

REGULATION 1141, SECTION 2.0

TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DELAWARE ADMINISTRATIVE CODE

Proposed

5/22/2015

1100 Air Quality Management Section

1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products

04/11/09 xx/xx/xx

2.0 Consumer Products

2.1 Applicability

2.1.1 Except as provided in 2.1.2 and 2.1.3 of this regulation, 2.0 of this regulation shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on and after the applicable compliance dates in Table 2-1 of this regulation, "VOC Content Limits for Consumer Products", for use in the State of Delaware.

2.1.2 The provisions of 2.0 of this regulation shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of Delaware, a consumer product that does not comply with the VOC standards specified in 2.3.1 of this regulation, 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 Delaware, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the State of Delaware. This does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the State of Delaware.

2.1.3 The provisions of 2.0 of this regulation shall not apply to a retailer who sells, supplies or offers for sale in the State of Delaware, a particular consumer product that does not comply with the VOC standards specified in 2.3.1 of this regulation, provided that retailer demonstrates to the satisfaction of the Department that the manufacturer or distributor of that product mislead that retailer into believing that the product did comply with the VOC standards specified in 2.3.1 of this regulation.

2.2 Definitions

Terms used but not defined in 2.0 of this regulation shall have the meaning given them in 7 **DE Admin. Code** 1101 or the CAA in that order of priority.

"ACP (alternative control plan)" means an emissions averaging program, established and managed by a responsible ACP party which allows manufacturers to sell ACP products in the State of Delaware pursuant to the requirements of 2.0 of this regulation.

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

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

where,

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

where,

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 VOCs per unit;
- C = total weight of all exempted VOCs per unit, as specified in 2.3.11 through 2.3.19 of this regulation.

For charcoal lighter material products only:

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

where,

Certified Emissions = emissions levels for products specified 2.3.4.1 of this regulation;
Certified Use Rate = see "Certified use rate" in 2.2 of this regulation.

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

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

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where,

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

where,

Enforceable Sales = see "Enforceable sales" in 2.2 of this regulation

ACP Standard = see "ACP standard" in 2.2 of this regulation

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

"ACP product" means any consumer product subject to the VOC standards specified in 2.3.1 of this regulation, except those products that have been exempted under 2.3 of this regulation, or exempted as innovative products under 2.4 of this regulation and is covered by an ACP established by the responsible ACP party.

"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.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 2.3.1 of this regulation, whichever is the lesser of the two.

"ACP VOC standard" means the maximum allowable VOC content for an ACP product, determined as follows:

(1) the applicable VOC standard specified in 2.3.1 of this regulation for all ACP products except for charcoal lighter material;

(2) for charcoal lighter material products only, the VOC standard for the purposes of 2.0 of this regulation shall be calculated according to the following equation:

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

where,

0.020 = the certification emissions level as specified in 2.3.1 of this regulation.

Certified Use Rate = see "Certified use rate" in 2.2 of this regulation

"Adhesive" means any product that is applied for the purpose of bonding two surfaces together other than by mechanical means. 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.

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"Adhesive remover" means a product designed to remove adhesives from a specific or a variety of substrates. Adhesive remover does not include products that remove adhesives intended exclusively for use on humans or animals.

For the purposes of this definition and adhesive remover subcategories (1) through (4) below, 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 purposes of forming a bond.

- (1) "Floor and wall covering adhesive remover" means a product designed or labeled to remove floor or wall coverings and associated adhesive from the underlying substrate;
- (2) "Gasket or thread locking adhesive remover" means a product designed or labeled to remove gaskets or thread locking adhesives. Product labeled for dual use as a paint stripper and gasket remover and/or thread locking adhesive remover are considered gasket or thread locking adhesive remover.
- (3) "General purpose adhesive remover" means a product designed or labeled to remove cyanoacrylate adhesive 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; silicones. Specialty adhesive remover does not include gasket or thread locking adhesive remover.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a non-refillable 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.

"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.

"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 sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. Agricultural use does not include the sale or use of pesticides in properly labeled

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packages or containers which are intended for: (and defined for the purposes of this definition only):

- (1) home use which means use in a household or its immediate environment,
- (2) structural pest control which means a use requiring a license under Title 3 **Del.C.** Ch. 12,
- (3) industrial use which means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites, and
- (4) institutional use which means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means any ~~consumer~~ product including, but not limited to, sprays, wicks, wipes, diffusers, powders, and crystals, designed or labeled for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. Air freshener includes dual purpose air freshener/disinfectant products. Air freshener does not include products that are used on the human body, products that, ~~as indicated on the product label,~~ function primarily as cleaning products as indicated on the product label , odor remover/eliminator, or toilet and 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.

"All other carbon-containing compounds" means all other compounds which contain at least one carbon atom and are not exempt compounds or LVP-VOCs.

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

"Anti-microbial hand or body cleaner or soap" means a cleaner or soap designed to reduce the level of microorganisms on the skin through germicidal activity. Anti-microbial hand or body cleaner or soap includes, but is not limited to, anti-microbial hand or body washes/cleaners, food-handler hand washes, healthcare personnel hand washes, pre-operative skin preparations and surgical scrubs. Anti-microbial 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 anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

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"**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.

"**Anti-static product**" means a product that is labeled to eliminate, prevent or inhibit 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.

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

"**Aromatic compound**" means 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^o C. Aromatic compound does not include compounds excluded from the definition of VOC.

"**Artist's solvent/thinner**" means any liquid product, labeled to meet ASTM D4236-94 (March 1, 2005) Standard Practice for Labeling Art Materials for Chronic Health Hazards, and is packaged in a container equal to or less than 34 fluid ounces, labeled to reduce the viscosity of, and/or remove, art coating compositions or components.

"**ASTM**" means the American Society for Testing and Materials International.

"**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.

"**Automotive brake cleaner**" means, for products manufactured before January 1, 2017, a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

"**Automotive hard paste wax**" means a motor vehicle wax or polish which is:

- (1) designed to protect and improve the appearance of motor vehicle painted surfaces;
- (2) a solid at room temperature; and
- (3) contains 0% water by formulation.

"**Automotive instant detailer**" means a product designed for use in a pump spray that is applied to motor vehicle painted surfaces and wiped off prior to being allowed to dry.

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

"Automotive wax, polish, sealant or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance motor vehicle painted surfaces. Automotive wax, polish, sealant or glaze includes, but is not limited to, products designed for use in auto body 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.

"Automotive windshield cleaner" means, for product manufactured on and after January 1, 2017, a product labeled and packaged as an automotive windshield cleaner in the form of a moistened towelette and is designed to be used on automobile 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.

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

"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 designed to clean toilet bowls, toilet tanks or urinals~~ toilet/urinal care product.

"Brake cleaner" means, for products manufactured on or after January 1, 2017, a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

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

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

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaners" means a product designed or labeled 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

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products designed or labeled exclusively to be introduced during engine operation directly into air intake vacuum lines by using a pressurized sprayer wand.

"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.

"Certified use rate" means the usage level for charcoal lighter materials specified under 2.3.4 of this regulation, expressed to the nearest 0.001 pound of charcoal lighter materials used per start.

"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: electrical starters and probes; metallic cylinders using paper tinder; natural gas; propane; and fat wood.

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

"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.

"Construction, panel, and floor covering adhesive" means any non-aerosol one-component adhesive that is designed or labeled exclusively for the installation, remodeling, maintenance, or repair of:

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

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

Construction, panel, and floor covering adhesive does not include floor seam sealer.

"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.

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"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to: antiperspirants; detergents; deodorants; 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. As used in 2.0 of this regulation, consumer products shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial and commercial uses.

"Contact adhesive" means ~~an~~ a non-aerosol adhesive that:

- (1) is designed for application to both surfaces to be bonded together;
- (2) is allowed to dry before the two surfaces are placed in contact with each other;
- (3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and
- (4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates. Contact adhesive also does not include vulcanizing fluids that are designed and labeled for tire repair only.

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

"Contact adhesive - special purpose" means a contact adhesive that:

- (1) is used to bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch thick or less in thickness to any porous or nonporous surface, and is sold in units of product, less packaging, that contains more than eight fluid ounces, or
- (2) is used in automotive applications that are (a) automotive-under-the-hood applications requiring heat, oil or gasoline resistance, or (b) body-side molding, automotive weather-strip or decorative trim.

"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.

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"Contact person" means a representative or representatives that has been designated by the responsible ACP party for the purpose of reporting or maintaining any information specified in the ACP.

"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.

"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.

"Delaware sales" means the sales (net pounds of product, less packaging and container, per year) in Delaware for a specified calendar year. If direct sales data for the State of Delaware are not available, sales may be estimated by prorating national or regional sales data by population.

"Deodorant" means:

(1)For products manufactured on or after January 1, 2005 and before May 1, 2009: 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 May 1, 2009: 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 on or applied to the human axilla, is a deodorant.

"Deodorant body spray" means:

(1)for products manufactured on or after January 1, 2005 and before May 1, 2009: a personal fragrance product with 20 percent or less fragrance.

