

ILLINOIS POLLUTION CONTROL BOARD  
October 16, 2008

IN THE MATTER OF: )  
)  
PROPOSED NEW 35 ILL. ADM. CODE ) R08-17  
PART 223 STANDARDS AND ) (Rulemaking - Air)  
LIMITATIONS FOR ORGANIC MATERIAL )  
EMISSIONS FOR AREA SOURCES )

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On January 2, 2008, the Illinois Environmental Protection Agency (Agency or IEPA or Illinois EPA) filed a proposed rule (Prop.) under the general rulemaking provisions of Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2006)). The Agency proposed a new 35 Ill. Adm. Code 223, Standards and Limitations for Organic Material Emissions for Area Sources. The Agency stated that the proposed regulations would reduce emissions of volatile organic material (VOM or VOC<sup>1</sup>) from various consumer and commercial products, architectural and industrial maintenance (AIM) products, and aerosol coatings.

The first-notice amendments set forth below are intended primarily to reduce VOM emissions from consumer products and AIM products. The proposed regulations include VOM content standards for those two product categories, exemptions and compliance alternatives, and various labeling, recordkeeping and reporting requirements. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period.

In this opinion, the Board first provides the procedural history of this rulemaking. The Board then summarizes the Agency's proposal and the issues raised both at hearing and in public comments. The Board then analyzes the background of federal requirements and the source of the Agency's proposal. The Board then addresses technical and economic considerations before making its findings and reaching its conclusions. The order following the opinion then sets forth the proposed amendments for first notice publication.

**PROCEDURAL HISTORY**

On January 2, 2008, the Agency filed a rulemaking proposal under the general rulemaking provisions of Sections 27 and 28 of the Act (415 ILCS 5/27, 28 (2006)). A Statement of Reasons (Statement) and a Technical Support Document (TSD) accompanied the Agency's proposal. A motion for waiver of various filing requirements also accompanied the proposal.

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<sup>1</sup> The Agency states that the terms "VOM" and "VOC" are interchangeable. Statement at 5. The Agency states, however, that it employs the term "VOM" and United States Environmental Protection Agency (USEPA) employs the term "VOC." *Id.*

On January 22, 2008, the Board received a written public comment from the National Paint and Coatings Association (NPCA) (PC 1).

In an order dated January 24, 2008, the Board accepted the Agency's proposal for hearing and granted the Agency's motion for waiver of filing requirements. In a letter dated January 24, 2008, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency's rulemaking proposal. *See* 415 ILCS 5/27(b) (2006). The Board has not received a response to this request.

In an order dated February 13, 2008, the hearing officer scheduled a first hearing on April 30, 2008, in Springfield and a second hearing on June 4, 2008, in Chicago. Also in that order, the hearing officer noted that the TSD included a list of approximately 600 entities potentially affected by the proposal. *See* TSD, Appendix A (Potentially Affected Manufacturers in Illinois). The order stated that the Board began the proceeding by including each of those entities in its Notice List and mailing each of them a copy of the order. However, the order also stated that it would mail copies of any subsequent opinions and orders only to those who specifically indicated that they wished to remain on the Notice List. The order included an Attachment A, which provided an electronic mail address, a facsimile number, and a mailing address through which potentially affected entities could indicate their wish to remain on the Notice List. The order also included an Attachment B, which contained the names and addresses of all of the entities listed by the Agency in Appendix A to its TSD and to each of which the Board had mailed the hearing officer order dated February 13, 2008.

On April 14, 2008, the Board received prefiled testimony from Mr. Joseph Yost on behalf of the Consumer Specialty Products Association (CSPA) (Yost Test.). On April 16, 2008, the Board received prefiled testimony from Ms. Heidi McAuliffe on behalf of the National Paint and Coatings Association (NPCA) (McAuliffe Test.). Also on April 16, 2008, the Board received prefiled testimony from Mr. Rory Davis on behalf of the Agency (Davis Test.). On the same date, the Agency filed its first *errata* sheet (*Errata* 1).

The first hearing in this proceeding took place on April 30, 2008, in Springfield (Tr.1). At the first hearing, the hearing officer admitted into the record two exhibits. The first is a final rule adopted by the United States Environmental Protection Agency (USEPA) and entitled "National Volatile Organic Compound Emission Standards for Aerosol Coatings" (Exh. 1). Tr.1 at 42; *see* 73 Fed. Reg. 15604-31 (Mar. 24, 2008). The second, a direct final rule adopted by USEPA, clarifies and amends certain regulatory language in the aerosol coatings final rule (Exh. 2). Tr.1 at 42; *see* 73 Fed. Reg. 15421-25 (Mar. 24, 2008).

On May 19, 2008, the Board received an additional written public comment from NPCA (PC 2).

