Table of Standards in section 235-3.1(a) of this Part.

$VOC_{NC}$  = the VOC content of the non-complying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the director, Division of Air Resources, Department of Environmental Conservation.

(2) For the purposes of this Subpart, 'representative consumer product' means a consumer product which meets all of the following criteria:

(i) the representative product shall be subject to the same VOC content limit in section 235-3.1(a) of this Part as the innovative product;

(ii) the representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made; and

(iii) the representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(3) A manufacturer shall apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for any exemption claimed under paragraph (1) of this subdivision. The application shall include the supporting documentation that demonstrates the emissions from the

innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the director, Division of Air Resources, Department of Environmental Conservation to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a manufacturer pursuant to this Subpart shall be handled in accordance with the procedures specified in applicable New York State confidentiality requirements.

(4) Within 30 days of receipt of the exemption application, the director, Division of Air Resources, Department of Environmental Conservation shall determine whether an application is complete as provided in applicable New York State laws or regulations.

(5) Within 90 days after an application has been deemed complete, the director, Division of Air Resources, Department of Environmental Conservation shall determine whether, under what conditions, and to what extent, an exemption from the requirements of section 235-3.1(a) of this Part will be permitted. The applicant and the director, Division of Air Resources, Department of Environmental Conservation may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The director, Division of Air Resources, Department of Environmental Conservation shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in paragraph (1) of this subdivision, and that such emissions reductions can be enforced. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the innovative product

exemption will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

(6) In granting an exemption for a product, the director, Division of Air Resources, Department of Environmental Conservation shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the director, Division of Air Resources, Department of Environmental Conservation to be necessary. The director, Division of Air Resources, Department of Environmental Conservation shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

(7) For any product for which an exemption has been granted pursuant to this Subpart, the manufacturer shall notify the director, Division of Air Resources, Department of Environmental Conservation in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the director, Division of Air Resources, Department of Environmental Conservation within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the director, Division of Air Resources, Department of Environmental Conservation in support of the exemption application.

(8) If the VOC content limits specified in section 235-3.1(a) of this Part are lowered for a product category through any subsequent rule making, all innovative product exemptions granted for products in the product category, except as provided in this paragraph, shall have no force and effect as of the effective date of the modified VOC content limit. This paragraph shall not apply to those



innovative products which have VOC emissions less than the applicable lowered VOC content limit and for which a written notification of the product's emissions status versus the lowered VOC content limit has been submitted to and approved by the director, Division of Air Resources, Department of Environmental Conservation at least 60 days before the effective date of such limits.

(9) If the director, Division of Air Resources, Department of Environmental Conservation believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in paragraph (1) of this subdivision, the director, Division of Air Resources, Department of Environmental Conservation may review, and for good cause, modify or revoke the exemption in accordance with Part 621 of this Title and the procedures therein as necessary to assure that the product will meet these criteria.

#### Section 235-6.1 Administrative requirements

(a) 'Product dating'.

(1) Each manufacturer of a consumer product subject to Subpart 235-3 of this Part shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.

(2) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of paragraph (b)(1) of this section, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

Where:

YY = two digits representing the year in which the product was manufactured, and

DDD = three digits representing the day of the year on which the product was manufactured, with 001 representing the first day of the year, 002 representing the second day of the year, and so forth ('i.e.' the Julian date)

(3) This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in section 235-3.1(a) of this Part.

(4) The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without irreversibly disassembling any part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container without removing any product packaging.

(5) The requirements of this subdivision shall not apply to[:

(i)] products containing no VOCs (as defined in subdivision 200.1[cf](cg) of this Title), or containing VOCs at 0.10 percent by weight or less.

(b) 'Additional product dating requirements'.

(1) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to Subpart 235-3 of this Part an explanation of the date portion of the code must be on file with

the director, Division of Air Resources, Department of Environmental Conservation [by the close of business December 31, 2010].

(2) If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to section 235-3.6(b)(1) of this Part, an explanation of the modified code must be submitted to the director, Division of Air Resources, Department of Environmental Conservation before any products displaying the modified code are sold, supplied, or offered for sale in New York State.

(3) No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

(4) Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential. (Note: If a manufacturer believes there is something in the date code explanation related to something other than the date of manufacture that the manufacturer believes to be confidential, then the manufacturer should modify the explanation prior to submitting it to the Department so that the date code explanation only includes non-confidential date code information.)

(c) 'Most restrictive limit'.

(1) Products manufactured before January 1, 2010, and FIFRA-registered insecticides manufactured before January 1, 2011. Notwithstanding the definition of product category as defined in section 235-2.1([ec]ej) of this Part, if anywhere on the principal display panel of any consumer product manufactured before January 1, 2010, or any FIFRA registered insecticide manufactured before June 1,

2011, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC content limit is specified in section 235-3.1(a) of this Part, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products, and insecticide foggers.

(2) Products manufactured on or after January 1, 2010, and FIFRA-registered insecticides manufactured on or after January 1, 2011. Notwithstanding the definition of product category in section 235-2.1(ec) of this Part, if anywhere on the container or packaging of any consumer product manufactured on or after January 1, 2010, or any FIFRA-registered insecticide manufactured on or after January 1, 2011, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in section 235-3.1(a) of this Part, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.

(d) ‘Additional labeling requirements for aerosol adhesives, adhesive removers, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesives’.

(1) In addition to the requirements specified in subdivision[s] (a) [and (c)] of this section, and Subpart 235-7 of this Part, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover[s], electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this Part shall ensure that all products clearly display the following information on each product container [which is manufactured on or after January 1, 2010]:

(i) the product category as specified in section 235-3.1(a) of this Part or an abbreviation of the category shall be displayed;

(ii) (a) the applicable VOC content limit for the product that is specified in section 235-3.1(a) of this Part, except for energized electrical cleaner, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the director, Division of Air Resources, Department of Environmental Conservation, as provided in Subpart 235-11 of this Part, and the product exceeds the applicable VOC content limit;

(b) if the product is included in an alternative control plan approved by the director, Division of Air Resources, Department of Environmental Conservation, and the product exceeds the applicable VOC content limits specified in section 235-3.1(a) of this Part, the product shall be labeled with the term ACP or ACP Product;

(iii) if the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate/application that qualifies the product as special purpose shall be displayed; and

(iv) if the manufacturer or responsible party uses an abbreviation as allowed by this subdivision, an explanation of the abbreviation must be filed with the director, Division of Air Resources, Department of Environmental Conservation before the abbreviation is used.

(2) The information required in paragraph (1) of this subdivision, shall be displayed on the product container such that it is readily observable without removing or irreversibly disassembling any portion of the product container or packaging. For the purposes of this Subpart, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(3) No person shall remove, alter, conceal, or deface the information required in paragraph (1) of this subdivision prior to final sale of the product.

#### Section 235-7.1 Reporting requirements

(a) Upon 90 days written notice, the director, Division of Air Resources, Department of Environmental Conservation may require any responsible party to report information for any consumer product or products the director, Division of Air Resources, Department of Environmental Conservation may specify including, but not limited to, all or part of the following information:

(1) the company name of the responsible party and the party's address, telephone number, and designated contact person;

(2) any claim of confidentiality made pursuant to applicable New York State confidentiality requirements;

(3) the product brand name for each consumer product and the product label;

- (4) the product category to which the consumer product belongs;
- (5) the applicable product form(s) listed separately;
- (6) an identification of each product brand name and form as a household product, i&i product, or both;
- (7) separate New York State sales in pounds per year, to the nearest pound, and the method used to calculate New York State sales for each product form;
- (8) for information submitted by multiple companies, an identification of each company which is submitting relevant data separate from that submitted by the responsible party. All information from all companies shall be submitted by the date specified in this subdivision;
- (9) for each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest 0.1 percent:
- (i) total Table B compounds;
  - (ii) total LVP-VOCs that are not fragrances;
  - (iii) total all other carbon-containing compounds that are not fragrances;
  - (iv) total all non-carbon-containing compounds;

(v) total fragrance;

(vi) for products containing greater than two percent by weight fragrance:

(‘a’) the percent of fragrance that are LVP-VOCs; and

(‘b’) the percent of fragrance that are all other carbon-containing compounds;

(vii) total paradichlorobenzene;

(10) for each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(i) each Table B compound;

(ii) each LVP-VOC that is not a fragrance;

(11) if applicable, the weight percent comprised of propellant for each product; and

(12) if applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).



If the responsible party does not have or does not provide the information requested by the director, Division of Air Resources, Department of Environmental Conservation, the director may require the reporting of this information by the person who has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

(b) In addition to the requirements of paragraph (a)(10) of this section, the responsible party shall report or shall arrange to have reported to the director, Division of Air Resources, Department of Environmental Conservation the net percent by weight of each ozone-depleting compound which is:

(1) listed in section 235-3.1(i) of this Part; and

(2) contained in a product subject to reporting under subdivision (a) of this section in any amount greater than 0.1 percent by weight.

(c) All information submitted by any person pursuant to this Subpart shall be handled in accordance with the procedures specified in applicable New York State confidentiality requirements.

[(d) 'Special reporting requirements for consumer products that contain perchloroethylene or methylene chloride'.

(1) The requirements of this Subpart shall apply to all responsible parties for consumer products that are subject to section 235-3.1(a) of this Part and contain perchloroethylene or methylene chloride and energized electrical cleaners as defined in section 235-2.1(bf) of this Part, that contain perchloroethylene or methylene chloride. For the purposes of this Subpart, a product contains

perchloroethylene or methylene chloride if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

(2) For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold in the State of New York during each calendar year, beginning with the year 2005, and ending with the year 2010:

(i) the product brand name and a copy of the product label with legible usage instructions;

(ii) the product category to which the consumer product belongs;

(iii) the applicable product form(s) (listed separately);

(iv) for each product form listed in subparagraph (iii) of this paragraph, the total sales in the State of New York during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating the New York State sales; and

(v) the weight percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the consumer product.