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

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

"Disinfectant" means ~~a any product intended that is labeled as a disinfectant, or is labeled to~~ destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered as a disinfectant under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.) and Title 3 **Del.C.** Ch. 12. Products that are labeled as both a sanitizer and a disinfectant are considered disinfectants. Disinfectant does not include any of the following:

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

(2)~~products designed~~ labeled solely for agricultural use;

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

(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~~ are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;

(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 cleaners, glass cleaners, general purpose cleaners, toilet/urinal care products, metal polishes, carpet cleaners, or fabric refreshers that may also make disinfecting or anti-microbial claims on the label.

"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.

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"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.

"Dry cleaning fluid" means any non-aqueous liquid product designed and labeled exclusively for use on: fabrics which are labeled "for dry clean only", such as clothing or drapery; or 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.

"Dual purpose air freshener/disinfectant" means 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.

"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.

"Electrical cleaner" means a product labeled to remove heavy soils such as grease, grime, or oil from electrical equipment, including, but not limited to, electric motors, armatures, relays, electric panels, or generators. Electric 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.

"Electronic cleaner" means a product labeled for the removal of dirt, moisture, dust, flux or oxides from the internal components of electronic or precision equipment such as circuit boards, and the internal components of electronic devices, including, but not limited to, radios, compact disc (CD) players, digital video disc (DVD) players, and computers. 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~~ labeled to clean the casings or housings of electronic equipment. Electronic cleaner does not include any product that meets both of 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 residual electrical potential from a component, and

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

"Energized electrical cleaners" means a product that meets both of the following criteria;

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

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

Energized electrical cleaner does not include electronic cleaner.

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

"Enforceable sales record" means a written, point-of-sale record or any other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the State of Delaware during the applicable compliance period can be accurately documented. For the purposes of 2.0 of this regulation, 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 recorded by the responsible ACP party;

(3)any other accurate product sales records approved by the Department as meeting the criteria specified in 2.2 of this regulation.

"Engine degreaser" means a cleaning product designed or labeled to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Exempt compound" means any carbon-containing compound listed as an exception to the definition of VOC's in 7 **DE Admin. Code** 1101.

"Fabric protectant" means,

(1)for products manufactured before January 1, 2017, 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,

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(2)for products manufactured on and after January 1, 2017, 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 constriction, reconstruction, modification, structural maintenance or repair of fabric substrates, or products that renew or restore fabric and qualifying as either clear coating or vinyl/fabric/leather/polycarbonate coating.

"Fabric refresher" means a product labeled to neutralize or eliminate odors on non-laundered fabric including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, clothing and/or on household furniture or objects upholstered or covered with fabrics such as, but not limited to, wool, cotton or nylon. 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 application to both fabric and human skin. ~~For the purposes of this definition only, soft household surface sanitizer means a product labeled 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 USC 136 et seq.)~~

"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.

"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.

"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.

"Flexible flooring material" means, for products manufactured before January 1, 2017, asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

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

"Floor polish or wax" means:

(1)for products manufactured before January 1, 2017, 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

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products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

(2)for products manufactured on or after January 1, 2017, 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 architectural coating regulations.

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 definition:

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

(b)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.

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

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

"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.

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

"Footwear or leather care product" means any product designed or labeled to be applied to footwear or to other leather articles/components, to maintain, enhance, clean, protect, or modify the appearance, durability, fit, or flexibility of the footwear or leather article/component. Footwear includes both leather and non-leather foot 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

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refresher, products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than 2 millimeters thick.

"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 2 mm. of Hg at 20 degrees C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or any other product ~~designed~~ 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 or~~ products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"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.

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

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

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

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

"General purpose degreaser" means ~~any~~ a product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive

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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, or oven or grill cleaner, or products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(1) exclusively sold exclusively 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.

"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, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"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.

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

"Gross Delaware sales" means the estimated total State of Delaware 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 determines will provide an accurate State of Delaware sales estimate:

(1) apportionment of national or regional sales of the ACP product to State of Delaware 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 Delaware's current population; or

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

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

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"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.

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

"Hair spray" means:

(1)for products manufactured before May 1, 2009: 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 May 1, 2009: a consumer product that is applied to styled hair, and is designed or labeled to provide sufficient rigidity, to hold, retain and/or finish the style of the hair for a period of time. 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 not provide finishing of a hair style. For the purposes of this definition, finish or finishing means the maintaining and/or holding of previously styled hair for a period of time and styling means the forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"Hair styling product" means a consumer product manufactured on or after May 1, 2009, that is designed or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling, and/or sculpting of the hair. Hair styling product includes, but is not limited to, hair balm, clay, cream, creme, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hair style, 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 or conditioners that are rinsed from the hair prior to styling. For the purposes of this definition, finish or finishing means the maintaining and/or holding of previously styled hair for a period of time and styling means forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"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, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are; for agricultural use, or restricted materials that require a permit for use and possession.

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"High-temperature coating" means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204⁰ C (400⁰ F).

"High volatility organic compound (HVOC)" means any volatile organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20°C.

"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.

"Industrial maintenance coating" means 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 121⁰ C (250⁰ F); 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.

"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 Title 3 **Del.C.** Ch. 12; or

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

"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

"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:

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(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.

"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.

"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.

"Laundry starch/sizing/fabric finish product" means a product that is ~~designed~~ labeled 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/sizing/fabric finish product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of 2.5.2 of this regulation, lawn and garden insecticides (aerosol) may claim to kill insects and other arthropods.

"Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90 (2006), incorporated by reference in 2.8.3 of this regulation. Liquid does not include powders or other materials that are composed entirely of solid particles.

"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:

(1) automotive power steering fluids;

(2) products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes;

(3) two cycle oils or other products designed to be added to fuels;

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(4) products for use on the human body or animals; or products that are

(a) ~~sold exclusively~~ sold directly or through distributors to establishments which manufacture or construct goods or commodities, and

(b) labeled "~~not for retail sale~~" exclusively for "use in the manufacturing process only".

"LVP content" means the total weight, in pounds, of LVP-VOC 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 percent.

"LVP-VOC" means a low vapor pressure chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(1) has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310, incorporated by reference in 2.8.1 of this regulation; 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, as determined by CARB Method 310, incorporated by reference in 2.8.1 of this regulation; or

(4) is the weight percent of a chemical "mixture" that boils above 216°C, as determined by CARB Method 310, incorporated by reference in 2.8.1 of this regulation.

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

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

"Medicated astringent/medicated toner" means any product regulated as a drug by the 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, personal fragrance products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound (MVOC)" means any volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

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

"Missing data days" means the number of days in a compliance period for which the responsible ACP party has failed to record the required enforceable sales or VOC content data, as specified in the ACP.

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

"Multi-purpose dry lubricant" means any lubricant which is:

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

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

"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.

"Multi-purpose solvent" means:

(1) for products manufactured before January 1, 2017, 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, 2017, any liquid product designed or labeled to be used for dispersing or dissolving or removing contaminants or other organic materials. Multi-purpose solvent also includes (a) products that do not display specific use instructions on the product container or packaging, (b) products that do not specify an end-use function or application on the product container or packaging, (c) solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories, (d) paint clean-up products, and (e)

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products labeled to prepare surfaces for painting. For the purposes of this definition, paint clean-up products 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.

(3)for products manufactured on and after January 1, 2017, multi-purpose solvent does not include (a) solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, (b) solvents labeled exclusively for the clean-up of application equipment used for polyaspartic and polyurea coatings, (c) solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment, (d) products that are labeled exclusively to clean a specific contaminant, on a single substrate, in specific situations, or (e) any product making a representation that the product may be used as, or is suitable for use as, a consumer product which qualifies under another definition in 2.2 of this regulation, such products are not multi-purpose solvents and are subject to the most restrictive limit provision in 2.5.2 of this regulation.

"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.

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

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

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

"Non-resilient flooring" means, for products manufactured before January 1, 2017, flooring of a mineral content which is not flexible. Non-resilient flooring includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

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

"One-product business" means a responsible ACP party which sells, supplies, offers for sale, or manufactures for use in the State of Delaware:

(1)only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 2.3 of this regulation; or

(2)only one distinct ACP product line subject to the requirements of 2.3 of this regulation, in which all the ACP products belong to the same product category or categories and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

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"**OTC state**" means any of the following, considered to be in the Ozone Transport Region as defined in the CAA and members of the Ozone Transport Commission (OTC): Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia and Vermont.

"**Oven or grill cleaner**" means ~~any cleaning a product designed to~~ labeled exclusively to clean and to remove dried baked on greases and/or food deposits from oven interiors 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.

"**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.

"**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:

- (1) multi-purpose solvents;
- (2) paint brush cleaners;
- (3) products designed and labeled exclusively as graffiti removers; and
- (4) hand cleaner products that claim to remove paints and other related coating from skin.

"**Paint thinner**" means, for products manufactured on or after January 1, 2017, 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;

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(a)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 used exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or, high temperature coatings, and

(b)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.