The second hearing in this proceeding took place on June 4, 2008 in Chicago (Tr.2). At the second hearing, the hearing officer admitted into the record two additional exhibits. The third exhibit is a final draft version of a "Model Rule for Consumer Products" developed by the

Ozone Transport Commission (OTC)<sup>2</sup> (Exh. 3) and dated September 13, 2006. The fourth exhibit is the Agency's second *errata* sheet, which was also received by the Board's Clerk on June 4, 2008 (Exh. 4 or *Errata 2*).

In an order dated June 11, 2008, the hearing officer set a deadline of July 11, 2008, for filing post-hearing comments and a deadline of July 25, 2008, for filing a response to a post-hearing comment. The order noted that the Board had mailed a copy of the February 13, 2008, hearing officer to each of approximately 600 entities listed by the Agency as potentially affected by the proposal. The order also noted that the Board stated it would mail copies of subsequent opinions and orders only to those who specifically indicated that they wished to remain on the Notice List. The order stated that the Board had received this indication from approximately 40 entities. The order also indicated that, after the Board mailed the first hearing officer order to each of the entities listed by the Agency in Appendix A to its TSD, the United States Postal Service (USPS) had returned approximately 70 of them to the Board as undeliverable. The order included as Attachment A the names and addresses of those entities from which the February 13, 2008 hearing officer order had been returned to the Board by the USPS.

On July 10, 2008, the Agency filed its post-hearing comments (PC 3). Also on July 10, 2008, the Agency filed its third *errata* sheet (*Errata 3*). On July 25, 2008, the Illinois Environmental Regulatory Group (IERG) filed its response to the Agency's post-hearing comments (PC 4). On July 29, 2008, the hearing officer received through electronic mail a number of questions and statements regarding the Agency's proposal from Jim Kantola, Regulatory Affairs Manager, Product Safety and Compliance for AkzoNobel Decorative Paints US. That communication has been filed with the Board's Clerk as a public comment in this proceeding (PC 5).

### **Filing Public Comments**

First-notice publication of these proposed rules in the *Illinois Register* will start a period of at least 45 days during which anyone may file a public comment with the Board, regardless of whether the person has already filed a public comment in this proceeding. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R08-17, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board at the following address:

Pollution Control Board  
John T. Therriault, Assistant Clerk  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500

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<sup>2</sup> The Agency describes OTC as "an organization in the eastern states created under the Clean Air Act." TSD at 7, Statement at 4-5. Specifically, the OTC consists of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia." TSD at 17.

Chicago, IL 60601

As an alternative, public comments may be filed with the Clerk electronically through the Clerk's Office On-Line (COOL) at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629. Please note that all filings with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Before filing any document with the Clerk, please check with the hearing officer or the Clerk's Office to verify the current version of the Service List.

### **Public Comment 6**

On October 8, 2008, the Board received an additional written public comment from NPCA (PC 6). Addressing the Agency's proposed effective date of the regulations, NPCA "requests that that current implementation date be extended to at least July 1, 2009 to allow IL adequate time to finalize and adopt the amendments to the AIM rule, and more importantly, provide adequate time for industry to make necessary changes in order to comply with the amendments." PC 6 at 1. NPCA argues that "[i]t is impossible for manufacturers to make these necessary changes and properly communicate the details of the IL AIM rule without having a final adopted rule in hand, particularly, as additional changes may occur between first notice and final adoption." *Id.*

While the Board notes that the deadline for filing post-hearing comments passed on July 11, 2008, the Board invites the participants during the first-notice comment period to address the issues raised by NPCA in its public comment filed October 8, 2008.

## **SUMMARY OF AGENCY PROPOSAL**

### **Proposed Subpart D: Aerosol Coatings**

In its original filing, the Agency proposed aerosol coating rules "limiting the content of various VOM compounds based on their reactivity and their likelihood to form ground level ozone." Statement at 4, citing TSD at 6; *see* Prop. at 67-105 (proposed Subpart D and appendices). The Agency based its proposed aerosol coatings rules on California Air Resource Board (CARB) regulations that have employed a reactivity-based standard since January 1, 2003. Statement at 4, citing CAL. CODE REGS., tit. 17, §§94521-24, 94526 (2001); *see* Prop., Att. A(11) (Final Regulation Order for Reducing the Ozone Formed from Aerosol Coating Product Emissions).

In her testimony prefiled for the first hearing, Ms. McAuliffe stated that NPCA had "significant concerns about the state adoption of standards for this [aerosol coating] product category when the USEPA has already finalized its national rule." McAuliffe Test. at 3. At the first hearing, Ms. McAuliffe spoke generally about the possibility that it would be difficult for state regulators continually to amend state rules to make them consistent with the federal rules. *See* Tr.1 at 35-37. Noting that some time may elapse between a change in the federal rules and the adoption of that change at the state level, she argued that it would be difficult for manufacturers to comply with rules during any periods when they are not consistent with one

another. *See id.* at 36-37. She further stated that “[t]he national rule for aerosol coatings, as published in the Federal Register on March 24, 2008, contains the same aerosol coatings categories, definitions and reactivity standards.” *Id.*; *see* Exh. 1 (73 Fed. Reg. 15604-31 (Mar. 24, 2008)), Exh. 2 (73 Fed. Reg. 15421-25 (Mar. 24, 2008)). Ms. McAuliffe concluded her prefiled testimony by requesting “that the aerosol coatings proposal be withdrawn.” McAuliffe Test. at 4.

