

**Notice of Proposed Rulemaking  
Department of Environmental Protection  
Environmental Quality Board  
(25 Pa. Code, Chapter 130, Subchapter B)  
Consumer Products**

**Preamble**

The Environmental Quality Board (Board, EQB) proposes to amend 25 Pa. Code Chapter 130, Subchapter B (relating to consumer products), to read as set forth in Annex A. The proposed amendments will amend the Table of Standards to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and revise the VOC content limits for one category of consumer products currently regulated. The proposal also includes definitions for approximately 30 new terms, including those that relate to the new product categories that will be regulated, and revised definitions for approximately 110 existing terms to provide clarity.

This proposal was adopted by the Board at its meeting of \_\_\_\_\_ .

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information contact J. Wick Havens, Chief, Division of Air Resource Management, P.O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 787-9702, or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

**C. Statutory Authority**

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

#### **D. Background and Purpose**

When ground-level ozone is present in concentrations in excess of the Federal health-based eight-hour standard, public health and welfare are adversely affected. The Federal Environmental Protection Agency (EPA) has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments, such as asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. Though such symptoms are often temporary, repeated exposure could result in permanent lung damage. High levels of ground-level ozone also cause damage to crops and vegetation, buildings and synthetic fibers, including nylon, and reduce visibility on roadways and in natural areas.

The purpose of the proposed amendments is to reduce the VOCs emitted from consumer products. Ozone is not directly emitted by consumer products, but is created as a result of the chemical reaction of oxides of nitrogen and VOCs in the presence of light and heat. The proposed amendments are part of the Commonwealth's strategy to achieve and maintain the eight-hour ozone standard throughout this Commonwealth. The proposed amendments expand upon the consumer products regulation adopted by the Board at its meeting of July 16, 2002. *See 32 Pa. B. 4824 (Oct. 5, 2002).*

While there are Federal VOC content limits codified at 40 CFR Part 59, Subpart C, for certain consumer products already regulated by Chapter 130, Subchapter B, there are no Federal limits for the additional products that will be regulated by this proposed rulemaking.

This proposal is consistent with regulatory initiatives that will be undertaken by other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions. The Ozone Transport Commission (OTC) Member States and the District of Columbia and OTC staff formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association, the American Solvents Council and the Cosmetic, Toiletry and Fragrance Association, participated in several of the conference calls or meetings and are generally supportive of the initiative. The OTC workgroup collected and evaluated information regarding emission reduction benefits, cost-effectiveness and implementation issues. Based on the analysis by the workgroup, the OTC Commissioners at the OTC Commissioners' meetings of June and November 2006 made recommendations to the OTC Member Jurisdictions to consider additional emission reductions from consumer products. The resulting 2006 OTC Model Rule for Consumer Products is similar to the California Air Resources Board (CARB) consumer products regulation amended in September 2005. Prior to developing this proposal, the Department used the OTC model rule and background material as a

starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth.

Because the Commonwealth, in conjunction with other OTC Member Jurisdictions, has had discussions with representatives of the various National consumer product manufacturers in related industries, and has gathered their support for the proposed amendments, it is important that the proposed amendments of the consumer product regulation be implemented consistently and uniformly in the Ozone Transport Region.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the proposed rulemaking on March 29, 2007. The AQTAC concurred with the Department's recommendation to seek EQB approval of the proposed rulemaking. In addition, AQTAC encouraged the Department to continue to work with other states to pursue federal standards for consumer products. The Department also consulted with the Citizens Advisory Council and the Small Business Compliance Advisory Committee.