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

"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: deodorant; medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body; mouthwashes, breath fresheners and deodorizers; lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations; products designed exclusively for use on human genitalia; soaps, shampoos and products primarily used to clean the human body; and, fragrance products designed to be used exclusively on non-human animals.

"Pesticide" means 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 a pesticide. (EPA Office of Pesticide Programs or see <http://www.epa.gov/pesticides/index.htm>)

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the ACP was established by the manufacturer, based on available Delaware sales records, or other accurate records, whichever yields the lowest VOC content for the product. If a valid ACP is in force in another state, product data from that state may be used if it yields the lowest VOC content for the product.

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

"Principal display panel or panels" means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears

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more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

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

"Product category" means the applicable category which best describes the product as listed in 2.2 and in Table 2-1 of this regulation.

"Product form" means, for the purposes of complying with 2.6 of this regulation only, the applicable form that most accurately describes the products' dispensing form as follows; A= aerosols, S= solids, L= liquids, P= pump spray, SS= semisolid, and O= other.

"Product line" means a group of products of identical form and function belonging to the same product category or categories.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

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

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

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, pursuant to 2.10.3.7.10 of this regulation.

"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.

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

"Restricted materials" means pesticides established as restricted materials under Title 3 Del.C. Ch. 12 or under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.)

"Retailer" means any person who sells, supplies, or offers consumer products for sale directly to consumers.

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

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

"Rubber and / vinyl protectant" means:

(1)for products manufactured before January 1, 2017, 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 and after January 1, 2017 (except aerosol tire shine products for which the effective date is January 1, 2016), 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, or 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.

"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.

"Sanitizer" means, for products manufactured on and after January 1, 2017, a product that is 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.). Products that are labeled as both a sanitizer and a disinfectant are considered disinfectants. Sanitizer does not include disinfectant; products labeled solely for use on humans or animals; products labeled solely for agricultural use; products labeled for use in swimming pools, therapeutic tubs, or hot tubs; products which are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces; products which are pre-moistened wipes or towelettes sold exclusively to medical, convalescent or veterinary establishments; products which are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or 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.

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"SCAQMD" means the South Coast Air Quality Management District, a part of the California Air Resources Board which is responsible for regulation of air quality in the State of California.

"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:

- (1) roof cements and roof sealants;
- (2) insulating foams;
- (3) removable caulking compounds;
- (4) clear/paintable/water resistant caulking compounds;
- (5) floor seam sealers;
- (6) products designed exclusively for automotive uses; or
- (7) sealers that are applied as continuous coatings.

For the purposes of this definition only, removable caulking compound 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.

"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.

"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.

"Shaving gel" means an aerosol product which dispenses a post-forming 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.

"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 the ACP was established.

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"Silicone-based multi-purpose lubricant" means any lubricant which is: (i) designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and (ii) designed and labeled for general purpose lubrication, or for use in a wide variety of applications. Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"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.

"Small business" means an independently owned and operated business with less than 100 employees as defined by the Administrator of the federal Small Business Administration pursuant to U. S. Public Law 85-536.

"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, incorporated by reference in 2.8.3 of this regulation.

"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)**"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 to 275 degrees F.

(3)**"Flexible vinyl adhesive"** means an aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method D1045-95, incorporated by reference in 2.8.5 of this regulation, or from product formulation data.

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

(5)**"Automotive headliner adhesive"** means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

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

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

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

(b) for 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 degrees F, and at pressures between 1,000 and 1,400 psi.

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

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

"Stick product" means, for products manufactured before January 1, 2017, 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.

"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-181 D (Type 1, Grade A).

"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. Surplus reduction does not include emissions occurring prior to the date the ACP was established by the manufacturer.

"Surplus trading" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"Temporary hair color" means, for products manufactured on or after January 1, 2017, 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.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflators" means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

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"Toilet/urinal care product" means any product designed or labeled to clean and/or to 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.

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

where,

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

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

where,

Highest VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording VOC content data (for any portion of the compliance period), as specified in the ACP, or the current actual VOC content, if the responsible ACP party has recorded all required VOC content data (for the entire compliance period), as specified in the ACP;

Highest Sales = the maximum one-year gross State of Delaware sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording enforceable sales records (for any portion of the compliance period), as specified in the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has recorded all required enforceable sales records (for the entire compliance period), as specified in the ACP;

Missing Data Days = see "Missing data days" in 2.2 of this regulation;

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

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

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

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

"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).

"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.

"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.

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

"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 2.8.1 and 2.8.2 of this regulation.

For charcoal lighter products only,

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

where,

Certified Emissions = emissions level for products specified in 2.3.4 of this regulation;

Certified Use Rate = usage level for products specified in 2.3.4 of this regulation.

"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.

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

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

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

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

"**Wood floor wax**" means, for products manufactured before January 1, 2017, wax-based products for use solely on wood floors.

"**Working day**" means any day between Monday through Friday, inclusive, except for days that are federal holidays.

"Zinc-rich primer" means a coating that meets all the following specifications:

- (1) coating contains at least 65 percent metallic zinc powder or zinc dust by weight of total solids; and
- (2) coating is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings; and
- (3) coating is intended for professional use only and labeled "For Professional Use Only", "For Industrial Use Only", "Not For Residential Use", or "Not Intended For Residential Use".

2.3 Standards and Exemptions

2.3.1 Except as provided in 2.1 (Applicability), 2.3.11 through 2.3.19 (Miscellaneous Exemptions), 2.4 (Innovative Products), 2.7 (Variances), and 2.10 (Alternative Control Plan) of this regulation,

2.3.1.1 no person shall sell, supply, or offer for sale in the State of Delaware any consumer product manufactured on and after the effective date shown in Table 2-1 of this regulation which contains VOC's in excess of the limits shown in Table 2-1 of this regulation and

2.3.1.2 no person shall manufacture any consumer product on and after the effective date shown in Table 2-1 of this regulation for use in the State of Delaware which contains volatile organic compounds in excess of the limits shown in Table 2-1 of this regulation.

2.3.2 For products that are diluted prior to use, the following shall apply:

2.3.2.1 The limits specified in Table 2-1 of this regulation shall apply to 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

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use, only after the minimum recommended dilution has taken place. Minimum recommended dilution, for the purposes of 2.3.2.1 of this regulation, 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.

- 2.3.2.2 The limits specified in Table 2-1 of this regulation shall apply to consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use only after the maximum recommended dilution has taken place.
- 2.3.3 The effective date of the VOC standards specified in Table 2-1 of this regulation, for those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 et seq.), is one year after the indicated date. Such products also must be registered under Title 3 **Del.C.** Ch. 12.
- 2.3.4 The following requirements shall apply to all charcoal lighter material products as defined in 2.2 of this regulation:
 - 2.3.4.1 Regulatory standards.

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

 - 2.3.4.1.1 The manufacturer or distributor of the charcoal lighter material has performed the requisite testing to demonstrate that VOC emissions from ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start (certified emissions), using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the "SCAQMD Rule 1174 Testing Protocol"), incorporated by reference in 2.8.4.1 of this regulation. The provisions relating to LVP-VOC in 2.2 of this regulation and 2.3.14 of this regulation shall not apply to any charcoal lighter material subject to the requirements of 2.3.1 and 2.3.4 of this regulation. The Department may approve alternative test procedures which are shown to provide equivalent results to those obtained using the SCAQMD Rule 1174 Testing Protocol 2.8.4 of this regulation.
 - 2.3.4.1.2 The charcoal lighter material meets the formulation criteria and other conditions specified in an applicable ACP.
 - 2.3.4.2 The Department may, at any time, request a manufacturer to submit information concerning the charcoal lighter material manufactured for use in the State of Delaware. The manufacturer shall respond within 30 days, in writing, and shall include, at a minimum, the following:
 - 2.3.4.2.1 The results of testing conducted pursuant to the procedures specified in SCAQMD Rule 1174 Testing Protocol 2.8.4 of this regulation.
 - 2.3.4.2.2 The exact text and/or graphics that 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

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directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the SCAQMD Rule 1174 Testing Protocol 2.8.4 of this regulation for that product, unless:

- 2.3.4.2.2.1 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
 - 2.3.4.2.2.2 the charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.
 - 2.3.4.2.3 For a charcoal lighter material which meets the criteria specified in 2.3.4.2.2.1 of this regulation, the usage instructions shall accurately reflect the quantity of charcoal lighter material used in the SCAQMD Rule 1174 Testing Protocol 2.8.4 of this regulation for that product.
 - 2.3.4.2.4 Any physical property data, formulation data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified an ACP.
 - 2.3.4.2.5 Possession of a currently effective certification by the CARB under the Consumer Products provisions of Title 17 of the California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Article 2, Section 94509(h), or from a state with a similar certification procedure, should be noted and a copy of the applicable certification decision (i.e., the Executive Order) should be included.
- 2.3.5 The following requirements for aerosol adhesives shall apply:
- 2.3.5.1 In order to qualify as a special purpose spray adhesive the product must meet one or more of the definitions specified in 2.2 of this regulation, but if the product label indicates that the product is suitable for use on any substrate or application not listed in special purpose spray adhesive, then the product shall be classified as either a web spray adhesive or a mist spray adhesive.
 - 2.3.5.2 If a product meets more than one of the definitions specified in 2.2 of this regulation for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in Table 2-1 of this regulation.
 - 2.3.5.3 Effective May 1, 2009, no person shall, sell, supply, offer for sale, or manufacture for use in the State of Delaware any aerosol adhesive which contains methylene chloride, perchloroethylene, or trichloroethylene.
- 2.3.6 No person shall sell, supply, offer for sale, or manufacture for use in the State of Delaware any floor wax stripper unless the following requirements are met:

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- 2.3.6.1 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 3 percent by weight or less.
- 2.3.6.2 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.
- 2.3.6.3 The terms "light build-up", "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.
- 2.3.7 For any consumer product specified in Table 2-1 of this regulation, no person shall sell, supply, offer for sale or manufacture for sale in the State of Delaware any such consumer product which contains any of the following ozone layer depleting compounds; CFC-11; CFC-12; CFC-113; CFC-114; CFC-115; halon 1211; halon 1301; halon 2402; HCFC - 22; HCFC-123; HCFC-124; HCFC-141b; HCFC-142b; carbon tetrachloride and, 1,1,1-trichloroethane.
- 2.3.7.1 The requirements of 2.3.7 shall not apply to any existing product formulation that complies with the VOC content limits specified in Table 2-1 of this regulation or any existing product formulation that is reformulated to meet the VOC content limits of Table 2-1 of this regulation, provided the ozone depleting compound content of the reformulated product does not increase.
- 2.3.7.2 The requirements of 2.3.7 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% by weight of the product.
- 2.3.8 Effective May 1, 2009 no person shall sell, supply, or offer for sale in the State of Delaware contact adhesives, electronic cleaners, footwear or leather care products, general purpose degreasers, adhesive removers, electrical cleaners, or graffiti removers manufactured on and after May 1, 2009 or, bathroom and tile cleaners, construction panel and floor covering adhesive, electronic cleaners labeled as for energized electronic equipment use only, general purpose cleaners, or oven or grill cleaners manufactured after January 1, 2017 that contain methylene chloride, perchloroethylene, or trichloroethylene in ~~excess~~ a combined amount greater than ~~of~~ 0.01 % by weight.
- 2.3.9 Effective May 1, 2009, no person shall sell, supply, or offer for sale in the State of Delaware any solid air fresheners or toilet/urinal care products manufactured on and after May 1, 2009 that contain para-dichlorobenzene.
- 2.3.10 Effective May 1, 2009, no person shall sell supply, or offer for sale in the State of Delaware any antiperspirant or deodorant which contains any of the following compounds: benzene; ethylene dibromide; ethylene dichloride; hexavalent chromium; asbestos; cadmium: carbon tetrachloride; trichloroethylene; chloroform; vinyl chloride; inorganic arsenic; nickel; perchloroethylene; formaldehyde; 1,3-butadiene; and lead.

NOTE: ITEMS 2.3.11 THROUGH 2.3.19 CONSTITUTE MISCELLANEOUS EXEMPTIONS

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- 2.3.11 The medium volatility organic compound (MVOC) content standards specified in 2.3.1 of this regulation for antiperspirants or deodorants, shall not apply to ethanol.
- 2.3.12 The VOC limits specified in 2.3.1 of this regulation shall not apply to fragrances up to a combined level of 2 percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant.
- 2.3.13 The requirements of 2.3.1 of this regulation for antiperspirants or deodorants shall not apply to those volatile organic compounds 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.
- 2.3.14 The VOC limits specified in 2.3.1 of this regulation shall not apply to any LVP-VOC.
- 2.3.15 The VOC limits specified in 2.3.1 of this regulation shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under 7 **DE Admin. Code** 1101 or exempted under 2.3.1 ~~¶~~ 4 of this regulation.
- 2.3.16 The VOC limits specified in 2.3.1 of this regulation shall not apply to: (1) insecticides containing at least 98% para-dichlorobenzene (2) until May 1, 2009, solid air fresheners containing at least 98% para-dichlorobenzene. On and after May 1, 2009, the provisions of 2.3.9 of this regulation apply to solid air fresheners containing para-dichlorobenzene.
- 2.3.17 VOC limits specified in 2.3.1 of this regulation shall not apply to adhesives sold in containers of 1 fluid ounce or less.

The VOC limits specified in 2.3.1 of this regulation for contact adhesive do not apply to units of product, less packaging, which consist of more than one gallon. [The VOC limits specified in 2.3.1 of this regulation for construction, panel and floor covering adhesive and for general purpose adhesive do not apply to units of product, less packaging, which consist of more than one pound and more than 16 fluid ounces.]

- 2.3.18 The VOC limits specified in 2.3.1 of this regulation shall not apply to bait station insecticides. For the purpose of 2.0 of this regulation, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5 percent active ingredients.
- 2.3.19 The provisions of 2.0 of this regulation do not apply to sealant and caulking compound in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

2.3.20 Effective January 1, 2017 no person shall sell, supply, offer for sale, or manufacture for use in the State of Delaware any “Flammable” or “Extremely Flammable” multi-purpose solvent or paint thinner named, on the principle display panel, as paint thinner, multi-purpose solvent, clean-up solvent, or paint clean-up unless they:

- (1) contain less than 1 percent by weight aromatic compound; and

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- (2) include an attached hang tag, sticker, or contrasting square or rectangular area on the principle display panel that displays, at a minimum, the following statements in a font size as large, or larger than, the signal word (i.e. DANGER, WARNING, or CAUTION) (not including the font size used for the company name, brand name or logo) as specified in Title 16, Code of Federal Regulations, section 1500.121; or product “formulated to meet California VOC limits; see warnings on label” ; or the principle display panel displays, in large font, the common name of the chemical compound that results in the product meeting the criteria for flammable or extremely flammable, such as acetone or methyl acetate. For the purposes of this definition, a product is flammable” or extremely flammable if it is labeled “Flammable” or “ Extremely Flammable” on the product container or meets the criteria for those terms specified in 16 CFR 1500.3(c)(6); and
- (3) contain methylene chloride, perchloroethylene, or trichloroethylene in a combined amount equal to or less than 0.01 % by weight.

2.4 Innovative Products

- 2.4.1 Any manufacturer of consumer products granted an Innovative Product Exemption (IPE) by the CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5 Article 1, Section 94503.5 of Title 17 of the California Code of Regulations, or granted an IPE by any OTC state, shall be exempt from the standards in 2.3.1 (Table 2-1) of this regulation for the period of time that said IPE remains in effect, provided that all consumer products within said IPE are contained in 2.3.1 Table 2-1 of this regulation. Any manufacturer claiming an exemption on this basis shall submit to the Department a copy of the IPE decision (i.e., the Executive Order or other comparable state action) including all conditions applicable to the exemption. The Department reserves the right to refuse to honor, revoke or otherwise cancel an IPE which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an IPE. Only the following provisions of 2.4.2 of this regulation shall apply to IPE's exempted under 2.4.2.7, 2.4.2.8, and 2.4.2.9 of this regulation.
- 2.4.2 Manufacturers of consumer products may seek an IPE in accordance with the following criteria:
- 2.4.2.1 The Department shall exempt a consumer product from the VOC limits specified in 2.3.1 of this regulation 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:
- 2.4.2.1.1 the VOC emissions from a representative consumer product which complies with the VOC limits specified in 2.3.1 of this regulation; or,
- 2.4.2.1.2 the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified

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in 2.3.1 of this regulation. VOC emissions shall be calculated using the following equation:

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

where:

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

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

VOC_{STD} = the VOC limit specified in 2.3.1 (Table 2-1) of this regulation.

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 Department.

2.4.2.2 For the purposes 2.4.2.1 of this regulation, representative consumer product means a consumer product which meets all of the following criteria:

2.4.2.2.1 The representative consumer product shall be subject to the same VOC limit in 2.3.1 of this regulation as the innovative product.

2.4.2.2.2 The representative consumer 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.

2.4.2.2.3 The representative consumer 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.

2.4.2.3 A manufacturer shall apply in writing to the Department for any exemption claimed under 2.4.2.1 of this regulation. The application shall include 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 Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted to the Department is

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subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at Title 29 **Del.C.** Ch. 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at ~~Title 29 **Del.C.** Ch. 100, Section 10002(d).~~ 8 DE Admin Code 900. The procedure an applicant must follow in order to have information classified as confidential is reviewed in the DNREC FOIA regulation which can be obtained from the Department.

If a manufacturer has been refused an IPE or had an IPE revoked by the CARB or any OTC state, details shall be included in the application.