In responding to questions at the first hearing, Mr. Davis noted that, although USEPA had finalized its aerosol coatings rule, that rule remained open to legal challenges until May 23, 2008. Tr.1 at 25. He stated, however, that, “[i]f that were to clear all the challenges and become a final rule, then we would consider withdrawing that portion of the rule.” *Id.* At the second hearing, counsel for the Agency stated that, according to USEPA, “the federal aerosol rule is beyond legal challenge at this point.” Tr.2 at 5. He stated that the Agency intended to file an *errata* sheet withdrawing from consideration Subpart D addressing aerosol coatings. *Id.*

In its third *errata* sheet, the Agency proposed to strike Subpart D in its entirety, including reference in the index to that language. *Errata* 3 at 11-31 (§13). In the same *errata* sheet, the Agency also proposed to strike two entire appendices pertaining to aerosol coatings. *Errata* 3 at 32-51 (§§14-15). The Agency stated that, because USEPA had promulgated an identical aerosol coatings rule, the proposed Subpart D and appendices had become moot. *Id.* at 11, 32, 49. Accordingly, the Board will not address the language that had originally been proposed as Subpart D, or the technical and economic issues relating to it, in the subsequent sections of this opinion and will not include that language in its order below.

### **Proposed Subpart A: General Provisions**

#### **Severability (Section 223.100)**

The Agency proposes to add a section providing in its entirety that, “[i]f any Section, subsection, or clause of this Part [223] is found invalid, such finding shall not affect the validity of this Part as a whole or any Section, subsection, or clause not found invalid.” Prop. at 2 (proposed new Section 223.100), Statement at 13.

#### **Abbreviations and Acronyms (Section 223.105)**

The Agency proposes to add a section providing that, “[u]nless otherwise specified within this Part [223], the abbreviations used in this Part shall be the same as those found in 35 Ill. Adm. Code 211.” Prop. at 2 (proposed new Section 223.105), Statement at 13; *see* 35 Ill. Adm. Code 211 (definitions and general provisions applicable to emission standards and limitations for stationary sources). The proposed new section lists a number of abbreviations and acronyms. Prop. at 3; *see also* TSD at 2 (List of Acronyms). In its third *errata* sheet, the Agency struck five acronyms on the basis that they “are no longer necessary as Subpart D is being withdrawn.” *Errata* 3 at 1-2 (§1).

#### **Incorporations by Reference (Section 223.120)**

The Agency proposes to add language incorporating by reference various materials. Prop. at 3-6 (proposed new Section 223.120), Statement at 13. The proposed new section specifically provides that “[t]hese incorporations do not include any later amendments or additions.” Prop. at 3, Statement at 13.

During the second hearing, the hearing officer directed to the Agency a number of questions about this proposed section. First, regarding subsections (a) through (e) incorporating materials from the Code of Federal Regulations, the hearing officer requested that the Agency make these five incorporations consistent with one another, particularly with regard to their citations to the Federal Register. Tr.2 at 52-53. The Agency addressed this request in its third *errata* sheet. *Errata 3* at 2-3.

Second, regarding various subsections in which the Agency sought to incorporate materials from the South Coast Air Quality Management District (SCAQMD), Bay Area Air Quality Management District (BAAQMD), and CARB, the hearing officer requested that the Agency supply an address for these three entities through which the public can obtain copies of the materials sought to be incorporated. Tr.2 at 53; *see* 5 ILCS 100/5-75(a) (2006) (Illinois Administrative Procedure Act). The Agency addressed this request in its third *errata* sheet. *Errata 3* at 4.

Third, referring to subsection (i) in the Agency’s proposal, the hearing officer noted that, although an SCAQMD analytical method filed with the Board indicates approval in July 1996, the proposed incorporation refers to approval on August 10, 1998. Tr.2 at 53; *see* Prop. at 5 (proposed Section 223.120(i)); *but see* Prop., Att. B(i) (SCAQMD Method 318-95 approved July 1996). The hearing officer asked that the Agency “clarify whether there is a subsequent version of this method that the Board would need to obtain as part of its record in its proceeding.” Tr.2 at 53. The Agency did not specifically address this issue in its third *errata* sheet. *See Errata 3* at 2-5 (amending proposed Section 223.120). Accordingly, the Board will amend the Agency’s proposal to reflect the 1996 date of the document filed with it. *See* 5 ILCS 100/5-75(c) (2006) (requiring Board to maintain copy of incorporated material). The Board seeks comment by the Agency and other participants on this amendment, including comment in the form of any subsequent version of the SCAQMD method that the Agency may wish to incorporate by reference.