(3) The information specified in paragraph (2) of this subdivision shall be reported for each calendar year by March 1<sup>st</sup> of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is due on March 1<sup>st</sup> of each year thereafter, until March 1, 2011, when the last report is due. ]

#### Section 235-8.1 Variances

(a) Any person who cannot comply with the requirements set forth in Subpart 235-3 of this Part, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for a variance. When approved by the director,

Division of Air Resources, Department of Environmental Conservation, the variance will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

The variance application shall set forth:

(1) the specific grounds upon which the variance is sought;

(2) the proposed date(s) by which compliance with the provisions of Subpart 235-3 of this Part will be achieved; and

(3) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

(b) No variance shall be granted unless all of the following findings are made:

(1) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with Subpart 235-3 of this Part would result in extraordinary economic hardship;

(2) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

(c) Any variance order shall specify a final compliance date by which the requirements of Subpart 235-3 of this Part will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the director, Division of Air Resources, Department of Environmental Conservation finds necessary to carry out the purposes of applicable New York State health and safety laws and Part 621 of this Title and the procedures therein.

(d) Upon the application of any person, the director, Division of Air Resources, Department of Environmental Conservation may review, and for good cause, modify or revoke a variance from requirements of Subpart 235-3 of this Part in accordance with Part 621 of this Title and the procedures therein and applicable New York State health and safety laws.

#### Section 235-9.1 Test methods

(a) Testing to determine compliance with the requirements of this Part, shall be performed using CARB Test Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products (see Table 1, section 200.9 of this Title). For the purposes of this Subpart, CARB Test Method 310 reference to Executive Officer will be replaced by director, Division of Air Resources, Department of Environmental Conservation. Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the director, Division of Air Resources, Department of Environmental Conservation. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the alternative test method will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval. Information submitted to the director, Division of Air Resources, Department of Environmental Conservation may be claimed as confidential; such

information will be handled in accordance with the confidentiality procedures specified in applicable New York State laws and regulations.

(b) 'VOC content determinations using product formulation and records'. Testing to determine compliance with the requirements of this Part may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

(1) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(2) If product records appear to demonstrate compliance with the VOC content limits, but these records are contradicted by product testing performed using CARB Test Method 310 (see Table 1, section 200.9 of this Title), the results of CARB Test Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this Part.

(c) 'Determination of liquid or solid'. Testing to determine whether a product is a liquid or solid shall be performed using ASTM D 4359-90 (2000)el (see Table 1, section 200.9 of this Title).

(d) 'Compliance determinations for charcoal lighter material products'. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see Table 1, section 200.9 of this Title).

(e) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D 86-90 (September 28, 1990) (see Table 1, section 200.9 of this Title).

(f) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

#### Section 235-10.1 Severability

Each [part] provision of this Part shall be deemed severable, and in the event that any [part] provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

#### Section 235-11.1 Alternative control plan for consumer products

The purpose of this Subpart is to provide an alternative method to comply with the Table of Standards specified in section 235-3.1(a) of this Part. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified in Subparts 235-1 through 235-11 of this Part. Only responsible ACP parties for consumer products may enter into an ACP. When approved by the director, Division of Air Resources, Department of Environmental Conservation, the Alternative Control Plan (ACP) will be submitted to the United States Environmental Protection Agency as a State Implementation Plan revision for approval.

(a) Any manufacturer of consumer products which have been granted an ACP agreement by the CARB under the provisions in sections 94540-94555 of Title 17 of the California Code of Regulations (see Table 1,

section 200.9 of this Title) shall be exempt from the Table of Standards in section 235-3.1(a) of this Part for the period of time that the CARB ACP agreement remains in effect provided that all ACP products within the CARB ACP agreement are contained in the Table of Standards in section 235-3.1(a) of this Part. Any manufacturer claiming such an ACP agreement on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the CARB ACP decision ('i.e.', the Executive Order), including all conditions established by CARB applicable to the exemption.

(b) Manufacturers of consumer products that have been granted an ACP agreement under the ACP provision in sections 94540-94555 of Title 17 of the California Code of Regulations (see Table 1, section 200.9 of this Title) based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP agreement in accordance with subdivisions (c) through (m) of this section.

(c) 'Requirements and process for approval of an ACP'.

(1) To be considered by the director, Division of Air Resources, Department of Environmental Conservation for approval, an application for a proposed ACP shall be submitted in writing to the director, Division of Air Resources, Department of Environmental Conservation by the responsible ACP party and shall contain all of the following:

(i) an identification of the contact persons, phone numbers, names and addresses of the responsible ACP party which is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement;

(ii) a statement of whether the responsible ACP party is a small business or a one-product business, as defined in section 235-2.1[(ey)](fg) and 235-2.1[(dr)](dx) of this Part;

(iii) a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category(ies) for each distinct ACP product that is proposed for inclusion in the ACP;

(iv) for each proposed ACP product identified in subparagraph (iii) of this paragraph, a demonstration to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in clause (‘e’) of this subparagraph. To provide this demonstration, the responsible ACP party shall do all of the following:

(‘a’) provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales; and

(‘b’) determine the enforceable sales of each product using enforceable sales records as defined in section 235-2.1[(bg)](bk) of this Part; and

(‘c’) demonstrate, to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party; and



(‘d’) calculate the percentage of the gross New York State sales, as defined in section 235-2.1[(cg)](ck) of this Part which is comprised of enforceable sales; and

(‘e’) determine which ACP products have enforceable sales which are 75 percent or more of the gross New York State sales. Only ACP products meeting this criteria shall be allowed to be sold in the State of New York under an ACP;

(v) for each of the ACP products identified in clause (iv)(‘e’) of this paragraph, the inclusion of the following:

(‘a’) legible copies of the existing labels for each product;

(‘b’) the VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods, as follows:

(‘1’) the VOC and LVP contents of the product at the time the application for an ACP is submitted; and

(‘2’) any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent ( $\pm 10.0\%$ ) of the VOC or LVP contents reported in subclause (‘1’), of this clause;

(vi) a written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the director, Division of Air Resources, Department of Environmental Conservation;

(vii) an operational plan covering all the products identified under clause (iv)(‘e’) of this paragraph for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(‘a’) an identification of the compliance periods and dates for the responsible ACP party to report the information required by the director, Division of Air Resources, Department of Environmental Conservation in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than 365 days. The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the director, Division of Air Resources, Department of Environmental Conservation at the same time and at the same frequency; and

(‘b’) an identification of specific enforceable sales records to be provided to the director, Division of Air Resources, Department of Environmental Conservation for enforcing the provisions of this Part and the ACP agreement approving an ACP. The

enforceable sales records shall be provided to the director, Division of Air Resources, Department of Environmental Conservation no later than the compliance period dates specified in clause ('a') of this subparagraph; and

('c') for a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party(ies) that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP; and

('d') for each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method; and

('e') the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect; and

('f') a detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced ('i.e.', by ACP reformulation). This demonstration shall use the equations specified in Subparts 235-2 and 235-3 of this Part for projecting the

ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of New York during each compliance period; and

(‘g’) a certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of this Part; and

(‘h’) written explanations of the date-codes that will be displayed on each ACP product’s container or packaging; and

(‘i’) a statement of the approximate dates by which the responsible ACP party plans to meet the applicable VOC content limit for each product in the ACP; and

(‘j’) an operational plan (reconciliation of shortfalls plan) which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(‘1’) a clear and convincing demonstration of how shortfalls of up to five percent, 10 percent, 15 percent, 25 percent, 50 percent, 75 percent and 100 percent of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined; and

(‘2’) a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this clause; and

(‘3’) a commitment to provide any record or information requested by the director, Division of Air Resources, Department of Environmental Conservation to verify that the shortfalls have been completely reconciled;

(viii) a declaration, signed by a legal representative for the responsible ACP party, which states that all information and operational plans submitted with the ACP application are true and correct.

(2) (i) In accordance with the time periods specified in subdivision (d) of this section, the director, Division of Air Resources, Department of Environmental Conservation shall issue an ACP agreement approving an ACP which meets the requirements of this Part. The director, Division of Air Resources, Department of Environmental Conservation shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC content limits specified in section 235-3.1(a) of this Part. The ACP shall also include:

(‘a’) only those ACP products for which the enforceable sales are at least 75 percent of the gross New York State sales, as determined in clause (iv)(‘e’) of this paragraph;

(‘b’) a reconciliation of shortfalls plan meeting the requirements of this Part; and

(‘c’) operational terms, conditions, and data to be reported to the director, Division of Air Resources, Department of Environmental Conservation to ensure that all requirements of this Part are met;

(ii) The director, Division of Air Resources, Department of Environmental Conservation shall not approve an ACP submitted by a responsible ACP party if the director, Division of Air Resources, Department of Environmental Conservation determines, upon review of the responsible ACP party’s compliance history with past or current ACPs or the requirements for consumer products in Subparts 235-1 through 235-11 of this Part, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

(d) ‘ACP approval time frames’.

(1) The director, Division of Air Resources, Department of Environmental Conservation shall take appropriate action on an ACP within the following time periods:

(i) Within 30 working days of receipt of an ACP application, the director, Division of Air Resources, Department of Environmental Conservation shall inform the applicant in writing that either:

(‘a’) the application is complete and accepted for filing; or

(‘b’) the application is deficient, and identify the specific information required to make the application complete;

(ii) Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the director, Division of Air Resources, Department of Environmental Conservation shall inform the applicant in writing that either:

(‘a’) the additional information is sufficient to make the application complete, and the application is accepted for filing; or

(‘b’) the application is deficient, and identify the specific information required to make the application complete;

(iii) If the director, Division of Air Resources, Department of Environmental Conservation finds that an application meets the requirements of subdivision (c) of this section, then he or she shall issue an ACP agreement in accordance with the requirements of this Part. The director, Division of Air Resources, Department of Environmental Conservation shall act to approve or disapprove a complete application within 90 working days after the application is deemed complete.