- 2.4.2.4 Within 30 days of receipt of the exemption application the Department shall determine whether an application is complete.
- 2.4.2.5 Within 90 days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, an exemption from the requirements of 2.3.1 of this regulation will be permitted. The applicant and the Department 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 Department shall notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in 2.4.2.1 of this regulation, and that such emissions reductions can be enforced.
- 2.4.2.6 In granting an exemption for a product the Department 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 Department to be necessary. The Department also shall specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.
- 2.4.2.7 For any product for which an exemption has been granted pursuant to 2.4.1 or 2.4.2 of this regulation, the manufacturer shall notify the Department in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Department within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application.
- 2.4.2.8 If the VOC limits specified in 2.3.1 of this regulation 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 2.4.2.8 of this regulation, shall have no force and effect as of the effective date of the modified VOC standard. This shall not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of such limits.

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- 2.4.2.9 If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in 2.4.2.1 of this regulation, the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Department shall not modify or revoke an exemption without first affording the applicant an opportunity to appeal the Department's decision to the Secretary, in writing.

2.5 Administrative Requirements

- 2.5.1 Each manufacturer of a consumer product subject to 2.0 of this regulation shall clearly display on each consumer product container or package, the day, month, and year when the product was manufactured, or a code indicating such date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cover/cap) without irreversibly disassembling any part of the container or packaging. Date or date-code information may be displayed on the bottom of the container or packaging as long as it is clearly legible without removing any product packing. No person shall erase, alter, deface or otherwise remove or make illegible any date or date-code from any regulated product container. The requirements of this provision shall not apply to products containing VOCs at 0.10% by weight or less. The requirements of 2.5.1 of this regulation shall not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act FIFRA; 7 U.S.C. Section 136 (et seq.), or Title 3 **Del.C.** Ch. 12.

- 2.5.1.1 A manufacturer using the following code to indicate the date of manufacture shall not be subject to 2.5.1.2 of this regulation, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YYDDD = year year day day day

where:

YY = two digits representing the year in which the product was manufactured
DDD= three digits representing the day of the year the product was manufactured, with 001 representing the first day of the year, 002 representing the second day of the year, etc. (the Julian date).

- 2.5.1.2 If a manufacturer elects to use a date-code other than represented in 2.5.1.1 of this regulation for any consumer product subject to 2.0 of this regulation an explanation of the date portion of the code must be filed with the Department before May 1, 2009 and must be ~~refilled~~ refiled every time the date code is changed.

Date-codes and date-code explanations indicating the date of manufacture are considered public information and will not be kept confidential.

2.5.2 Most Restrictive Limit

- 2.5.2.1 Notwithstanding the definition of product category in 2.2 of this regulation, if anywhere on the principal display panel of any consumer product manufactured before May 1, 2009, or any FIFRA-registered insecticide manufactured before May 1, 2010, any representation is made that the product may be used as, or is

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suitable for use as a consumer product for which a lower VOC limit is specified in 2.3.1 (Table 2-1) of this regulation, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products, and insecticide foggers.

- 2.5.2.2 Notwithstanding the definition of product category in 2.2 of this regulation, if anywhere on the container or packaging of any consumer product manufactured on or after May 1, 2009, or any FIFRA-registered insecticide manufactured on or after May 1, 2010, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in 2.3.1 (Table 2-1) of this regulation, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.
- 2.5.3 Additional Labeling Requirements for Aerosol Adhesives and Other Products.
- 2.5.3.1 In addition to the requirements specified in 2.5.1, 2.5.2, and 2.6 of this regulation, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electric cleaner, and contact adhesive product subject to 2.0 of this regulation shall ensure that all products clearly display the following information on each product container which is manufactured on or after the effective date for the category specified in 2.3.1 (Table 2-1) of this regulation.
- 2.5.3.1.1 The product category as specified in 2.3.1 (Table 2-1) of this regulation or an abbreviation of the category shall be displayed.
- 2.5.3.1.2 The applicable VOC standard for the product that is specified in 2.3.1 (Table 2-1) of this regulation, except for energized electric cleaner, expressed as a percentage by weight, shall be displayed unless the product is included in an ACP, as provided in 2.10 of this regulation and the product exceeds the applicable VOC standard.
- If the product is included in an ACP, and the product exceeds the applicable VOC standard specified in 2.3.1 (Table 2-1) of this regulation, the product shall be labeled with the term ACP or ACP product.
- 2.5.3.1.3 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.
- 2.5.3.1.4 If the manufacturer or responsible party uses an abbreviation as allowed by 2.5.3.1.1 of this regulation, an explanation of the abbreviation must be filed with the Department before the abbreviation is used.
- 2.5.3.2 The information required in 2.5.3.1 of this regulation, shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the

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purposes of 2.5.3.2 of this regulation, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

2.6 Reporting Requirements

2.6.1 Upon 90 days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify including, but not limited to, all or part of the information listed in 2.6.1.1 through 2.6.1.12 of this regulation. If their responsible party does not have or does not provide the information requested by the Department, the Department may require the reporting of this information by the person that has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

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

2.6.1.2 any claim of confidentiality which shall be handled as specified in 2.10.12 of this regulation;

2.6.1.3 the product brand name for each consumer product and upon request by the Department, the product label;

2.6.1.4 the product category to which the consumer product belongs;

2.6.1.5 the applicable product form or forms listed separately;

2.6.1.6 an identification of each product brand name and form as a household product, I & I product, or both;

2.6.1.7 separate Delaware sales in pounds per year, to the nearest pound, and the method used to calculate Delaware sales for each product form;

2.6.1.8 for reports submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All information from both companies shall be submitted by the date specified in 2.6.1 of this regulation;

2.6.1.9 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 one tenth of a percent (0.1%):

2.6.1.9.1 Total exempt compounds: and,

2.6.1.9.2 Total LVP-VOCs that are not fragrances .

2.6.1.9.3 Total all other carbon containing compounds that are not fragrances

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2.6.1.9.4 Total all non-carbon containing compounds

2.6.1.9.5 Total fragrance

2.6.1.9.6 For products containing greater than two percent by weight fragrance:

2.6.1.9.6.1 the percent of fragrance that are LVP-VOCs, and

2.6.1.9.6.2 the percent of fragrance that are all other carbon containing compounds

2.6.1.9.7 Total paradichlorobenzene;

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

2.6.1.10.1 Each exempt compound ~~;~~ and,

2.6.1.10.2 Each LVP-VOC that is not a fragrance .

2.6.1.11 if applicable, the weight percent comprised of propellant for each product; and

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

2.6.2 All information submitted by responsible parties pursuant to 2.6 of this regulation shall be handled in accordance with confidentiality procedures which are specified in 2.10.12 of this regulation.

2.7 Variances

2.7.1 Any person who cannot comply with the requirements set forth in 2.3 of this regulation, because of extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall set forth:

2.7.1.1 the specific grounds upon which the variance is sought;

2.7.1.2 the proposed date or dates by which compliance with the provisions of 2.3 of this regulation will be achieved; and

2.7.1.3 a compliance report reasonably detailing the method or methods by which compliance will be achieved.

2.7.2 Upon receipt of a variance application containing the information required in 2.7.1 of this regulation, the Department shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in 2.3 of this regulation is necessary and will be permitted. Notice of the time and place of the hearing shall be

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sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing also shall be submitted for publication in the Delaware Register and sent to every person who requests such notice, not less than 30 days prior to the hearing. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. At least 30 days prior to the hearing, the variance application shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

The applicant may wish to have some information treated as confidential. Procedures for establishing confidentiality are specified in 2.10.12 of this regulation. The Department may consider such confidential information in reaching a decision on a variance application.

2.7.3 No variance shall be granted unless all of the following findings are made:

2.7.3.1 that, because of reasons beyond the reasonable control of the applicant, requiring compliance with 2.3 of this regulation would result in extraordinary economic hardship;

2.7.3.2 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

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

2.7.4 Any variance order shall specify a final compliance date by which the requirements of 2.3 of this regulation 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 Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the State of Delaware's environmental regulations.

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

2.7.6 Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of 2.3 of this regulation after holding a public hearing in accordance with provisions of the Delaware Code.

2.8 Test Methods

2.8.1 Testing to determine compliance with the requirements of 2.0 of this regulation, shall be performed using CARB Method 310, "Determination of Volatile Organic Compound (VOC) in Consumer Products", adopted September 25, 1997, and amended on May 5, 2005, which is incorporated herein by reference. This method includes a number of ASTM methods.

Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval by the Department.

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2.8.2 VOC content determinations using product formulation and records. Testing to determine compliance with the requirements of 2.0 of this regulation also may 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:

2.8.2.1 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.

2.8.2.2 For the purposes of 2.8.2 of this regulation, the VOC content shall be calculated according to the following equation:

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

where,

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

B = total weight of all VOCs per unit

C = total weight of VOCs exempted under 2.3 of this regulation, per unit

2.8.2.3 If product records appear to demonstrate compliance with VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over product records and may be used to establish a violation of the requirements of 2.0 of this regulation.

2.8.3 Determination of liquid or solid. Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (2006), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid", incorporated by reference herein [see "Liquid" and "Solid" in 2.2 of this regulation].