#### **E. Summary of Regulatory Requirements**

This proposed rulemaking amends the definitions in § 130.202 (relating to definitions) of the following terms, for clarity, style and format: "ACP emissions," "ACP limit," "ACP product," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol cooking spray," "aerosol product," "agricultural use," "air freshener," "all other forms," "antimicrobial hand or body cleaner or soap," "astringent/toner," "automotive brake cleaner," "automotive hard paste wax," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive wax, polish, sealant or glaze," "automotive windshield washer fluid," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "charcoal lighter material," "compliance period," "construction, panel and floor covering adhesive," "consumer product," "contact adhesive," "container/packaging," "crawling bug insecticide," "deodorant," "device," "disinfectant," "dry cleaning fluid," "dusting aid," "electronic cleaner," "enforceable sales record," "engine degreaser," "fabric protectant," "facial cleaner or soap," "flea and tick insecticide," "floor polish or wax," "floor seam sealer," "floor wax stripper," "flying bug insecticide," "fragrance," "furniture coating," "furniture maintenance product," "general purpose adhesive," "general purpose cleaner," "general purpose degreaser," "general-use hand or body cleaner or soap," "glass cleaner," "hair mousse," "hair shine," "hair spray," "hair styling gel," "heavy-duty hand cleaner or soap," "herbicide," "household product," "insecticide," "insecticide fogger," "institutional product or industrial and institutional (I&I) product," "LVP content or lower vapor pressure content," "LVP-VOC or lower vapor pressure-VOC," "laundry prewash," "laundry starch product," "lawn and garden insecticide," "liquid," "lubricant," "medicated astringent/medicated toner," "metal polish/cleanser," "multipurpose dry lubricant," "multipurpose lubricant," "multipurpose solvent," "nail polish," "nail polish remover," "nonresilient flooring," "oven cleaner," "paint," "paint remover or stripper," "penetrant," "Pennsylvania

sales,” “pesticide,” “plasticizer,” “pre-ACP VOC content,” “principal display panel or panels,” “product category,” “rubber and vinyl protectant,” “sealant and caulking compound,” “shaving cream,” “shortfall,” “silicone-based multipurpose lubricant,” “solid,” “special purpose spray adhesive,” “spot remover,” “spray buff product,” “structural waterproof adhesive,” “surplus reduction,” “TMHE-Total maximum historical emissions,” “tire sealant and inflation,” “type B propellant,” “type C propellant,” “undercoating,” “VOC content,” “wasp and hornet insecticide,” “waterproofing,” “wax” and “wood floor wax.”

This proposed rulemaking adds definitions in § 130.202 for the following terms to improve clarity or explain new product categories: “aerosol coating product,” “antistatic product,” “certified emissions,” “certified use rate,” “contact adhesive-general purpose,” “contact adhesive-special purpose,” “deodorant body spray,” “electrical cleaner,” “energized electrical cleaner,” “existing product,” “fabric refresher,” “floor and wall covering adhesive remover,” “floor coating,” “footwear or leather care product,” “gasket adhesive or thread locking adhesive remover,” “general purpose adhesive remover,” “graffiti remover,” “hair styling product,” “high pressure laminate,” “highest sales,” “highest VOC content,” “personal fragrance product,” “pressurized gas duster,” “product form,” “shaving gel,” “specialty adhesive remover,” “toilet/urinal care product,” “vinyl/fabric/leather/polycarbonate coating” and “wood cleaner.”

The proposal revises § 130.211 (relating to table of standards) by adding VOC content limits for 11 new categories of consumer products and revising the VOC content limits for one category of product currently regulated (contact adhesive). This section sets forth the percentage of VOC by weight that cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. The 11 new categories are: adhesive remover (floor and wall covering, gasket or thread locking, general purpose and specialty); antistatic product; electrical cleaner; electronic cleaner; fabric refresher; footwear or leather care product; graffiti remover; hair styling product; shaving gel; toilet/urinal care product; and wood cleaner.

The proposed rulemaking amends §§ 130.213 - 130.215 (relating to products registered under FIFRA; requirements for charcoal lighter material products; and requirements for aerosol adhesives) for clarity and format. In addition, the proposal amends § 130.214 to incorporate future changes in test procedures.

The proposed rulemaking adds § 130.217 (relating to sell-through of products) to allow for sell-through of products manufactured prior to applicable effective dates.