Fourth, referring to subsections (j) and (k) in the Agency’s proposal, the hearing officer noted that, although two BAAQMD analytical methods filed with the Board indicate proposed amendment dated February 4, 2004, the proposed incorporation refers to amendments dated May 18, 2005. Tr.2 at 54; *see* Prop. at 5 (proposed Sections 223.120(j), (k)); *but see* Prop., Att. B(j), (k) (BAAQMD Methods 43 and 41, respectively). The hearing officer asked that the Agency clarify “whether there is a subsequent version of the method that the Board would need to obtain a copy of for the record in this proceeding.” Tr.2 at 54. The Agency did not specifically address this issue in its third *errata* sheet. *See Errata 3* at 2-5 (amending proposed Section 223.120). Accordingly, the Board will amend the Agency’s proposal to reflect the 2004 date of the methods filed with it. *See* 5 ILCS 100/5-75(c) (2006) (requiring Board to maintain copy of incorporated material). The Board seeks comment by the Agency and other participants on this

amendment, including comment in the form of any subsequent version of the BAAQMD methods that the Agency may wish to incorporate by reference.

Fifth, referring to subsection (m) in the Agency's proposal, the hearing officer noted that, although an SCAQMD rule filed with the Board indicates adoption on October 5, 1990, the proposed incorporation refers to approval on February 27, 1991. Tr.2 at 54; *see* Prop. at 5 (proposed Section 223.120(i)); *but see* Prop., Att. B(m) (SCAQMD Rule 1174 adopted October 5, 1990). The hearing officer asked the Agency to "clarify whether there is some subsequent version, updated version of that document that the Board would need to." Tr.2 at 54. The Agency did not specifically address this issue in its third *errata* sheet. *See Errata 3* at 2-5 (amending proposed Section 223.120). Accordingly, the Board will amend the Agency's proposal to reflect the 1990 adoption date of the document filed with it. *See 5 ILCS 100/5-75(c)* (2006) (requiring Board to maintain copy of incorporated material). The Board seeks comment by the Agency and other participants on this amendment, including comment in the form of any subsequent version of the SCAQMD rule that the Agency may wish to incorporate by reference.

Sixth, referring to subsection (n) in the Agency's proposal, the hearing officer noted that Agency wishes to incorporate a provision of the California Administrative Code. Tr.2 at 54; *see* Prop. at 5 (proposed subsection 223.120(n)), CAL. CODE REGS., tit. 17, § 94509. The hearing officer noted that, in the copy of those regulations filed with the Board, five images appearing to contain VOC content limits appeared as not available for printing. Tr.2 at 55; *see* Prop., Att. B(n) (regulatory language). The hearing officer requested that the Agency complete the document by filing a copy including those images. Tr.2 at 55. The Agency responded to this request by filing a copy of the regulatory language as an attachment to its post-hearing comments. PC 3, Att. 3.

Finally, the Board notes that the Agency in its third *errata* sheet proposes to strike from materials incorporated by reference one set of test methods from the American Society for Testing and Materials (ASTM) and to add ASTM Method D86-07b for distillation of petroleum products. *Errata 3* at 3-4. The Agency supplied the Board with a copy of this method by attaching it as an attachment to its post-hearing comments. PC 3, Att. 1.

### **Proposed Subpart B: Consumer and Commercial Products**

USEPA now regulates consumer and commercial products through a rule promulgated on September 11, 1998. TSD at 5, citing 40 C.F.R. 59 Subpart D; TSD at 17 (noting authority under Section 183(e) of Clean Air Act). Use of these products results in solvent evaporation and the emission of VOM. TSD at 9. The USEPA rule limits the VOM content of 24 categories of consumer and commercial products and is estimated to have reduced VOM emissions from those categories by 20 percent from uncontrolled levels. TSD at 5, 17. Emissions attributable to those 24 categories, however, "account for only 48 percent of the consumer and commercial products emission inventory." *Id.* at 5-6, 17, citing Prop., Att. A(3) (Interim White Paper – Midwest Regional Planning Organization Candidate Control Measures, Source Category: Consumer and Commercial Products, MACTEC, December 1, 2005).

Under the USEPA rule, “a consumer product is any household or institutional product (including paints, coatings, and solvents), or substance, or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of VOC.” TSD at 8, citing 40 C.F.R. 59.202; Statement at 5. “Consumer and commercial products are chemically formulated products used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products.” TSD at 8, Statement at 5-6. The description also includes aerosol adhesives, including those for consumer, industrial, and commercial uses. TSD at 8, Statement at 6. It does not however, “include other paint products, furniture coatings, or architectural coatings.” TSD at 8, Statement at 6. “Consumer and commercial products are sold to retail customers for personal, household, or automotive use” and also are sold “by wholesale distributors for use in commercial or industrial settings such as beauty shops, schools, and hospitals.” TSD at 8.