2.8.4 Compliance determinations for charcoal lighter material products.

2.8.4.1 Testing to determine compliance with certification requirements for charcoal material shall be performed using procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), incorporated by reference herein.

2.8.4.2 Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-07b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure", incorporated herein by reference.

2.8.5 Testing to determine plasticizer in flexible vinyl adhesives [see "Flexible vinyl adhesive" within "Special purpose spray adhesive" in 2.2 of this regulation] shall be performed using ASTM D-1045-95 (reapproved 2001) "Standard Test Methods for Sampling and Testing Plasticizers used in Plastics" incorporated herein by reference.

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2.8.6 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.

2.8.7 Test Method Availability.

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

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

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

2.9 Severability

Each part of 2.0 of this regulation shall be deemed severable, and in the event that any part of 2.0 of this regulation is held to be invalid, the remainder of 2.0 of this regulation shall continue in full force and effect.

2.10 Alternative Control Plan

The purpose of 2.10 of this regulation is to provide an alternative method [an alternative control plan (ACP)] to comply with the Table 2-1 of this regulation limits specified in 2.3.1 of this regulation. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified herein. Only responsible ACP parties for consumer products may establish an ACP.

2.10.1 Except as provided in 2.10.2 of this regulation, any manufacturer of consumer products, granted an ACP agreement by the CARB under provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations, or granted an ACP agreement by any OTC state, shall be exempt from the Table 2-1 limits specified in 2.3 of this regulation for the period of time that said ACP agreement remains in effect, provided that all ACP products used for emission credits within said ACP agreement are contained in Table 2-1 of this regulation. Any manufacturer claiming such an ACP agreement shall submit to the Department a copy of the ACP decision (i.e., the Executive Order or other comparable state action), including all conditions applicable to the exemption. The Department reserves the right to refuse to honor, revoke or otherwise cancel an ACP which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an ACP. Holders of other state ACP agreements, operating in Delaware, shall be subject to all the provisions of 2.10.3 through 2.10.13 of this regulation.

2.10.2 Manufacturers of consumer products granted an ACP under the ACP provision in Subchapter 8.5, Article 4, Sections 9450-94555, of Title 17 of the California Code of Regulations, based on California specific data, or that have been granted an ACP agreement by any OTC state based on state specific data, or that have not been granted an ACP agreement by the CARB or any OTC state may establish an ACP in accordance with 2.10.2 through 2.10.13 of this regulation. It is not necessary to apply to the

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Department for authorization. The manufacturer shall submit the information requested in 2.10.5.1 of this regulation upon establishing the ACP and from time to time, the Department may require additional reporting as specified in 2.10.5 of this regulation. The Department reserves the right to refuse to honor, revoke or otherwise cancel an ACP established under 2.10.2 of this regulation which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an ACP. Manufacturers of consumer products whose application to CARB or any OTC state for an ACP was refused or whose ACP agreement was revoked, cancelled or otherwise terminated prior to the specified termination date, shall notify the Department of the circumstances before establishing an ACP for Delaware sales. Decisions by CARB or any OTC state to not approve an ACP application or to cancel or terminate an ACP prior to the specified termination date will be considered in taking any action in Delaware.

2.10.3 Requirements of an ACP.

To establish an ACP the responsible ACP party shall develop a file of information containing all of the following, which shall be kept current and available to the Department upon request as specified in 2.10.4.2 of this regulation and maintained for at least three years after such records are generated:

- 2.10.3.1 an identification of the contact persons, phone numbers, names and addresses of the responsible ACP party;
- 2.10.3.2 a statement of whether the responsible ACP party is a one-product business, or a small business as defined in 2.2 of this regulation;
- 2.10.3.3 a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category or categories for each distinct ACP product that is proposed for inclusion in the ACP;
- 2.10.3.4 for each proposed ACP product identified in 2.10.3.3 of this regulation a supported statement that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in 2.10.3.4.5 of this regulation. To support this statement, the responsible ACP party shall include all of the following in the file:
 - 2.10.3.4.1 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;
 - 2.10.3.4.2 the enforceable sales of each product using enforceable sales records as defined in 2.2 of this regulation;
 - 2.10.3.4.3 support the validity of the enforceable sales with enforceable sales records provided by the contact persons or the responsible ACP party;
 - 2.10.3.4.4 calculate the percentage of the gross Delaware sales, as defined in 2.2 of this regulation, which is comprised of enforceable sales;

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- 2.10.3.4.5 determine which ACP products have enforceable sales which are 75.0% or more of the gross Delaware sales. Only ACP products meeting this criteria criterion shall be allowed to be sold in the State of Delaware under an ACP.
- 2.10.3.5 for each of the ACP products identified in 2.10.3.4.5 of this regulation, the inclusion of the following:
 - 2.10.3.5.1 legible copies of the existing labels for each product;
 - 2.10.3.5.2 the VOC content and LVP content for each product reported for two different periods, as follows:
 - 2.10.3.5.2.1 the VOC and LVP contents of the product at the time the ACP is established, and
 - 2.10.3.5.2.2 any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of establishing the ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent (+10.0%) of the VOC or LVP contents reported in 2.10.3.5.2.1 of this regulation;
- 2.10.3.6 a written commitment obligating the responsible ACP party to date-code every unit of each ACP product included 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 5 working days after the date an ACP was established.
- 2.10.3.7 an operational plan covering all the products identified under 2.10.3.4.5 of this regulation for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:
 - 2.10.3.7.1 an identification of the compliance periods and dates for the responsible ACP party to summarize the information required by the Department in 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 also shall choose the dates for summarizing information such that all required VOC content and enforceable sales data for all ACP products shall be summarized at the same time and at the same frequency;
 - 2.10.3.7.2 an identification of specific enforceable sales records summarized in the operational plan for the compliance period dates specified in 2.10.3.7.1 of this regulation;
 - 2.10.3.7.3 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 or parties that they will transfer the surplus reductions to the small business or one-product business upon adoption of the ACP;

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- 2.10.3.7.4 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 or methods by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.
- 2.10.3.7.5 the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect;
- 2.10.3.7.6 a detailed write-up 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 write-up shall use the equations specified in "ACP emissions" and "ACP limit" as defined in 2.2 of this regulation for projecting the ACP emissions and ACP limits during each compliance period. It shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of Delaware during each compliance period;
- 2.10.3.7.7 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 2.0 of this regulation;
- 2.10.3.7.8 written explanations of the date-codes that will be displayed on each ACP product's container or packaging;
- 2.10.3.7.9 a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP;
- 2.10.3.7.10 a 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:
 - 2.10.3.7.10.1 a clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75%, and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;
 - 2.10.3.7.10.2 a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in 2.10.3.7.10 of this regulation; and
 - 2.10.3.7.10.3 a commitment to provide any record or information requested by the Department to verify that the shortfalls have been completely reconciled.

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2.10.3.7.11 a declaration, signed by a legal representative for the responsible ACP party which states that all information and plans included in the ACP are true and correct.

2.10.4 Record Keeping and Availability of Requested Information.

2.10.4.1 All information specified in an ACP shall be maintained by the responsible ACP party for a minimum of three years after the ACP is cancelled or expires. Such records shall be clearly legible and maintained in good condition during this period.

2.10.4.2 The records specified in 2.10.5.1 of this regulation shall be made available to the Department or an authorized representative:

2.10.4.2.1 immediately upon request, during an on-site visit to a responsible ACP party;
or

2.10.4.2.2 within five working days after receipt of a written request from the Department; or

2.10.4.2.3 within a time period mutually agreed upon by the Department and the responsible ACP party.

2.10.5 Reporting

2.10.5.1 Upon establishing an ACP, the responsible ACP party shall notify the Department, in writing, that an ACP has been established and shall submit to the Department all of the information specified in 2.10.3 of this regulation.

2.10.5.2 At any time that the information specified in 2.10.3 of this regulation is modified for any reason, the Department shall be promptly notified of the change.

2.10.5.3 When a shortfall occurs, the responsible ACP party shall promptly notify the Department. When the shortfall is reconciled, the responsible ACP party will notify the Department.

2.10.5.4 When a VOC exceedance occurs, the responsible ACP party shall promptly notify the Department of the exceedance and plans for correction. Any exceedance is a violation of 2.0 of this regulation and may result in penalties.

2.10.6 Violations.

2.10.6.1 Any person who commits a violation of 2.0 of this regulation may be subject to the penalties specified in applicable Delaware laws and regulations. Failure to meet any requirement of 2.0 of this regulation or any condition of an ACP shall constitute a single, separate violation of 2.0 of this regulation for each day until such requirement or condition is satisfied, except as otherwise provided in 2.10.6.3 through 2.10.6.8 of this regulation.