(2) Before the end of each time period specified in this Subpart, the director, Division of Air Resources, Department of Environmental Conservation and the responsible ACP party may mutually agree to a longer time period for the director, Division of Air Resources, Department of Environmental Conservation to take the appropriate action.

(e) 'Recordkeeping and availability of requested information'.

(1) All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

(2) The records specified in paragraph (1) of this subdivision shall be made available to the director, Division of Air Resources, Department of Environmental Conservation or his or her authorized representative:

(i) immediately upon request, during an on-site visit to a responsible ACP party;

(ii) within five working days after receipt of a written request from the director, Division of Air Resources, Department of Environmental Conservation; or

(iii) within a time period mutually agreed upon by both the director, Division of Air Resources, Department of Environmental Conservation and the responsible ACP party.

(f) 'Violations'.

(1) Any person who commits a violation of this Part is subject to the penalties specified in applicable New York State laws and regulations. Failure to meet any requirement of this Part or any condition of an applicable ACP agreement shall constitute a single, separate violation of this Part for



each day until such requirement or condition is satisfied, except as otherwise provided in paragraphs (2) through (8) of this subdivision.

(2) False reporting of any information contained in an ACP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this Part for each day that the approved ACP is in effect.

(3) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this Part for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the State of New York.

(4) Any of the following actions shall each constitute a single, separate violation of the requirements of this Part for each day after the applicable deadline until the requirement is satisfied:

(i) failure to report data ('i.e.', missing data) or failure to report data accurately ('i.e.', inaccurate data) in writing to the director, Division of Air Resources, Department of Environmental Conservation regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified in the applicable ACP agreement;

(ii) false reporting of any information submitted to the director, Division of Air Resources, Department of Environmental Conservation for determining compliance with the ACP requirements;

(iii) failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement, within 30 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental Conservation; and

(iv) failure to completely reconcile the shortfall as specified in the ACP agreement, within 90 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental Conservation.

(5) False reporting or failure to report any of the information specified in subparagraph (g)(2)(ix) of this section, or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation of the requirements of this Part for each day during the time period for which the surplus reductions are claimed to be valid.

(6) Except as provided in paragraph (7) of this subdivision, any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this Part for each day of the applicable compliance period. The director, division of Air Resources, Department of Environmental Conservation shall determine whether an exceedance of the ACP limit has occurred as follows:

(i) if the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the director, Division of Air Resources, Department of Environmental Conservation shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

(ii) if the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the director, Division of Air Resources, Department of Environmental Conservation shall determine whether an exceedance of the ACP limit has occurred as follows:

(‘a’) for the missing data days, the director, Division of Air Resources, Department of Environmental Conservation shall calculate the total maximum historical emissions, as specified in section 235-2.1[(fl)](fu) of this Part;

(‘b’) for the remaining portion of the compliance period which are not missing data days, the director, Division of Air Resources, Department of Environmental Conservation shall calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

(‘c’) the ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to clause (‘a’) of this subparagraph, and the emissions determined pursuant to clause (‘b’) of this subparagraph;

(‘d’) the director, Division of Air Resources, Department of Environmental Conservation shall calculate the ACP limit for the entire compliance period using the VOC content limit applicable to each ACP product and the enforceable sales records specified in clause (‘b’) of this subparagraph. The enforceable sales for each ACP

product during missing data days, as specified in clause ('a') of this subparagraph, shall be zero;

('e') an exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to clause ('c') of this subparagraph, exceeds the ACP limit, determined pursuant to clause ('d') of this subparagraph.

(7) If a violation specified in this subdivision occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$NEV = (ACP \text{ Emissions} - ACP \text{ Limit}) \times 1 \text{ Violation}/40 \text{ Pounds}$$

where,

NEV = number of ACP limit violations

ACP Emissions = the ACP emissions for the compliance period

ACP Limit = the ACP limit for the compliance period

The responsible ACP party may determine the number of ACP limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP limit violations pursuant to this paragraph.

(8) In assessing the amount of penalties for any violation occurring pursuant to paragraphs (1) through (7) of this subdivision, the circumstances identified in applicable New York State health and safety laws and regulations shall be taken into consideration.

(9) A cause of action against a responsible ACP party under this Subpart shall be deemed to accrue on the date(s) when the records establishing a violation are received by the director, Division of Air Resources, Department of Environmental Conservation.

(10) The responsible ACP party is fully liable for compliance with the requirements of this Part, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this Part.

(g) 'Surplus reductions and surplus trading'.

(1) The director, Division of Air Resources, Department of Environmental Conservation shall issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, any surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in paragraph (2) of this subdivision. All surplus reductions shall be calculated by the director, Division of Air Resources, Department of Environmental Conservation at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or any other form of property.

(2) The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

(i) for the purposes of this Part, VOC reductions from sources of VOCs other than consumer products subject to the VOC content limits specified in section 235-3.1(a) of this Part may not be used to generate surplus reductions;

(ii) surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP;

(iii) surplus reductions are valid only after the director, division of Air Resources, Department of Environmental Conservation has issued an ACP agreement pursuant to paragraph (1) of this subdivision;

(iv) any surplus reductions issued by the director, Division of Air Resources, Department of Environmental Conservation may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision (k) of this section;

(v) surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;

(vi) except as provided in clause (vii)('b') of this paragraph, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase;

(vii) while valid, surplus reductions can be used only for the following purposes:

(‘a’) to adjust either the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(‘b’) to be traded for the purpose of reconciling another responsible ACP party’s shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the director, Division of Air Resources, Department of Environmental Conservation pursuant to clause (c)(1)(vii)(‘j’) of this section;

(viii) a valid surplus reduction certificate shall be in effect starting five days after the date of issuance by the director, Division of Air Resources, Department of Environmental Conservation, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period;

(ix) at least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the director, Division of Air Resources, Department of Environmental Conservation in writing of the transfer. The notification shall include all of the following:

(‘a’) the date the transfer is to become effective;

(‘b’) the date the surplus reductions being traded are due to expire;

(‘c’) the amount (in pounds of VOCs) of surplus reductions that are being transferred;

(‘d’) the total purchase price paid by the buyer for the surplus reductions;

(‘e’) the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions; and

(‘f’) a copy of the director, Division of Air Resources, Department of Environmental Conservation-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non-traded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this Subpart;



(x) surplus reduction certificates shall only be traded between ACP product(s) for consumer products.

(3) 'Limited-use surplus reduction certificates for early reformulations of ACP products'.

(i) For the purposes of this paragraph, 'early reformulation' means an ACP product which is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied, or offered for sale in the State of New York for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the director, Division of Air Resources, Department of Environmental Conservation. Early reformulation does not include any reformulated ACP products which are sold, supplied, or offered for sale in the State of New York more than one year prior to the date on which the ACP application is submitted to the director, Division of Air Resources, Department of Environmental Conservation.

(ii) If requested in the application for a proposed ACP, the director, Division of Air Resources, Department of Environmental Conservation shall, upon approval of the ACP, issue surplus reduction certificates for early reformulation(s) of ACP product(s), provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation:

(a) accurate documentation showing that the early reformulation(s) reduced the VOC content of the ACP product(s) to a level which is below the pre-ACP VOC content

of the product(s), or below the applicable VOC content limit(s) specified in section 235-3.1(a) of this Part, whichever is the lesser of the two;

(‘b’) accurate documentation demonstrating that the early reformulated ACP product(s) was sold in the State of New York retail outlets within the time period specified in subparagraph (i) of this paragraph;

(‘c’) accurate sales records for the early reformulated ACP product(s) which meet the definition of enforceable sales records in section 235-2.1[(bh)](bl) of this Part, and which demonstrate that the enforceable sales for the ACP product(s) are at least 75.0 percent of the gross New York State sales for the product(s), as specified in subparagraph (c)(1)(iv) of this section;

(‘d’) accurate documentation for the early reformulated ACP product(s) which meets the requirements specified in subparagraphs (c)(1)(iii) through (iv) of this section, clauses (c)(1)(vii)(‘g’) through (‘h’) of this section, and subparagraph (c)(1)(viii) of this section, and which identifies the specific test methods for verifying the claimed early reformulation(s) and the statistical accuracy and precision of the test methods as specified in clause (c)(1)(vii)(‘i’) of this section.

(iii) Surplus reduction certificates issued pursuant to this paragraph shall be calculated separately for each early reformulated ACP product by the director, Division of Air Resources, Department of Environmental Conservation according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}})}{100}$$

where,

SR = surplus reductions for the ACP product, expressed to the nearest pound,

Enforceable Sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product,

$(\text{VOC Content})_{\text{initial}}$  = the pre-ACP VOC content of the ACP product, or the applicable VOC content limit specified in Subpart 235-3.1 of this Part, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product,

$(\text{VOC Content})_{\text{final}}$  = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

(iv) The use of surplus reduction certificates issued pursuant to this paragraph shall be subject to all of the following provisions:

(‘a’) surplus reduction certificates shall be used solely to reconcile the responsible ACP party’s shortfalls, if any, generated during the first compliance period occurring

immediately after the issuance of the ACP agreement approving an ACP, and shall not be used for any other purpose;

(‘b’) surplus reduction certificates shall not be transferred to, or used by, any other responsible ACP party;

(‘c’) except as provided in this paragraph, surplus reduction certificates shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in paragraphs (1) and (2) of this subdivision.