The Agency notes that the Emission Inventory Improvement Program separates the category of consumer and commercial products into seven product categories: “personal care products, household products, automotive aftermarket products, adhesives and sealants, FIFRA regulated products, coatings and related products, and miscellaneous products.” TSD at 14, citing Prop., at Att. A(1) (Emission Inventory Improvement Program Volume III, Chapter 5 Consumer and Commercial Solvent Use, August 1996). For the purposes of its proposed rules, however, the Agency divides the source category into 59 product categories, each with a VOM content limit expressed in terms of percentage VOM by weight. TSD at 10-14 (Table 2.2.1 Proposed Regulated Product Categories and Limits), Prop. at 29-35 (proposed Section 223.205).

The Agency notes that it produced a 2002 ozone inventory, which includes “a comprehensive inventory of VOM emissions from consumer and commercial products statewide, and for both NAAs [nonattainment areas] in Illinois. TSD at 14, citing Prop., Att. A(15) (Illinois Base Year Ozone Inventory for 2002 (June 2006)). That inventory includes emission factors for each of seven product categories expressed in pounds per year per person. TSD at 15 (Table 2.2.2 Consumer Product Emission Factors by Category), Prop., Att. A(15) at 46 (Table 4-12 Consumer Solvent Use Emission Factors (lb/person/year)).

The Agency’s data also include an inventory of VOM emissions attributable to consumer and commercial products during both the ozone season and the entire year. TSD at 15-16 (Table 2.2.3), citing Prop., Att. A(2) (Illinois Periodic Emission Inventory and Milestone Demonstration for 2002); Prop., Att. A(15) (Illinois Base Year Ozone Inventory for 2002 (June 2006)). The data show that “consumer and commercial products account for approximately 4.95% of total statewide anthropogenic VOM emissions during the ozone season and approximately 8.51% of those emissions for the entire year. TSD at 9, 16, Statement at 6. In the Metro East/St. Louis NAA, consumer and commercial products account for approximately 4.93% of total anthropogenic VOM emissions during the ozone season and approximately 6.89% of those emissions for the entire year. TSD at 9, 16, Statement at 6. In the Chicago NAA, consumer and commercial products account for approximately 9.22% of total anthropogenic VOM emissions during the ozone season and approximately 13.45% of those emissions for the entire year. TSD at 9, 16, Statement at 6. “Consumer and commercial products are estimated to emit 81.86 tons of

VOM per day in Illinois” during the ozone season and to emit 124.80 tons per day over the entire year. TSD at 16 (Table 2.2.3); *see* Statement at 6.

The Agency claims that “[t]he most effective approaches for achieving reductions in this source category are reformulating products currently employing VOM solvents and replacing them with water based formulations or formulations employing acetone or other exempt solvents.” TSD at 16, Statement at 6-7, 12. The Agency further argues that “[o]ther measures for reduction in this category include increasing the solids content of products, formulating non-VOM propellants for products, or changing the valves, containers, or delivery systems of the products to reduce VOM content. TSD at 16, Statement at 7, 12.

The Agency estimates that adoption of its proposed rule “will result in a 14.2% reduction in VOM emission from consumer and commercial products beyond those achieved by the current federal rule.” Statement at 7, TSD at 29, citing Prop., Att. A(3) (Interim White Paper – Midwest Regional Planning Organization Candidate Control Measures, Source Category: Consumer and Commercial Products, MACTEC, December 1, 2005). This translates into a reduction of approximately 17.72 tons per day or 6468 tons of VOM per year in Illinois. Statement at 7, TSD at 29, citing Prop., Att. A(15) (Illinois Base Year Ozone Inventory for 2002 (June 2006)). This represents “a reduction of nearly 1% of the total anthropogenic VOM emissions in the State.” Statement at 7, TSD at 29.

In his testimony prefiled on behalf of CSPA on April 14, 2008, Mr. Yost indicted that USEPA is developing revisions to its consumer products rule and that USEPA expects to issue its proposed revisions in May of 2008. Yost Test. at 3. At the first hearing, Mr. Yost elaborated that USEPA considered May to remain the target date for issuance of the revised consumer products rule. Tr.1 at 46 (referring to discussions with Mr. Bruce Moore of USEPA). He also stated that he expected the implementation date of the revised rule to fall sometime between May and August of 2009. *Id.* Similarly, IERG expects USEPA to propose amended consumer products rule in the late summer or early fall of 2008 with promulgation in the spring of 2009. PC 4 at 3 (referring to e-mail from Mr. Bruce Moore of USEPA).

In his testimony at the first hearing, Mr. Davis acknowledged that the Agency “would have to address” any ways in which a USEPA proposal differed from its own. Tr. 1 at 11-12. At the second hearing, however, he indicated that the expected date for proposing and promulgating that USEPA consumer products rule “keeps getting pushed back.” Tr.2 at 11.

### **Purpose (Section 223.200)**

The Agency proposes to add a section providing in its entirety that “[t]he purpose of this Subpart [B] is to limit emissions of volatile organic materials (VOMs) by requiring reductions in the VOM content of consumer and commercial products.” Prop. at 6 (proposed new Section 223.200), Statement 13.