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- 2.10.6.2 False reporting of any information contained in an ACP, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of 2.0 of this regulation for each day that the ACP is in effect.
- 2.10.6.3 Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP shall constitute a single, separate violation of the requirements of 2.0 of this regulation 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 Delaware.
- 2.10.6.4 Any of the following actions shall each constitute a single, separate violation of the requirements of 2.0 of this regulation for each day after the applicable deadline until the requirement is satisfied:
 - 2.10.6.4.1 Failure to record data (i.e., "missing data") or failure to record data accurately (i.e., "inaccurate data") in writing to the Department regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified by the Department;
 - 2.10.6.4.2 False reporting of any information submitted to the Department for determining compliance with the ACP requirements;
 - 2.10.6.4.3 Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP, within 30 working days from the date of written notification of a shortfall;
 - 2.10.6.4.4 Failure to completely reconcile the shortfall as specified in the ACP, within 90 working days from the date of written notification of a shortfall.
- 2.10.6.5 False reporting or failure to report any of the information specified in 2.10.7.2.9 of this regulation, or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation of the requirements of 2.0 of this regulation for each day during the time period for which the surplus reductions are claimed to be valid.
- 2.10.6.6 Except as provided in 2.10.7 of this regulation, 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 2.0 of this regulation for each day of the applicable compliance period. The responsible ACP party shall determine whether an exceedance of the ACP limit has occurred as follows and promptly report the results to the Department:
 - 2.10.6.6.1 If the responsible ACP party has recorded all required information for the applicable compliance period specified in an ACP, then the manufacturer 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;

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- 2.10.6.6.2 If the responsible ACP party has failed to provide all the required information specified in the ACP for an applicable compliance period, determining whether an exceedance of the ACP limit has occurred shall be done as follows:
- 2.10.6.6.2.1 for the missing data days, calculate the total maximum historical emissions, as specified in 2.2 of this regulation;
 - 2.10.6.6.2.2 for the remaining portion of the compliance period which are not missing data days, 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;
 - 2.10.6.6.2.3 the ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to 2.10.6.6.2.1 of this regulation, and the emissions determined pursuant to 2.10.6.6.2.2 of this regulation;
- 2.10.6.6.3 calculate the ACP limit for the entire compliance period using ACP standards applicable to each ACP product and enforceable sales records specified in 2.10.6.6.2.2 of this regulation. Enforceable sales for each ACP product during missing data days, as specified in 2.10.6.6.2.1 of this regulation, shall be zero (0).
- 2.10.6.6.4 an exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to 2.10.6.6.2.3 of this regulation, exceeds the ACP limit, determined pursuant to 2.10.6.6.3 of this regulation.
- 2.10.6.7 If a violation specified in 2.10.6.6 of this regulation 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. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP limit violations pursuant to 2.10.6.7 of this regulation.

- 2.10.6.8 In assessing the amount of penalties for any violation occurring pursuant to 2.10.6.1 through 2.10.6.7 of this regulation, circumstances covered in applicable laws and regulations of the State of Delaware shall be taken into consideration.

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- 2.10.6.9 A cause of action against a responsible ACP party under 2.10.6 of this regulation shall be deemed to accrue on the date or dates when the records establishing a violation are received by the Department.
 - 2.10.6.10 The responsible ACP party is fully liable for compliance with the requirements of 2.0 of this regulation, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of 2.0 of this regulation.
- 2.10.7 Surplus Reductions and Surplus Trading.
- 2.10.7.1 Any surplus reductions of VOC achieved by a responsible ACP party operating under an ACP may be represented in the form of certificates which can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in 2.10.7.2 of this regulation. All surplus reductions shall be calculated at the end of each compliance period within the time specified in the established ACP. Surplus reduction certificates shall not constitute instruments, securities, or any other form of property.
 - 2.10.7.2 The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:
 - 2.10.7.2.1 For the purposes of 2.0 of this regulation, VOC reductions from sources of VOC other than consumer products subject to the VOC standards specified in 2.3.1 of this regulation may not be used to generate surplus reductions;
 - 2.10.7.2.2 Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under a prior established ACP;
 - 2.10.7.2.3 Surplus reductions 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 2.10.11 of this regulation;
 - 2.10.7.2.4 Surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;
 - 2.10.7.2.5 Except as provided in 2.10.7.2.6.2 of this regulation, only small or one-product businesses selling products under an established 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.
 - 2.10.7.2.6 While valid, surplus reductions can be used only for the following purposes:
 - 2.10.7.2.6.1 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 used by any responsible ACP party to further lower its ACP emissions when its ACP

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emissions are equal to or less than the ACP limit during the applicable compliance period; or

2.10.7.2.6.2 to be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfall plan pursuant to 2.10.3.7.10 of this regulation.

2.10.7.2.7 A valid surplus reduction shall be in effect starting five (5) days after the date of identification by the responsible ACP party, 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.

2.10.7.2.8 At least five (5) working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include all of the following:

2.10.7.2.8.1 the date the transfer is to become effective;

2.10.7.2.8.2 the date the surplus reductions being traded are due to expire;

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

2.10.7.2.8.4 the total purchase price paid by the buyer for the surplus reductions;

2.10.7.2.8.5 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;

2.10.7.2.8.6 a copy of the surplus reductions certificate issued by the responsible ACP party, signed by 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 limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in 2.10.7 of this regulation.

2.10.7.2.9 Surplus reduction credits shall only be traded between ACP product or products for consumer products.

2.10.8 Reconciliation of Shortfalls.

2.10.8.1 At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period. Upon receipt of this information, the Department shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

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- 2.10.8.2 The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP, within 30 working days from the date of written notification of a shortfall by the Department.
 - 2.10.8.3 All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP.
 - 2.10.8.4 All requirements specified in the ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.
- 2.10.9 Notification of Modifications to an ACP by the Responsible ACP Party.
- 2.10.9.1 The responsible ACP party shall notify the Department, in writing, of any change in an ACP product's:
 - 2.10.9.1.1 product name,
 - 2.10.9.1.2 product formulation,
 - 2.10.9.1.3 product form,
 - 2.10.9.1.4 product function,
 - 2.10.9.1.5 applicable product category or categories,
 - 2.10.9.1.6 VOC content,
 - 2.10.9.1.7 LVP content,
 - 2.10.9.1.8 date-codes, or
 - 2.10.9.1.9 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:
 - 2.10.9.1.10 the nature of the modification;
 - 2.10.9.1.11 the extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;
 - 2.10.9.1.12 the extent to which the ACP emissions and ACP limit specified in the ACP will be changed for the applicable compliance period; and
 - 2.10.9.1.13 the effective date and corresponding date-codes for the modification.

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2.10.9.2 Except as otherwise provided in 2.10.7.2 of this regulation, the responsible ACP party shall notify the Department, 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 2.10.3 of this regulation. The responsible ACP party shall provide such notification to the Department no later than 15 working days from the date such information is known to the responsible ACP party.

2.10.10 Modification of an ACP by the Department

2.10.10.1 If the Department determines that:

2.10.10.1.1 the enforceable sales for an ACP product are no longer at least 75.0% of the gross Delaware sales for that product, or

2.10.10.1.2 the information submitted pursuant to a request is no longer valid, or

2.10.10.1.3 the ACP emissions are exceeding the ACP limit specified in the ACP, then the Department shall modify the ACP as necessary to ensure that the ACP meets all requirements of 2.0 of this regulation and that the ACP emissions will not exceed the ACP limit.

The Department shall not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be modified.

2.10.10.2 If any applicable VOC standards specified in 2.3.1 of this regulation are modified in a future rule making, the responsible ACP party shall modify the ACP limit specified in the ACP to reflect the modified ACP VOC standards as of their effective dates.

2.10.11 Cancellation of an ACP

2.10.11.1 An ACP shall remain in effect until:

2.10.11.1.1 the ACP reaches the specified expiration date;

2.10.11.1.2 the ACP is modified by the responsible ACP party;

2.10.11.1.3 the ACP is modified by the Department, as provided in 2.10.10 of this regulation;

2.10.11.1.4 the ACP includes a product for which the VOC standard specified in 2.3.1 of this regulation is modified by the Department in a future rule making, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date or dates of the modified standard;

2.10.11.1.5 the ACP is cancelled pursuant to 2.10.11.2 of this regulation.

2.10.11.2 The Department shall cancel an ACP if any of the following circumstances occur:

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- 2.10.11.2.1 the responsible ACP party demonstrates to the satisfaction of the Department that the continuation of the ACP will result in an extraordinary economic hardship;
 - 2.10.11.2.2 the responsible ACP party violates the requirements of the ACP, and the violation or violations results in a shortfall that is 20.0% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20.0% or more);
 - 2.10.11.2.3 the responsible ACP party fails to meet the requirements of 2.10.8 (Reconciliation of Shortfalls) of this regulation within the time periods specified in 2.10.8 of this regulation; or
 - 2.10.11.2.4 the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.
- 2.10.11.3 The Department shall not cancel an ACP pursuant to 2.10.11.2 of this regulation without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be canceled.
- 2.10.11.4 The responsible ACP party for an ACP which is canceled pursuant to 2.10.11.2 of this regulation and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:
- 2.10.11.4.1 all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of 2.10.8 of this regulation, and
 - 2.10.11.4.2 all ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 2.3.1 of this regulation immediately upon the effective date of ACP cancellation.
- 2.10.11.5 Any violations incurred pursuant to 2.10.6 shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to 2.10.9, 2.10.10, or 2.10.11 of this regulation.