(h) ‘Reconciliation of shortfalls’.

(1) At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period, as specified in the ACP agreement approving the ACP. Upon receipt of this information, the director, Division of Air Resources, Department of Environmental Conservation shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

(2) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP, within 30 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental Conservation.

(3) All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the director, Division of Air Resources, Department of Environmental

Conservation, by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

(4) All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

(i) 'Notification of modifications to an ACP by the responsible ACP party'.

(1) Modifications that do not require director, Division of Air Resources, Department of Environmental Conservation pre-approval: The responsible ACP party shall notify the director, Division of Air Resources, Department of Environmental Conservation, in writing, of any change in an ACP product's:

(i) product name;

(ii) product formulation;

(iii) product form;

(iv) product function;

(v) applicable product category(ies);

(vi) VOC content;

(vii) LVP content;

(viii) date-codes; or

(ix) recommended product usage directions, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

(‘a’) the nature of the modification;

(‘b’) the extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

(‘c’) the extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

(‘d’) the effective date and corresponding date-codes for the modification.

(2) Modifications that require director, Division of Air Resources, Department of Environmental Conservation pre-approval: The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement approving the ACP. Any such proposed modifications shall be fully described in writing and forwarded to the director, Division of Air Resources, Department of Environmental Conservation. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this Part. The

director, Division of Air Resources, Department of Environmental Conservation shall act on the proposed modifications using the procedure set forth in subdivision (d) of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as any proposed modification(s) is approved in writing by the director, Division of Air Resources, Department of Environmental Conservation.

(3) Other modifications: Except as otherwise provided in paragraphs (1) and (2) of this subdivision, the responsible ACP party shall notify the director, Division of Air Resources, Department of Environmental Conservation, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of subdivision (c) of this section. The responsible ACP party shall provide such notification to the director, Division of Air Resources, Department of Environmental Conservation no later than 15 working days from the date such information is known to the responsible ACP party.

(j) 'Modification of an ACP by the director, Division of Air Resources, Department of Environmental Conservation'.

(l) If the director, Division of Air Resources, Department of Environmental Conservation determines that:

(i) the enforceable sales for an ACP product are no longer at least 75 percent of the gross New York State sales for that product;

(ii) the information submitted pursuant to the approval process set forth in subdivision (c) of this section is no longer valid; or

(iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the director, Division of Air Resources, Department of Environmental Conservation shall modify the ACP as necessary in accordance with Part 621 of this Title and the procedures therein to ensure that the ACP meets all requirements of this Part and that the ACP emissions will not exceed the ACP limit.

(2) If any applicable VOC content limits specified in section 235-3.1(a) of this Part are modified by the Department of Environmental Conservation in a future rule making, the director, Division of Air Resources, Department of Environmental Conservation shall modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified VOC content limits as of their effective dates.

(k) 'Cancellation of an ACP'.

(1) An ACP shall remain in effect until:

(i) the ACP reaches the expiration date specified in the ACP agreement;

(ii) the ACP is modified by the responsible ACP party and approved by the director, Division of Air Resources, Department of Environmental Conservation, as provided in subdivision (i) of this section;



(iii) the ACP is modified by the director, Division of Air Resources, Department of Environmental Conservation, as provided in subdivision (j) of this section;

(iv) the ACP includes a product for which the VOC content limit specified in section 235-3.1(a) of this Part is modified. The ACP will terminate on the effective date(s) of the modified standard; or

(v) The ACP is cancelled pursuant to paragraph (2) of this subdivision.

(2) The director, Division of Air Resources, Department of Environmental Conservation shall cancel an ACP if any of the following circumstances occur:

(i) the responsible ACP party demonstrates to the satisfaction of the director, Division of Air Resources, Department of Environmental Conservation that the continuation of the ACP will result in an extraordinary economic hardship;

(ii) the responsible ACP party violates the requirements of the approved ACP, and the violation(s) results in a shortfall that is 20 percent or more of the applicable ACP limit ('i.e.', the ACP emissions exceed the ACP limit by 20 percent or more);

(iii) the responsible ACP party fails to meet the requirements of subdivision (h) (reconciliation of shortfalls) of this section within the time periods specified in subdivision (h) of this section; and

(iv) the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

(3) The responsible ACP party for an ACP which is canceled pursuant to this Subpart and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

(i) all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subdivision (h) of this section; and

(ii) all ACP products subject to the ACP shall be in compliance with the applicable VOC content limits in section 235-3.1(a) of this Part immediately upon the effective date of ACP cancellation.

(4) Any violations incurred pursuant to subdivision (f) of this section shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to subdivision (i), (j), or (k) of this section.

(l) 'Treatment of information'. The information required by subparagraphs (c)(1)(i) through (ii) of this section and subparagraph (g)(2)(ix) of this section is public information which may not be claimed as confidential. All other information submitted to the director, Division of Air Resources, Department of Environmental Conservation to meet the requirements of this Part shall be handled in accordance with the procedures specified in applicable New York State laws and regulations.

(m) 'Other applicable requirements'. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(1) The director, division of Air Resources, Department of Environmental Conservation shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(2) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this Part.



## 6 NYCRR Part 200, General Provisions

### Express Terms

(Sections 200.1 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

235-2.1(g)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (Feb. 28, 1991)	††††
<u>235-2.1(w)</u>	<u>ASTM, D4236-94 (March 1, 2005)</u>	<u>****</u>
235-2.1 [(ay)] <u>(bb)</u>	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et. seq. (January 2, 2001)	**
235-2.1 [(bl)] <u>(bp)</u>	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136, et. seq. (January 2, 2001)	**
235-2.1 [(cx)] <u>(dd)</u>	ASTM, D4359-90(2000)el (2000)	****
235-2.1 [(da)] <u>(dg)</u> (1)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-2.1 [(da)] <u>(dg)</u> (3)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-2.1 [(da)] <u>(dg)</u> (4)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
<u>235-2.1(ey)</u>	<u>Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136, et. seq. (January 2, 2001)</u>	<u>**</u>
235-2.1 [(ez)] <u>(fh)</u>	ASTM, D4359-90(2000)el (2000)	****
235-2.1 [(fa)] <u>(fi)</u> (2)	ASTM, E 260-96 (2001)	****
235-2.1 [(fe)] <u>(fm)</u>	Department of Defense Federal Specification MMM-A-181D (Type 1, Grade A)  40 CFR Part 59, Subpart C (July 1, 2001)	††††  *
235-2.1 [(fs)] <u>(gb)</u>	South Coast Air Quality Management District, Rule 1174, Ignition Method	††††

	Compliance Certification Protocol (February 28, 1991)	
235-3.1(b)	Title 17, California Code of Regulations, Section 93000 (Amended July 21, 1999)	***
235-3.1(e)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq. (January 2, 2001)	**
235-3.1(f)(1)(i)(‘a’)	Title 17, California Code of Regulations, Section 94509(h) (Amended May 25, 2000)	***
235-3.1(f)(2)(i)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(ii)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘a’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘b’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(2)(iii)(‘c’)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(f)(4)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-3.1(g)(1)	California Health and Safety Code section 41712(h)(2)	†
235-4.1(g)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq. (January 2, 2001)	**
235-5.1(a)	Title 17, California Code of Regulations, Section 94511 (Amended May 25, 2000)	***
235-5.1(a)	Title 17, California Code of Regulations, Section 94503.5 (Amended October 26, 2000)	***

235-5.1(b)	Title 17, California Code of Regulations, Section 94511 (Amended May 25, 2000)	***
	Title 17, California Code of Regulations, Section 94503.5 (Amended October 26, 2000)	***
235-9.1(a)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-9.1(b)(2)	California Air Resources Board Method 310 (Amended September 3, 1999)	††
235-9.1(c)	ASTM, D 4359-90(2000)el (2000)	*****
235-9.1(d)	South Coast Air Quality Management District, Rule 1174, Ignition Method Compliance Certification Protocol (February 28, 1991)	††††
235-9.1(e)	ASTM D 86-90 (September 28, 1990)	*****
235-11.1(a)	Title 17, California Code of Regulations, Sections 94540-94555 (March 23, 1995)	***
235-11.1(b)	Title 17, California Code of Regulations, Sections 94540-94555 (March 23, 1995)	***







Department of  
Environmental  
Conservation

## ENB Statewide Notices 1/27/2021

### Public Notice

**Pursuant to the Environmental Conservation Law sections 13-0105 and 13-0340-d, the New York State Department of Environmental Conservation hereby gives notice of the following:**

NYS DEC Division of Marine Resources (DMR) is filing a Notice of Adoption to permanently adopt a rule that amends 6 NYCRR Part 40 Marine Fish. The rule implements a commercial tautog tagging program.

**This notice will be published in issue 4 of the State Register, dated January 27, 2021.**

**For further information, please contact:**

Rachel Sysak  
NYS DEC - Division of Marine Resources  
205 North Belle Meade Road, Suite 1  
East Setauket, NY 11733-3400  
Phone: (631) 444-0469  
E-mail: [rachel.sysak@dec.ny.gov](mailto:rachel.sysak@dec.ny.gov)

---

### Notice of Adoption of 6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles

**Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0304, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:**

NYS DEC repealed and replaced 6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, NYS DEC also revised 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from this replacement of Part 230 and the revision to Part 200 are necessary to help the state demonstrate attainment of both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). This rulemaking will affect approximately 7,500 gasoline dispensing sites in New York State. In addition, NYS DEC will submit the new Part 230 as well as the revisions to Part 200 to the United States Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan (SIP) for New York State.