### **Applicability (Section 223.201)**

The Agency proposes to add a section providing in its entirety that, “[e]xcept as provided in Section 223.230 [Exemptions], this Subpart shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2009, for use in Illinois.” Prop. at 6 (proposed new Section 223.201), Statement at 13-14.

### **Definitions (Section 223.203)**

The Agency proposes to add a section listing definitions applicable to the provisions of Subpart B. Prop. at 6-29 (proposed new Section 223.203), Statement at 14. The Agency also proposes to include language providing that, “[u]nless otherwise defined herein, the definitions of terms used in this Subpart shall have the meanings specified for those terms in 35 Ill. Adm. Code Part 211.” Prop. at 6, Statement at 14; *see* 35 Ill. Adm. Code 211 (definitions and general provisions applicable to emission standards and limitations for stationary sources).

In its second *errata* sheet, the Agency proposed a number of technical changes. *Errata 2* at 1-2. First, the Agency clarified that ASTM methods included in three definitions are incorporated by reference. *Id.*; *see* Prop. at 4 (proposed new Section 223.120). Also, in five definitions, the Agency changed the term “Part” to “Subpart” to clarify the applicability of those definitions. *Errata 2* at 2-4; *see* Tr.1 at 27-28. Similarly, the Agency in its third *errata* sheet proposed a number of technical changes “to clarify the definitions of certain words.” *Errata 3* at 5; *see* Tr.2 55-56.

### **Standards (Section 223.205)**

The Agency proposes to add a section providing that, with certain specified exceptions, “no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer product manufactured on or after January 1, 2009, which contains VOMs in excess of the limits specified.” Prop. at 29, Statement at 14. For 60 categories of affected products, the Agency proposes VOM content limits expressed in terms of “% VOM by Weight.” Prop. at 29-35 (proposed Section 223.205(a)), TSD at 10-14 (Table 2.2.1 Proposed Regulated Product Categories and Limits). The proposed section also provides that “[n]o person shall sell, supply, offer for sale, or manufacture for sale in Illinois, on and after January 1, 2009, any antiperspirant or deodorant that contains any” of 17 listed compounds. Prop. at 35 (proposed Section 223.205(b)), Statement at 14.

In his testimony on behalf of the Agency, Mr. Davis expressed the assumption that affected entities had sufficient time to comply with the provisions of the proposed rule by the compliance date of January 1, 2009. Tr.2 at 9. His testimony also acknowledged that, because compliance with the ozone standard must be demonstrated by June 15, 2010, the Agency’s proposal can potentially influence only the 2009 ozone season. *Id.* at 10. In her testimony on behalf of IERG, Ms. Hodge asked why the Agency had “waited until this point in time to propose the rule?” *Id.* at 10-11. In its post-hearing comments, the Agency responded that it

filed the proposed regulation as soon as was possible given the staff resources, and the combination of the Consumer Products rule with [the] AIM Coatings rules and the now withdrawn Aerosol Coating rule. An extensive amount of

consultation with the affected industry groups to ensure the rules were consistent and acceptable to stakeholders was an additional factor in the timing of the Agency's filing of the proposed regulations. PC 3 at 1 (§2); *see* Davis Test. at 3.

In his testimony on behalf of the CSPA, Mr. Yost noted that, unlike the OTC model rule, the Agency's proposal included no provision for obtaining a variance from the VOM content standards. Tr.1 at 39. Addressing that issue for the Agency, Mr. Davis stated that "Illinois has its own variance procedures that we follow." *Id.*, *see* 415 ILCS 5/35-38 (Variances). Ultimately, Mr. Yost supported the Agency's proposed compliance date of January 1, 2009, characterizing it as "absolutely critical" and "consistent with what the other states are doing." Tr.1 at 45.

### **Diluted Products (Section 223.206)**

The Agency proposes to add a section providing that, "[f]or consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOM solvent prior to use, the limits specified in Section 223.205(a) shall apply to the product only after the minimum recommended dilution has taken place." Prop. at 36 (proposed Section 223.206(a)), Statement at 14-15. The Agency also seeks to clarify that "the minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special application such as hard-to-remove soils or stains." Prop. at 36 (proposed Section 223.206(b), Statement at 15. Finally, the Agency proposes language providing that, "[f]or consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOM solvent prior to use, the limits specified in Section 223.205(a) shall apply to the product only after the maximum recommended dilution has taken place." Prop. at 36 (proposed Section 223.206(c)), Statement at 15.