The proposed rulemaking amends §§ 130.331, 130.332, 130.334, 130.335 and 130.338 (relating to products for shipment and use outside this Commonwealth; antiperspirants and deodorants; products registered under FIFRA; air fresheners; and fragrances) for clarity and format. In addition, the proposal deletes “air fresheners” from § 130.335 for consistency with the OTC model rule, because these air fresheners would be regulated in the new category “toilet/urinal care product.”

The proposal amends § 130.371 (relating to product dating) by updating the product dating requirements and explaining the format and location for the date code. The proposal also requires that a manufacturer must submit an explanation of its modified codes to the Department before products displaying the modified code can be sold.

The proposed rulemaking amends § 130.372 (relating to most restrictive limit) to add new subsections (a) and (b). Subsection 130.372(a) establishes the lowest applicable VOC limit requirements for products manufactured before January 1, 2009, and FIFRA-registered insecticides manufactured before January 1, 2010. Subsection 130.372(b) establishes the lowest applicable VOC limit requirements for products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.

The proposal requires additional information on product containers for products in § 130.373 (relating to additional labeling requirements for aerosol adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products).

The proposal amends §§ 130.411, 130.412 and 130.414 (relating to application for variance; variance orders; and modification of variance) for format.

The proposed rulemaking revises § 130.431 (relating to testing for compliance) to update the reference date for several test protocols and standards and to incorporate future amendments of test protocols and standards.

The proposal amends §§ 130.452 - 130.455 (relating to exemption; request for exemption; application for an ACP; and recordkeeping and availability of requested information), §§ 130.457, 130.458, 130.460, 130.462 and 130.465 (relating to limited-use surplus reduction credits for early reformulations of ACP products; reconciliation of shortfalls; modifications that require Department pre-approval; modification of an ACP by the Department; and other applicable requirements) for clarity.

The proposal amends § 130.471 (relating to public hearings) to require the applicant for a variance or alternative control plan to publish the notice for the three public hearings in newspapers of general circulation not less than 30 days prior to the hearings. The Department will publish notice in the *Pennsylvania Bulletin*.

This proposed rulemaking is necessary to achieve and maintain the eight-hour ozone NAAQS. The proposed regulations, if adopted, will be submitted to the EPA as a revision to the State Implementation Plan.

## **F. Benefits, Costs and Compliance**

### **Benefits**

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

### **Compliance Costs**

Under these proposed amendments, it is estimated that the reduction of VOC content of the affected consumer products will cost approximately \$4000 per ton of VOC emissions reduced based on annual emission reductions of approximately 767 tons or 0.13 pound per resident per year. This equates to an estimated annual cost increase of \$3.1 million annually, or \$0.26 per Commonwealth resident per year. Applicants for a variance or alternative compliance plan will incur the costs of publishing notice of the time, place and purpose of the three public hearings in newspapers of general circulation.

### **Compliance Assistance Plan**

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

### **Paperwork Requirements**

The proposed regulations will not increase the paperwork that is already generated during the normal course of business operations.

## **G. Pollution Prevention**

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The proposed amendments will assure that the citizens and the environment of the Commonwealth will continue to experience the benefits of reduced emissions of VOCs and HAPs from low-VOC consumer products.

Although the requirements are to address ozone air quality by reducing emissions of ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The proposed regulations will result in improved indoor and outdoor air quality for all citizens of the Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

#### **H. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

#### **I. Regulatory Review**

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

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

#### **J. Public Comments**

**Written Comments** - Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by (blank) (within    days of publication in the *Pennsylvania Bulletin* and within 30 days after the third hearing). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by (blank) (within    days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member

of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

**Electronic Comments** - Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by     (date)    . A subject heading of the proposal and a return name and address must be included in each transmission.

**K. Public Hearings**

The Environmental Quality Board will hold 3 public hearings for the purpose of accepting comments on this proposal. The hearings will be held at p.m. on the following dates:

\_\_\_\_\_ (blank) \_\_\_\_\_  
\_\_\_\_\_ (blank) \_\_\_\_\_  
\_\_\_\_\_ (blank) \_\_\_\_\_

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

BY:

KATHLEEN A. MCGINTY  
Chairperson  
Environmental Quality Board