**Requests for information related to the SIP may be obtained from:** Robert D. Bielawa, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

**For further information on Part 230 or relevant revision to Part 200, contact:** Denise Prunier, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3250, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

---

### Notice of Adoption of 6 NYCRR Part 235, Consumer Products and 6 NYCRR Part 200, General Provisions

**Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:**

NYS DEC has revised 6 NYCRR Part 235, "Consumer Products" (Part 235), to reduce volatile organic compound emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards and maintain regional product consistency. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the Ozone Transport Commission model rule and regulations adopted by nearby states.

Documents pertaining to this [rulemaking](#) can be found on NYS DEC's website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

**For further information, contact:** Kenneth A. Newkirk, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3250, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

**Notice of Proposed Rulemaking - 6 NYCRR Part 326 Registration and Classification of Pesticides**

Notice is hereby given that the New York State Department of Environmental Conservation (NYS DEC) filed a Notice of Proposed Rulemaking with the New York State Department of State to amend New York State's existing 6 NYCRR Part 326 pesticide registration regulations. The proposed regulation will add chlorpyrifos to the section 326.2(c) list of pesticide active ingredients that are no longer allowed to be distributed, sold, purchased, possessed, or used for any purpose.

**The Notice of Proposed Rulemaking is available in the January 27, 2021 issue of the State Register. Written public comments will be accepted by the NYS DEC through April 5, 2021.**

**Availability of Documents for Review:**

Information concerning the [review process](#), [the proposed rulemaking](#), and [supporting rulemaking documents](#) can be accessed from NYS DEC's rulemaking web site at: <https://www.dec.ny.gov/regulations/propregulations.html#public>.

These documents may also be inspected at NYS DEC, 625 Broadway, Albany, NY 12233. Please call Melissa Treers for an appointment at (518) 402-8678 or email her at [Melissa.treers@dec.ny.gov](mailto:Melissa.treers@dec.ny.gov).

**Written Comments:**

**The public is invited to submit written comments on the proposed rulemaking through April 5, 2021.** Written comments can be submitted as follows:

- 1) By email to [chlorpyrifosregs@dec.ny.gov](mailto:chlorpyrifosregs@dec.ny.gov). Please include "Comments on Proposed Part 326" in the subject line of the email; or
- 2) By mail to the NYS DEC - Division of Materials Management, Pesticide Enforcement & Compliance Assurance Section, 625 Broadway, Albany, NY 12233-7254.

**Public Comment Hearing:**

A public comment hearing webinar for the proposed rule will be held before an Administrative Law Judge (ALJ) via electronic webinar as follows. The electronic webinar format is reasonably accessible to persons with impaired mobility:

**Date:** March 30, 2021

**Time:** 6:00 p.m.

**Location:** via electronic webinar

[Instructions](#) on how to "join" the hearing webinar, how to provide an oral statement, and how to register for the webinar may be accessed at the proposed regulations webpage for Part 326 at: <https://www.dec.ny.gov/chemical/121988.html>.

Persons who wish to receive the instructions by mail or telephone may call NYS DEC at (518) 402-9003. Please provide your first and last name, address, and telephone number and reference the Part 326 public comment hearing.

**NYS DEC will provide interpreter services for hearing impaired persons, and language interpreter services for individuals with difficulty understanding or reading English, at no charge upon written request submitted no later than March 16, 2021.**

The written request must be addressed to ALJ Sherman, NYS DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550 or emailed to ALJ Sherman at [ohms@dec.ny.gov](mailto:ohms@dec.ny.gov).

**Contact:** Anthony Lammano NYS DEC - Division of Materials Management, 625 Broadway, Albany, NY 12233-7254, E-mail: [Anthony.lammano@dec.ny.gov](mailto:Anthony.lammano@dec.ny.gov).

---

**Notice of Proposed Rulemaking- 6 NYCRR Part 350 Food Donation and Food Scraps Recycling**

**Notice is hereby given that the New York State Department of Environmental Conservation (NYS DEC) filed a Notice of Proposed Rulemaking with the New York State Department of State to add a new 6 NYCRR Part 350.** The proposed regulations will implement the requirements outlined in the Food Donation and Food Scraps Recycling Law enacted in 2019. The law takes effect on January 1, 2022 and requires large generators of food scraps to donate excess edible food and recycle all remaining food scraps if they are located within 25 miles of an organics recycler. Food scraps generators may petition NYS DEC for a one-year waiver from these requirements.

**The Notice of Proposed Rulemaking is available in the January 27, 2021 issue of the State Register. Written public comments will be accepted by the NYS DEC through April 27, 2021.**

**Availability of Documents for Review:**

Information concerning the [review process](#), [the proposed rulemaking](#), and [supporting rulemaking documents](#) can be accessed from NYS DEC's rulemaking web site at: <https://www.dec.ny.gov/regulations/propregulations.html#public>.

- changing the title of Part 63 of the Commissioner's Regulations from "Pharmacy" to "Pharmacy and Registered Pharmacy Technicians";
- adding a new section 63.14 to the Commissioner's Regulations which implements Chapter 414's definition of the practice of registered pharmacy technician and the use of the title "registered pharmacy technician"; and
- adding a new section 63.15 to the Commissioner's Regulations which establishes requirements for licensure as a registered pharmacy technician, which includes education, certification, age, moral character, application and fee requirements.

Individuals seeking licensure to practice as a registered pharmacy technician in New York State will be required to submit an application to the State Education Department and meet all the requirements for licensure, which include but are not limited to, the education, certification and examination requirements specified in the proposed rule.

The proposed rule will not impose any additional professional service requirements on entities in rural areas.

#### 3. COSTS:

With respect to individuals seeking licensure as a registered pharmacy technician from the State Education Department, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As authorized by Education Law section 6844(6), the proposed rule establishes fees for both the initial license and each triennial registration period: the initial license fee is \$75 and the triennial registration fee is \$100. Additionally, pursuant to Education Law section 6844(3), applicants for licensure as registered pharmacy technicians must have certification from a nationally accredited pharmacy technician program acceptable to the Department. Thus, applicants will also incur the cost of obtaining such certification, the cost of which will be set by the nationally accredited pharmacy technician program or programs acceptable to the Department.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 414, which establishes the new profession of registered pharmacy technicians and the licensure requirements for registered pharmacy technicians, which include education, experience, examination, age, moral character and fee requirements. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the State Education Department has determined that the proposed rule's requirements should apply to all individuals seeking licensure as a registered pharmacy technician, regardless of the geographic location, to help insure continuing competency across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

#### 5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing parties having an interest in the practice of pharmacy and pharmacy technicians. These organizations included the State Board for Pharmacy and professional associations representing the pharmacy profession and/or pharmacy technicians. These groups have members who live or work in rural areas.

#### 6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement statutory requirements in Chapter 414 and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period.

#### Job Impact Statement

The proposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 414 of the Laws of 2019 (Chapter 414). The proposed rule implements Chapter 414, which establishes and defines the practice of registered pharmacy technicians. Chapter 414 allows, inter alia, registered pharmacy technicians, under the direct personal supervision of a licensed pharmacist, to assist such pharmacist, as directed, in compounding, preparing, labeling, or dispensing of drugs used to fill valid prescriptions or medication orders or in compounding, preparing, and labeling in anticipation of a valid prescription or medication order for a patient to be served by facilities licensed in accordance with Article 28 of the Public Health Law (Article 28 facilities), or pharmacies owned and operated by such facilities, in accordance with Article 137 of the Education Law, where such tasks require no professional judgment.

The proposed aligns the Rules of the Board of Regents and the Commissioner's regulations to Chapter 414 by:

- adding the profession of registered pharmacy technicians to the list of health care professions that are subject to its unprofessional provisions;
- changing the title of the section from "Special Provisions for the Profession of Pharmacy" to "Special Provisions for the Professions of Pharmacy and Registered Pharmacy Technicians";

- changing the title of the subparagraph from "Limitations on assistance by an unlicensed person" to "Limitations on assistance by a registered pharmacy technician and an unlicensed person."

- implementing the supervision ratio for registered pharmacy technicians and unlicensed persons employed by Article 28 facilities, or pharmacies owned and operated by such facilities and the supervision ratio for unlicensed persons employed by non-Article 28 facilities and pharmacies not owned or operated by such facilities; and establishing that these ratios do not apply to pharmacy interns, but requires that pharmacy interns must be supervised in accordance with Parts 29 and 63 of the Commissioner's regulations;

- changing the title of Part 63 of the Commissioner's Regulations from "Pharmacy" to "Pharmacy and Registered Pharmacy Technicians";

- adding a new section 63.14 to the Commissioner's Regulations which implements Chapter 414's definition of the practice of registered pharmacy technician and the use of the title "registered pharmacy technician"; and

- adding a new section 63.15 to the Commissioner's Regulations which establishes requirements for licensure as a registered pharmacy technician, which includes education, certification, age, moral character, application and fee requirements.

It is not anticipated that the proposed rule will increase or decrease the number of jobs to be filed because, among other things, Chapter 414 limits the practice of registered pharmacy technicians to Article 28 facilities, or pharmacies owned and operated by such facilities, under the direct personal supervision of a licensed pharmacist employed in such facilities or pharmacies. It is anticipated that unlicensed persons currently working in or seeking to work in such facilities or pharmacies owned and operated by such facilities may seek to apply for licensure as registered pharmacy technicians. Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## Department of Environmental Conservation

### NOTICE OF ADOPTION

#### Repeal and Replacement of 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles

**I.D. No.** ENV-06-20-00018-A

**Filing No.** 9

**Filing Date:** 2021-01-12

**Effective Date:** 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 200; repeal of Part 230; addition of new Part 230 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0304, 71-2103 and 71-2105

**Subject:** Repeal and replacement of 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles.

**Purpose:** To further reduce harmful volatile organic compounds (VOCs) emitted into the atmosphere.

**Substance of final rule:** 6 NYCRR Part 230, "Gasoline Dispensing Sites and Transport Vehicles"

6 NYCRR Part 200, "General Provisions"

The New York State Department of Environmental Conservation (Department) has revised Part 200.9 "General Provisions, Referenced Material, Table 1" and repealed and replaced Part 230 "Gasoline Dispensing Sites and Transport Vehicles" of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR).