### **Products Registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Section 223.207)**

The Agency proposes to add a section providing that, for products registered under FIFRA, "the effective date of the VOM standards will be January 1, 2010." Prop. at 36 (proposed Section 223.207), Statement at 15. In its second *errata* sheet, the Agency proposed language "to clarify that the FIFRA section specified was incorporated by reference." *Errata 2* at 4 (§3). In responding to a question at the first hearing, Mr. Yost accounted for this effective date. He stated that a number of consumer products, such as those that kill mold or mildew, are regulated as a pesticide by FIFRA. Tr.1 at 29. He further stated that changes such as the formulation or labeling of pesticides require approval under FIFRA both by USEPA and the state Department of Agriculture. *Id.* at 29-30. He testified that the OTC model rule and regulations in other states all "provide one additional year because it takes that additional time to work through other sister agencies to get approval for any type of change." *Id.* at 30.

### **Requirements for Aerosol Adhesives (Section 223.208)**

The Agency proposes to add a section providing that, as specified in particular language in California statutes, "the standards for aerosol adhesives apply to all uses of aerosol adhesives,

including consumer, industrial, and commercial uses.” Prop. at 36 (proposed Section 223.208(a)), Statement at 15; *see* Prop., Att. B(o) (CAL. HEALTH AND SAFETY CODE § 41712(h)(2) (2005)). In its second *errata* sheet, the Agency proposed to clarify that this California provision was incorporated by reference. *Errata 2* at 4 (§4).

The proposed section continues by stating that, subject to specified exceptions, “no person shall sell, supply, offer for sale, use or manufacture for sale in Illinois any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOMs in excess of the specified standard.” Prop. at 36 (proposed Section 223.208(a)), Statement at 15. In its third *errata* sheet, the Agency proposed to strike an inadvertently repeated cross-reference to one of the stated exceptions. *Errata 3* at 7 (§4); *see* Tr.2 at 56.

The Agency also proposes a subsection (b) providing that, in order to qualify as a “Special Purpose Spray Adhesive,” a product must satisfy one or more of the proposed definitions of that term. Prop. at 36 (proposed Section 223.208(b)(1)), Statement at 15; *see* Prop. at 26-27 (proposed definition). The proposed subsection (b) continues by providing that, “if the product label indicates that the product is suitable for use on any substrate or application not listed in the definitions for “Special Purpose Spray Adhesive, then the product shall be classified as either a “Web Spray Adhesive” or a “Mist Spray Adhesive.” Prop. at 36-37 (proposed Section 223.208(b)(1)), Statement at 15-16. The Agency also proposes that, if a product meets more than one of the definitions of “Special Purpose Spray Adhesive” and is not classified as a “Web Spray Adhesive” or “Mist Spray Adhesive,” “then the VOC limit for the product shall be the lowest applicable VOM limit specified in Section 223.205(a) (Standards).” Statement at 16, Prop. at 37 (proposed Section 223.208(b)(2)).

The Agency also proposes a subsection (c) stating that, effective January 1, 2009, “no person shall sell, supply, offer for sale, or manufacture for use in Illinois” aerosol adhesives containing any of three specified compounds. Prop. at 37 (proposed Section 223.208(c)), Statement at 16. The Agency also seeks to require that all aerosol adhesives must comply with proposed additional labeling requirements for aerosol adhesives, adhesive removers, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesives. Prop. at 37 (proposed Section 223.208(d)), Statement at 16; *see* Prop. at 43-44 (proposed Section 223.265 additional labeling requirements).

### **Requirements for Floor Wax Strippers (Section 223.209)**

The Agency proposes to add a section providing that, on and after January 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in Illinois any floor wax stripper unless certain special labeling requirements concerning dilution ratios are met.” Statement at 16, Prop. at 37 (proposed Section 223.209). Specifically, non-aerosol floor wax stripper labels must specify, for light or medium build-up of polish, a dilution ratio resulting “in an as-used VOM concentration of three percent by weight or less.” Prop. at 37 (proposed Section 223.209(a)). Those labels must require, for removal of heavy build-up, a dilution ratio “that results in an as-used VOM concentration of 12% by weight or less.” *Id.* (proposed Section 223.209(b)). The Agency does not propose to require use of the specific terms “light build-up,” “medium build-

up,” and “heavy build-up,” as long as labels use comparable terminology. *Id.* (proposed Section 223.209(c)).

### **Products Containing Ozone-Depleting Compounds (Section 223.210)**

The Agency proposes to add a section providing that, for consumer products subject to VOM content standards, “no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consume product which contains any of” fifteen specified ozone-depleting compounds. Prop. at 37-38 (proposed Section 223.210(a)), Statement at 16; *see* Prop. at 29-35 (proposed standards). The Agency also proposes to provide exceptions for “any product formulation existing as of January 1, 2009, that complies with Section 223.205(a) [Standards] or is reformulated to meet Section 223.205(a), provided the ozone-depleting compound content of the reformulated product does not increase.” Prop. at 38 (proposed Section 223.210(b)), Statement at 16-17. In addition, the Agency proposes language providing that the prohibition does 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.” Prop. at 38 (proposed Section 223.210(c)), Statement at 17.