2.10.12 Treatment of Information.

The information required by 2.10.3.1, 2.10.3.2, and 2.10.7.2.8 of this regulation is public information which may not be claimed as confidential. All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at 29 **Del.C.** Ch. 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at 29 **Del.C.** 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the FOIA regulation which can be obtained from the Department.

2.10.13 Other Applicable Requirements.

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

- 2.10.13.1 The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP. The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.
- 2.10.13.2 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 and 2.0 of this regulation.
- 2.11 Related Delaware Rules.

The following Delaware rules are referred to in 2.0 of this regulation and are required to fully understand the provisions of 2.0 of this regulation. Copies of these related rules may be obtained through the State of Delaware web site <http://www.delaware.gov>, by writing to State of Delaware, Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, Delaware 19720 or by calling 302-323-4542.

- 2.11.1 Some definitions are in "Regulations Governing the Control of Air Pollution", Air Quality Management Section, Division of Air and Waste Management, 7 **DE Admin. Code** 1101, "Definitions and Administrative Principles". This regulation also is available on the Department of Natural Resources and Environmental Control (DNREC) web site <http://www.dnrec.state.de.us/DNREC2000->
<http://regulations.delaware.gov/AdminCode/title7/1000/1100/1101.pdf>
- 2.11.2 The state pesticide law, "State of **Delaware Code** Title 3, Part II, Chapter 12" also can be obtained by writing the State of Delaware, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 or by calling 302-739-4811. The pesticide law also can be found on the following web site, <http://www.michie.com>.
<http://www.udel.edu/pesticide/selfstudy/Delaw.htm>.
- 2.11.3 The Freedom of Information Act (FOIA), Title 29 **Del.C.** Ch. 100, Section 10002(d) also is available on the following web site <http://www.michie.com>.
<http://delcode.delaware.gov/title29/c100/>. The DNREC FOIA regulation also is available at <http://www.dnrec.state.de.us/DNREC2000->
<http://regulations.delaware.gov/AdminCode/title8/900.pdf>
- 2.11.4 The Delaware code relating to public hearings for environmental matters, Title 7 **Del.C.** Ch. 60, Section 6006 also can be found on the following web site, <http://www.michie.com>.
<http://www.delcode.delaware.gov/title7/c060/sc02/index.shtml>.

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2.11.5 The Delaware Code relating to penalties for violations of environmental regulations, Title 7 **Del.C.** Ch. 60 Sections 6005 and 6013 also can be found at the following web site <http://www.michie.com>. <http://www.delcode.delaware.gov/title7/c060/sc02/index.shtml>.

**TABLE 2-1
VOC CONTENT LIMITS FOR CONSUMER PRODUCTS
(percent volatile organic compounds by weight)**

	Product Category	VOC Content Limit		
		Effective 1/1/2005	Effective 5/1/2009	<u>Effective</u> <u>1/1/2017</u>
Adhesive Removers:				
	Floor or Wall Covering		5	
	Gasket or Thread Locking		50	
	General Purpose		20	
	Specialty		70	
Adhesives:				
	Aerosol Mist Spray	65		
	Aerosol 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	15		<u>7</u>
	Contact	80*	N/A	
	Contact, General Purpose		55	
	Contact Special Purpose		80	
	General Purpose	10*		
	Structural Waterproof	15*		

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Air Fresheners:				
	Single-phase Aerosols	30		
	Double-phase Aerosols	25		
	<u>Dual Purpose Air Freshener/Disinfectant, Aerosol</u>			<u>60</u>
	Liquids/Pump Sprays	18*		
	Solids/Semisolids	3*		
Antiperspirants:				
	Aerosol	40 HVOC		
		10 MVOC		
	Non-aerosol	0 HVOC		
		0 MVOC		
Anti-static Product				
	<u>Aerosol</u>			<u>80</u>
	Non-aerosol		11	
Automotive Brake Cleaners		45		<u>N/A</u>
Automotive Rubbing or Polishing Compound		17		
Automotive Wax, Polish, Sealant or Glaze:				
	Hard Paste Waxes	45		
	Instant Detailers	3		
	All Other Forms	15		
<u>Automotive Windshield Cleaner</u>				<u>35</u>
Automotive Windshield Washer Fluids		35		
Bathroom and Tile Cleaners				
	Aerosols	7		
	All Other Forms	5		<u>N/A</u>
	<u>Non-aerosol</u>			<u>1</u>
<u>Brake Cleaner</u>				<u>10</u>
Bug and Tar Remover		40		
Carburetor or Fuel-Injection Air Intake Cleaners		45		<u>10</u>
Carpet & Upholstery Cleaners				

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Aerosols	7		
Non-aerosols (dilutable) (dilutable)	0.1		
(ready-to-use):	3.0		
Charcoal Lighter Material	2.3.4 this regulation*		
Cooking Spray, Aerosol	18 *		
Deodorants:			
Aerosol	0 HVOC		
	10 MVOC		
Non-aerosol	0 HVOC		
	0 MVOC		
Disinfectant			
Aerosol			<u>70</u>
Non-aerosol			<u>1</u>
Dusting Aids:			
Aerosol	25		
All other forms	7*		
Electrical Cleaner		45	
Electronic Cleaner		75	
Engine Degreasers:			
Aerosol	35		<u>10</u>
Non-aerosol	5		
Fabric Protectants	60		
Fabric Refresher:			
Aerosol		15	
Non-aerosol		6	
Floor Polishes/waxes:			
Products for Flexible Resilient Flooring Materials	7 *		<u>1</u>
Products for Non-Resilient Flooring Materials	10 *		<u>1</u>
Wood Floor Wax	90 *		

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Floor Wax Strippers, non-aerosol	2.3.6 this regulation		
Footwear or Leather Care Products:			
Aerosol		75	
Solid		55	
All other forms		15	
Furniture Maintenance Products:			
Aerosol	17		
All other forms except solid or paste	7		<u>N/A</u>
<u>Non-aerosol (except solid or paste)</u>			<u>3</u>
General Purpose Cleaners:			
Aerosol	10		<u>8</u>
Non-aerosol	4		
General Purpose Degreaser			
Aerosol	50		<u>10</u>
Non-aerosol	4		
Glass Cleaners:			
Aerosol	12 *		
Non-aerosol	4		
Graffiti Removers:			
Aerosol		50	
Non-aerosol		30	
Hair Mousse	6		
Hair Shine	55		
Hair Spray	55		
Hair Styling Gel	6 *		
Hair Styling Products:			
Aerosol and Pump sprays		6	
All other forms		2	
Heavy Duty Hand Cleaner or Soap	8		
Insecticide:			
Crawling Bug (aerosol)	15		

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Crawling Bug (all other forms)	20		
Flea and Tick	25		
Flying Bug (aerosol)	25		
Flying Bug (all other forms)	35		
Foggers	45		
Lawn & Garden (all other forms)	20		
Lawn & Garden (non-aerosol)	3		
Wasp & Hornet	40		
<u>Laundry Prewash:</u>			
Aerosol/Solid	22		
All other forms	5		
Laundry Starch/ <u>Sizing/Fabric Finish</u> Product	5		<u>4.5</u>
Metal Polish/Cleanser	30		
Multi-purpose Lubricant (excluding solid or semi-solid product)	50		
<u>Multi-Purpose Solvent</u>			<u>3</u>
Nail Polish Remover	75		<u>1</u>
<u>Non-selective Terrestrial Herbicide</u>			
Non-aerosol	3		
<u>Oven or Grill Cleaners</u>			
Aerosol/Pump spray	8		
Liquid	5		N/A
<u>Non-aerosol</u>			<u>4</u>
Paint Remover or Stripper	50		
<u>Paint Thinner</u>			<u>3</u>
Penetrants	50		
<u>Rubber & Vinyl Protectant</u>			
Non-aerosol	3		
Aerosol **	10		
<u>Sanitizer</u>			
<u>Aerosol</u>			<u>70</u>

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	<u>Non-aerosol</u>			<u>1</u>
Sealant & Caulking Compound		4		
Shaving Cream		5		
Shaving Gel			7	<u>4</u>
Silicone-based Multi-purpose Lubricants (excluding solid or semi-solid product)		60		
Spot Remover				
	Aerosol	25		
	Non-aerosol	8		
<u>Temporary Hair Color, aerosol</u>				<u>55</u>
Tire Sealant and Inflators		20		
Toilet/Urinal Care:				
	Aerosol		10	
	Non-aerosol		3	
Undercoating, Aerosol		40		
Wood Cleaner:				
	Aerosol		17	
	Non-aerosol		4	

Notes: N/A Not applicable ~~on or after May 1, 2009~~

* Limits and definition unchanged from 9/11/98 federal rule

** VOC standards for Rubber/Vinyl Protectant aerosol shall apply to tire shine products in this category beginning January 1, 2016.

12 DE Reg. 1333 (04/01/09)