The revisions to 6 NYCRR Part 200.9 "General Provisions, Referenced Material, Table 1" were made to incorporate the applicable standards, guidelines and methodologies necessary to meet the specific requirements of 6 NYCRR Part 230.

Repeal and replacement of 6 NYCRR Part 230 "Gasoline Dispensing Sites and Transport Vehicles" will further reduce volatile organic com-



pound (VOC) source emissions from gasoline dispensing facilities (GDFs) and transport vehicles across New York State.

The Department is also adopting EPA's control measures for federal "enhanced" Stage I vapor recovery, submerged fill, dual-point vapor control systems, new performance test requirements and best management practices outlined in 40 CFR 63 Subpart CCCCCC (Subpart 6C).

The incorporation of federal "enhanced" Stage I controls into new Part 230 will provide better vapor capture efficiency during the loading of gasoline storage tanks than the existing regulation currently requires.

New submerged filling requirements are being adopted in Part 230 for all gasoline storage tanks at GDFs to address the requirements in the current New York State Fire Code and minimize the generation of gasoline vapors caused by splash loading.

The federal requirement for dual-point vapor control systems, equipping storage tanks with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection, is necessary to maintain a proper seal when the vapor recovery line is disconnected.

The addition of the federal performance test requirements for vapor recovery systems will ensure more consistent vapor capture at GDFs.

Other federal requirements being adopted include best management practices to minimize the amount of VOC released from spills and uncovered gasoline storage containers.

The changes also include the removal of Stage II vapor recovery systems due to the equipment incompatibility with onboard refueling vapor recovery (ORVR) systems.

The "phase-in" requirements for installation of Stage I and Stage II vapor recovery systems are being removed because they are no longer applicable.

Gasoline storage tanks with a capacity of less than 550 gallons and which are used exclusively for farm tractors engaging in agricultural or snowplowing activity and automobile dismantling facilities will be exempt from the requirements of Stage I because it would not be cost effective to require these facilities to install vapor recovery systems.

The Department is also requiring test companies to certify that Stage I vapor recovery system tests will be performed in accordance with incorporated CARB regulation testing procedures and protocols.

The information regarding registration schedules is being removed because the schedules for compliance have already been completed.

The Department is requiring pressure-vacuum cargo tank testing and markings that coincide with the Federal Department of Transportation (DOT) testing and marking requirements making these requirements consistent on the state and federal level.

The revision to the gasoline transport vehicle recordkeeping retention requirements from 2 years to 5 years supports the recent recordkeeping amendment made to federal Subpart 6C.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 200.9 and 230.2(b)(2).

**Text of rule and any required statements and analyses may be obtained from:** Denise Prunier, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: air.regs@dec.ny.gov

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration, and a Coastal Assessment Form have been prepared and are on file.

#### **Summary of Revised Regulatory Impact Statement**

The New York State Department of Environmental Conservation (Department) proposes to repeal and replace 6 NYCRR Part 230 to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, the Department also proposes to revise 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from the proposed replacement of Part 230 and the revision to Part 200 are necessary to help the state demonstrate attainment of both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). The attainment demonstrations for both the 2008 and 2015 ozone NAAQS must be documented in State Implementation Plans (SIPs) that must be submitted to the Environmental Protection Agency prior to the end of 2020 and 2021, respectively.

According to the Environmental Conservation Law (ECL), the Department has the authority to develop and enforce regulations for the protection of New York State's natural resources and the environment. ECL sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303 establish the authority of the Department to regulate air pollution and air contamination sources. ECL section 19-0305 authorizes the Department to enforce the codes, rules and regulations of the Department, and ECL sections 71-2103 and 71-2105 set forth the applicable civil and criminal penalty

structures. Together, these sections of the ECL set out the overall state policy goal of reducing air pollution and providing clean, healthy air for the citizens of New York and provides the Department with the general authority to adopt and enforce measures to do so.

#### **Replacement of 6 NYCRR Part 230**

The Department is proposing to adopt a new Part 230, "Gasoline Dispensing Sites and Transport Vehicles," to further reduce VOC source emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. Emissions of VOCs from the transfer of gasoline at GDFs can be significant. Over 6 billion gallons of gasoline are distributed to about 7,540 retail sites in New York State each year.

Vapor recovery measures at GDFs help reduce VOC emissions into the atmosphere. Stage I and Stage II vapor recovery systems collect and control these emissions. Stage I systems are used to control the emissions from gasoline storage tanks whereas outdated Stage II systems control the emissions from vehicle fuel tanks during refueling. Additional control measures can include submerged filling for gasoline storage tanks and dual-point vapor balancing systems that have an entry port for a gasoline fill pipe and a separate exit port for better vapor collection. Proposed Part 230 will require some or all these control measures depending on site location and the annual gasoline throughput of a gasoline dispensing site or GDF.

The Department proposes to adopt the federal requirements of 40 CFR Part 63 Subpart CCCCCC (Subpart 6C) for "enhanced" Stage I vapor recovery control, submerged filling, dual-point vapor control systems, new performance testing and best management practices in new Part 230. Incorporation of these measures into new Part 230 will make the state regulation consistent with federal requirements. The Department also proposes to extend these same federal requirements to medium-sized GDFs not covered by the federal rule to achieve further reductions in NYMA emissions. Additionally, new Part 230 proposes to increase the frequency of performance testing and decommission all remaining Stage II vapor recovery systems.

Federal "enhanced" Stage I systems achieve greater emission reductions than the Stage I systems currently allowed under the existing Part 230 state regulation. Under the federal rule, Stage I vapor recovery systems are only required at large GDFs with annual throughputs of 1,200,000 gallons or greater. The Department proposes to extend these same federal requirements to medium-sized GDFs located in the New York City Metropolitan Area (NYMA) with annual throughputs between 800,000 and 1,200,000 gallons to achieve greater VOC emission reductions in the ozone nonattainment area.

New submerged filling requirements are being proposed in Part 230 for all GDF's with gasoline storage tanks that have capacities greater than 250 gallons. Submerged filling is already required by the New York State Fire Code for all top-loaded gasoline storage tanks with capacities greater than 60 gallons. Inclusion of this requirement in Part 230 will make the regulation consistent with the State Fire Code for the larger gasoline storage tanks. Submerged filling reduces vapor emissions where gasoline is dispensed through a fill pipe that extends to within 6 inches of the bottom of a tank.

Proposed Part 230 incorporates the federal requirement to equip new or reconstructed gasoline storage tanks with a dual-point vapor control system that has both an entry port for a gasoline fill pipe and a separate exit port for a vapor connection. Coaxial pipes, with only one port for both gasoline filling and vapor extraction, don't always maintain a proper seal when the vapor line is disconnected. As with the federal Stage I vapor recovery requirements, the Department proposes to extend this requirement to medium-sized GDFs in the NYMA to achieve greater reductions in VOC emissions.

The Department proposes to replace the current Part 230 performance test requirements with the federal requirements for testing vapor recovery systems to ensure better vapor capture and control. These improved performance test methods will ensure that vapor recovery systems are functioning properly and meet the federal control requirements. Requiring these tests to be conducted once every three years, rather than every five years, will help improve yearly compliance. This rulemaking proposal also extends the federal testing requirements to medium-sized GDFs in the NYMA.

Other proposed, new provisions include the federal requirement for best management practices to minimize spills and the amount of VOC released from uncovered gasoline storage containers. Proposed best management practices include requirements to keep all gasoline containers covered, minimize spills, and to clean-up spills as expeditiously as possible. These measures will apply to all GDFs with annual throughputs of 120,000 gallons or greater.

The required removal of Stage II vapor recovery systems is being proposed due to equipment incompatibility with onboard refueling vapor

recovery systems (ORVR). As ORVR becomes more widespread, the counter productiveness of Stage II increases. Modeling has shown that the percentage of vehicles equipped with ORVR in New York State is high and that excess emissions are starting to increase because of the incompatibility problem with Stage II systems. Removal of the Stage II systems from GDFs will help New York State attain the ozone standard.

The “phase-in” requirements for installation of Stage I and Stage II vapor recovery systems are being removed because they are no longer applicable. Existing Part 230 phased in Stage I and Stage II requirements over time depending on tank size, annual throughput and location of the GDF. All the compliance dates have since passed making these requirements obsolete.

The Department proposes to exempt auto dismantling facilities from the requirements of Stage I because there are no cargo trucks in which to return captured vapors. These facilities fill storage tanks with gasoline collected from drained and dismantled vehicles. There are approximately 800 of these facilities located throughout New York which handle a small volume of gasoline per year.

Companies doing performance tests will also be required to provide certification of testing experience. Approximately 3,545 GDFs will be required to comply with the proposed testing requirements. New self-certification requirements will also help enforcement staff verify that tests are being conducted properly.

The Department also proposes to remove the registration schedules in existing Part 230.7 because the compliance dates have passed. All GDFs operating in New York State must currently be registered with the Department.

The proposal to replace the pressure-vacuum cargo tank testing and marking provisions with current Federal Department of Transportation (DOT) requirements will make these requirements consistent on the state and federal level.

The proposal to revise the recordkeeping retention requirements for gasoline transport vehicles from two to five years matches federal Subpart 6C requirements.

Potential costs to regulated parties due to the proposed repeal and replacement of Part 230 will include costs to medium-sized GDFs located in the NYMA with annual throughputs between 800,000 and 1,200,000 gallons per year for the upgrade to federal “enhanced” Stage I and the requirement to perform more frequent vapor-tightness testing. The cost for this upgrade is approximately \$1,150 for an average site. In addition, these GDFs would incur a cost of \$500 once every three years instead of once every five years for increased vapor-tightness testing. These additional costs would affect approximately 851 GDFs in the NYMA.

The costs associated with the removal of Stage II vapor recovery systems will be offset by eliminating the annual costs for maintaining these systems.

No new costs are associated with the installation of dual-point collection systems, removal of the “phase-in” requirements, self-certification requirements for testers, federal DOT tank test and marking requirements for cargo tank owners or for compliance with gasoline transport vehicle recordkeeping requirements.

Costs to state and local governments like those described above will be required for several of the larger cities, counties, or local municipalities across the state operating GDFs. The majority will not be affected by many of the costs associated with the proposed rule changes. Since the regulatory amendments will apply equally to all entities, the compliance obligations of local governments will be no different than those of other subject entities.

There should be no increase in administrative costs to the Department since the Department does not anticipate a need to increase or expand the resources currently devoted to the regulation of GDFs.

Minor additional paperwork will be imposed on owners and/or operators of GDFs and companies overseeing the required performance tests due to this rulemaking. GDF owners and/or operators will need to submit additional information regarding site location and throughput when submitting required test reports and provide documentation to the Department upon completion of decommissioning procedures for Stage II vapor recovery systems. Test companies will need to submit self-certification forms to the Department prior to conducting performance tests.

Proposed Part 230 will not conflict with any other state or federal requirements. It is the intent of New York State to bring its GDF regulation in sync with the current federal GDF regulation by adopting the provisions of Subpart 6C. All relevant federal obligations will be satisfied by the revised new state regulation.

New Part 230 will incorporate all the minimum standards of federal Subpart 6C and its amendments. In addition, new Part 230 will impose additional requirements, beyond what the federal rule requires, for the federal Stage I and performance test requirements for medium-sized GDFs in the NYMA.

Revisions to 6 NYCRR Part 200

The revisions to Table 1 of Part 200.9 are being made to incorporate by reference the applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

#### **Revised Regulatory Flexibility Analysis**

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). To lower emissions that affect ozone formation, New York State is proposing to repeal and replace 6 NYCRR Part 230 to limit VOC emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. Revisions to Table 1 of 6 NYCRR Part 200.9 are also being proposed to incorporate by reference applicable federal and California Air Resources Board test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

The New York State Department of Environmental Conservation (Department) is revising the State Implementation Plan (SIP) to demonstrate how New York State will attain the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). The SIP revisions will include the establishment of new and/or revised control requirements for emissions of the precursors causing ground level ozone pollution including VOCs. This rulemaking proposal is aimed at achieving some of the VOC emission reductions necessary to achieve the ozone standards.

The Department proposes to adopt the United States Environmental Protection Agency’s (EPA) federal regulation for GDFs outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C). This includes the required use of federal “enhanced” Stage I vapor recovery systems at large GDFs with annual gasoline throughputs of 1,200,000 gallons or more, submerged filling, dual-point vapor control systems, new performance test methods and best management practices. Incorporation of these federal requirements into state regulation will bring consistency to the regulated community. These same federal Stage I vapor recovery systems requirements are also being proposed for medium-sized GDFs in the New York City Metropolitan Area (NYMA) with annual gasoline throughputs of between 800,000 and 1,200,000 gallons per year. The NYMA is currently designated as a serious ozone nonattainment area and further reductions in VOC emissions are necessary to achieve the NAAQS for ground level ozone. The required decommissioning of all Stage II vapor recovery systems at all GDFs is also being proposed due to equipment incompatibility with On-board Refueling Vapor Recovery (ORVR) systems. All proposed changes are necessary to promote attainment of the 2008 and 2015 8-hour ozone NAAQS.

1. **Effects on Small Businesses and Local Governments.** Costs to local governments for several of the larger cities, counties, or local municipalities across the state will be the same as those for all GDFs. However, the majority will not be affected by many of the costs associated with the proposed rule changes due to low annual throughputs. The same applies to small businesses. GDFs with low annual throughputs will be exempt from many of the proposed requirements. Since the regulatory amendments will apply equally to all subject entities, the proposed changes will not impose any mandate specific to small businesses or local governments.

2. **Compliance Requirements.** Local governments and small businesses are required to comply with the same requirements as all GDFs throughout the state.

3. **Professional Services.** Small businesses and local governments are required to comply with the same requirements as all GDFs throughout the state. Some professional services like those from gasoline dispensing equipment contractors and testers will be required. The same is true for all GDFs throughout the state.

4. **Compliance Costs.** There are no additional compliance costs for small businesses and local governments as a result of this rulemaking. Local governments and small businesses are required to comply with the same requirements as all GDFs throughout the state.

5. **Economic and Technological Feasibility.** These changes are not expected to have unfair or adverse impacts on small businesses or local governments since the same requirements will apply statewide.

6. **Minimizing Adverse Impact.** The proposed rulemaking is intended to create air quality benefits for the entire state through the reduction of ozone forming pollutants. These changes are not expected to have unfair or adverse impacts on small businesses or local governments since the same requirements will apply statewide. The proposed regulation ensures a fair and level playing field for all GDF owners.

7. **Small Business and Local Government Participation.** Small businesses and local governments are not specifically adversely affected by the proposed revisions. The proposed rulemaking changes apply to GDF owners and/or operators throughout the entire state in varying degrees

depending upon the annual throughput of the GDF. The Department held public meetings in which industry stakeholders, including small businesses and local governments, were presented with a draft of the proposed regulatory changes. Comments received during this period were taken into consideration when drafting the final rule. Additionally, further stakeholder input was received, considered, and implemented where appropriate during the formal State Administrative Procedures Act comment period.

#### **Revised Rural Area Flexibility Analysis**

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). To lower emissions that affect ozone formation, New York State is proposing to repeal and replace 6 NYCRR Part 230 to limit VOC emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. As part of this rulemaking, changes are also being proposed to Table 1 of Part 200.9 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

The New York State Department of Environmental Conservation (Department) is revising the State Implementation Plan (SIP) to demonstrate how New York State will attain the 8-hour ozone National Ambient Air Quality Standards (NAAQS). The emission reductions resulting from proposed Part 230 are necessary to help attain the 2008 and 2015 ozone NAAQS. SIP revisions will include the establishment of new and/or revised control requirements for emissions of the precursors of ground level ozone pollution – Nitrogen Oxides and VOCs. This rulemaking proposal is aimed at achieving some of the VOC emission reductions necessary to achieve the ozone NAAQS.

The Department proposes to adopt EPA's federal regulation for GDFs outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C). This includes the federal requirements for the use of "enhanced" Stage I vapor recovery systems at large GDFs with annual gasoline throughputs of 1,200,000 gallons or more, submerged filling, dual-point vapor control systems, new performance test methods and best management practices. Incorporation of these federal requirements into state regulation will bring consistency to the regulated community. In addition, to achieve greater VOC emission reductions, the Department proposes to extend the same federal requirements to medium-sized GDFs located in the New York City Metropolitan Area (NYMA) with annual gasoline throughputs between 800,000 and 1,200,000 gallons per year. The NYMA is designated as a moderate ozone nonattainment area and further reductions in VOC emissions will help achieve the NAAQS for ground level ozone. The required decommissioning of Stage II vapor recovery systems at all GDFs is also being proposed due to equipment incompatibility with On-board Refueling Vapor Recovery (ORVR) systems. All proposed changes are necessary to help achieve attainment of the 2008 and 2015 8-hour ozone NAAQS throughout New York State.

1. Types and estimated number of rural areas: Rural areas are found in much of upstate New York. In addition to the statewide requirements for large and medium-sized GDFs, this proposed rulemaking will impose minor new requirements on rural area GDFs with annual gasoline throughputs of 120,000 gallons or greater. Most notably, all GDFs must comply with the requirement for submerged filling equipment and best management practices. Submerged filling is an existing requirement of the New York State Fire Code for all stationary top-loaded gasoline storage tanks with a capacity greater than 60 gallons and best management practices is a federal requirement. Rural area GDFs will not be unfairly or adversely affected by the revisions to Part 230. This proposal will apply on a statewide basis.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The regulatory changes to Part 230 and Part 200 will apply on a statewide basis. Rural area GDFs are not expected to be unfairly or adversely affected by these revisions. The proposed rulemaking will impose minor reporting and recordkeeping requirements on most GDF owners and/or operators as well as testers of gasoline dispensing equipment. This requirement applies to all sources and not just those in rural locations. GDF owners and/or operators will need to submit additional information regarding site location and throughput when submitting required test reports. Documentation must also be provided to the Department upon completion of decommissioning procedures for Stage II vapor recovery systems. Test companies will need to submit self-certification forms to the Department prior to conducting performance testing. All GDF owners and/or operators, not just rural area GDF owners and/or operators, will require professional services from time to time from GDF equipment contractors and testers.

3. Costs: Rural areas are not expected to be unfairly or adversely af-

fected by these changes. Since most of the costs are due to equipment upgrades, the cost to GDF owners associated with the proposed regulations will vary depending on site condition and will likely be lower for smaller GDFs often located in rural areas.

4. Minimizing adverse impact: The proposal is not anticipated to have an unfair or adverse effect on rural areas. The rulemaking is intended to create air quality benefits for the entire state, including rural areas, through the reduction of ozone forming pollutants. The regulation ensures a fair and level playing field for all GDF owners and/or operators as well as for all manufacturers, contractors and testers of gasoline dispensing equipment.

5. Rural area participation: Rural areas will not be adversely affected by the proposed changes. The changes proposed apply to GDF owners and/or operators throughout the entire state. The Department held public meetings for industry stakeholders to present a draft of the proposed regulatory changes at various locations throughout the state. These locations were convenient for persons from rural areas to participate. Comments received during this period were taken into consideration when drafting the final rule. Additionally, further stakeholder input was received, considered, and implemented where appropriate during the formal State Administrative Procedures Act comment period.

#### **Revised Job Impact Statement**

The edits made to the Express Terms do not require any changes to the JIS.

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

Seven commenters commented on the proposed new Part 230 and Part 200. This document summarizes those comments and the Department's responses.

##### **General**

Three commenters expressed appreciation for the opportunity to comment. The Department thanks those commenters for their participation in the rulemaking process.

##### **Timing**

Two commenters expressed concern that the Department is forging ahead with new regulations during a pandemic, imposing new costs and compliance mandates at a time when retail sales are low, and many are unemployed. The Department emphasized that most of the gasoline dispensing facilities (GDFs) and gasoline transport vehicles in the State already must comply with the requirements in the proposal due to federal regulations and State Fire Codes already in place. The new Part 230 will only impose new minimal requirements on medium-sized GDFs located in an area of the state not meeting the National Ambient Air Quality Standards (NAAQS) required under the Clean Air Act (CAA).

##### **Opportunity for Public Participation**

Three commenters felt that the cancellation of the scheduled public hearings by government order prevented an important public participation opportunity to comment on the proposed new rule. The Department explained that the original public comment period was extended by 30 days to accommodate this and that, along with the stakeholder meetings held early in the process, was enough time to allow meaningful input. This is especially true, given that written comments are given the same consideration as oral comments provided in public hearings.

One commenter was concerned about not receiving a response to an information request in time to review and comment on the proposal before the close of the comment period. The Department confirmed that a response to an information request filed on the closing day of the public comment period did not allow enough time for the Department to provide a response by the closing day of the comment period.

##### **Regulatory Clarification**

One commenter asked for an explanation of the proposed changes. The Department referenced the express terms and supporting documents that fully outline the proposal.

One commenter was confused by use of the term "phase-in" requirements used in the current Part 230 to reference the registration of GDFs as it was once used by EPA to refer to the increased use of on-board refueling vapor recovery (ORVR)-equipped vehicles. The Department clarified its meaning as it pertains to the supporting documents.

One commenter asked for clarification on the required certification for those performing vapor tightness testing. The Department explained that the self-employed would also be required to self-certify if contracted to perform these tests.

One commenter asked for clarification on the varying number of GDFs referenced throughout the supporting documents. The Department made clear that the number of GDFs affected by a specific requirement differs due to varying applicability.



One commenter pointed out the misuse of the term “moderate” versus “serious” to describe nonattainment areas of the state in two places within the supporting documents. The Department corrected the status in those documents.

One commenter asked for clarification on the compliance dates specified in the proposed new Part 230. The Department verified a compliance date of 6 months for those GDFs that become subject to federal Stage I vapor recovery requirements and a compliance date of 12 months after the effective date of the rule for the removal of Stage II vapor recovery systems.

#### Justification for Regulatory Changes

One commenter suggested that the opportunity for job growth as a result of the proposal for those servicing GDFs may be a driving force for the rule changes. The Department explained that the goal of the rulemaking was to reduce emissions of volatile organic compounds (VOCs) in New York State and that job growth in this sector is merely a consequence of a proposed regulation designed to protect the environment.

#### Beyond the Federal Rule

One commenter requested justification for the proposal exceeding the federal GDF standards. The Department defended its position to require medium-sized GDFs in an ozone nonattainment area of the state to comply with federal Stage I vapor recovery requirements to help the state meet the NAAQS and reasonably available control technology (RACT) requirements established under the CAA.

#### Emissions

Three commenters expressed that the estimated emission reductions for this proposal are low and would have a very small impact on air quality. The commenters also pointed out that current air quality in New York State is improved as a result of the stay home orders due to the pandemic. Based on the preceding, commenters concluded that new regulations to control air pollutant emissions are unnecessary. The Department conveyed that the state faces a significant health challenge from the effects of ground-level ozone caused, in part, by emissions of gasoline vapors and the importance of reducing any amount of pollutant emissions as necessary. The commenters were also reminded that the CAA requires RACT for VOC sources in areas that do not meet the NAAQS and that New York is required to include permanent enforceable and verifiable emission reductions in the State Implementation Plan (SIP) and we cannot assume that temporary changes in emissions due to the pandemic will become permanent.

#### Compliance Costs

Two commenters were concerned that the costs imposed by the regulatory changes were underestimated and that some were unjustified. The Department explained that cost estimates were obtained from various GDF service providers currently doing business in New York State and costs can vary from vendor to vendor. It was emphasized that costs are associated with the requirement for medium-sized GDFs in the New York Metropolitan area (NYMA) to comply with the federal Stage I vapor recovery standards but that no new costs are being imposed as a result of any other requirements in the proposed new Part 230.

One commenter suggested high cost for continuous monitoring controls was a regulatory burden. The Department clarified that continuous monitoring of the vapor space was not part of the proposed new Part 230.

Two commenters expressed concerns that submerged flt pipes and dual-point collection systems on all gasoline storage tanks would be overly burdensome on industry. The Department clarified that these vapor control requirements are already mandated for all GDFs in the state by the New York State Fire Code and the federal regulations in 40 CFR Part 63 Subpart CCCCC (Subpart 6C).

One commenter argued that the removal of Stage II vapor recovery systems was unnecessary. The Department countered that the removal of these systems is being proposed due to equipment incompatibility with ORVR systems installed on approximately 96% of vehicles in the state. Leaving them in place is causing excess emissions of VOC into the atmosphere and the decommissioning of these systems will help New York State attain the ozone standard.

#### Cost/Benefit Analysis

Three commenters recommended that the Department redo the cost/benefit analysis that was performed as part of the proposal citing lower emissions from GDFs due to less gas being pumped as result of the pandemic. The Department stressed that the NYMA is still in nonattainment for the ozone NAAQS and emission sources of VOC are required to implement RACT to reduce those emissions under the CAA. The Department further emphasized that New York State is required to include permanent enforceable and verifiable emission reductions in the SIP and cannot base controls on temporary changes in emissions.

#### Impact on Small Businesses

Two commenters conveyed that most GDFs are small business being unfairly targeted and adversely affected by the proposed regulation. The Department stated that the proposal is not expected to have unfair or

adverse impacts on small businesses since the requirements will apply statewide, in varying degrees, to all GDFs and that the regulation was intended to create air quality benefits for the entire state.

One commenter challenged the estimation of cost savings from the proposal and asserted that any benefits would be in the form of jobs for GDF service providers. The Department explained the cost savings realized by eliminating the need to maintain costly Stage II vapor recovery systems and by reducing lost gasoline product due to the incompatibility of these systems.

One commenter expressed concern that the proposed regulatory changes would impose significant and costly burdens on upstate GDF owners and operators. The Department confirmed there would be no new costs or compliance burdens for any GDFs outside the NYMA as a result of this proposal since these facilities are already subject to these requirements under the New York State Fire Code and the federal GDF regulation.

#### Suggested Alternatives to Proposal

Three commenters expressed that the Department should rescind the current proposal and merely adopt the federal regulation in Subpart 6C. The Department pointed out that a major part of the proposal is adoption of the federal requirements and that not adopting current federal requirements would leave the regulated community with overlapping and contradictory requirements. The regulation goes beyond federal requirements in regards to medium sized GDFs in the NYMA in order to provide necessary emissions reductions in an area of the state that is in nonattainment.

#### Requests for Additional Information

One commenter requested information on the modeling that was used to demonstrate when the New York State vehicle feet would be in “wide-spread use” – meaning when Stage II was determined to be no longer useful in reducing emissions of VOCs. The Department referenced the analysis performed in 2011 which included modeling of the feet and explained that the results of that analysis were forwarded to EPA for approval to allow removal of Stage II vapor recovery systems.

#### Outside Scope of Rulemaking

Several comments were received that were outside the scope of this rulemaking.

## NOTICE OF ADOPTION

### Consumer Products

**I.D. No.** ENV-06-20-00019-A

**Filing No.** 8

**Filing Date:** 2021-01-12

**Effective Date:** 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 200 and 235 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** Consumer Products.

**Purpose:** Reduce Volatile Organic Compound emissions from Consumer Products – those products used in the average household.

**Substance of final rule:** The Division of Air Resources is revising 6 NYCRR Part 235, “Consumer Products” (Part 235) to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional product consistency. The revisions will help the state attain federal National Ambient Air Quality Standards, and work toward regionally consistent regulations amongst the Ozone Transport Commission (OTC) states.

The revisions include adding nine new product categories and revising ten existing categories in order to reduce the VOC content of the products through lower VOC content limits. Part 200 will be revised to incorporate referenced materials, including American Society for Testing Materials (ASTM) testing procedures, the California Air Resources Board (CARB) provisions supporting this regulation, and to update references to Part 235. Part 235 will be revised to incorporate new definitions and revise some categories in the existing definitions. Additionally, Subpart 235-3 will be updated to add new VOC limits, conform to the revised definitions and product categories, and to remove obsolete text and references.

Changes throughout the proposal include a January 1, 2022 compliance date for the new VOC limits on new and reformulated products in the regulation. Likewise, changes were made in the definitions section to provide transitional language, where necessary, for those categories of products that were redefined or revised, to cite which emission standards apply before or after the compliance date of the regulation.

The revisions include setting VOC content limits for nine new product