### **Requirements for Charcoal Lighter Material (Section 223.220)**

The Agency proposes to add a section providing that, on and after January 1, 2009, no person shall sell, supply, or offer for sale charcoal lighter material, unless the material at the time of the transaction has an effective CARB certification under a specified California regulation. Prop. at 38 (proposed Section 223.220(a)), Statement at 17; *see* Prop., Att. B(n) (CAL. CODE REGS. tit. 17, § 94509(h) (2005)). In its second *errata* sheet, the Agency clarified that this California provision was incorporated by reference. *Errata 2* at 4-5 (§5). The Agency also seeks to clarify that “[t]his certification remains in effect for Illinois for as long as the CARB certification remains in effect.” Prop. at 38, Statement at 17.

The Agency also proposes language providing that, as an alternative, “the person may demonstrate that at the time of the transaction the manufacturer had been issued a certification by an air pollution agency of another state and the USEPA that was current at the time of the transaction.” Prop. at 39 (proposed Section 223.220(b)), Statement at 17. Finally, the Agency also proposes that a manufacturer claiming to have this certification must submit, at the Agency’s request, “a copy of the certification decision, including all conditions applicable to the certification established by CARB or the air pollution agency of another state and the USEPA.” Prop. at 39 (proposed Section 223.220(c)), Statement at 17.

### **Exemptions (Section 223.230)**

The Agency seeks to add a section listing categories of products that are exempt from the proposed regulation. Prop. at 39-40 (proposed Section 223.230), Statement at 17. First, the Agency proposes to exempt “any consumer product manufactured in Illinois for shipment and use outside of Illinois, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of Illinois, and that the manufacturer or distributor has taken reasonable, prudent precautions to assure that the consumer product is

not distributed to Illinois.” Prop. at 39 (proposed Section 223.230(a)), Statement at 17. Second, the Agency proposes that, “[f]or antiperspirants or deodorants, ethanol shall not be considered a medium volatility organic material (MVOM) for purposes of the content standards specified in Section 223.205(a).” Prop. at 39 (proposed Section 223.230(b)), Statement at 17: *see* Prop. at 29-35 (proposed Section 223.205 standards). Third, the Agency seeks to provide that the VOM content limits “shall not apply to fragrances up to a combined level of two percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of two percent by weight contained in any antiperspirant or deodorant.” Prop. at 39 (proposed Section 223.230(c)), Statement at 17-18. Fourth, the Agency also seeks to provide that the VOM content limits “for antiperspirants and deodorants shall not apply to those volatile organic materials that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20°C.” Prop. at 39 (proposed Section 223.230(d)), Statement at 18.

Fifth, the Agency proposes that the VOM content limits “shall not apply to any LVP-VOM [Low Vapor Pressure – Volatile Organic Material].” Prop. at 39 (proposed Section 223.230(e)). In responding to a question at the first hearing, Mr. Davis indicated that, if a product contains other types of VOM, it is still subject to the VOM standards. Tr.1 at 32. Sixth, the agency seeks to provide that the product dating requirements of the proposal do not apply to consumer products regulated under FIFRA. Prop. at 39 (proposed Section 223.230(f)), Statement at 18; *see* Prop. at 41-42 (proposed Section 223.250 product dating provisions), Prop., Att. B(s) (FIFRA). Seventh, the Agency proposes to exempt from VOM content limits “air fresheners that are comprised entirely of fragrance, less compounds not defined as VOMs under Section 211.7150 or exempted under subsection 223.230(f).” Prop. at 39 (proposed Section 223.230(g)), Statement at 18; *see* 35 Ill. Adm. Code 211.7150 (defining VOM or VOC).

Eighth, the Agency also proposes to exempt from VOM content limits “insecticides containing at least 98% para-dichlorobenzene.” Prop. at 39 (proposed Section 223.230(h)), Statement at 18. Ninth, the Agency offers an exemption from VOM content limits for “adhesives sold in containers of one fluid ounce or less.” Prop. at 40 (proposed Section 223.230(i)), Statement at 18. Tenth, and finally, the Agency proposes to exempt “bait station insecticides” from VOM content limits. Prop. at 40 (proposed Section 223.230(j)). For the purpose of this section, the proposal defines “bait station insecticides” as “containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.” Prop. at 40, Statement at 18.

### **Innovative Product Exemption (Section 223.240)**

The Agency proposes to add a section providing an innovative product exemption, which allows “qualified manufacturers to sell products that have VOC contents greater than the applicable VOC limit, provided they demonstrate that such products actually emit less VOCs than representative products that comply with the VOC limit.” TSD at 19 (§2.4 Flexibility in Compliance Measures), Statement at 10. The Agency claims that, in both California and the OTC states, “various manufacturers have formulated technologically-advanced products that are more concentrated, higher in efficacy, or have some other chemical or physical properties that

permit users to release less VOCs when using such products.” Statement at 10, TSD at 19-20, citing Prop., Att. A(6) at 61, 222 (Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulations (Sept. 10, 1999)).

The Agency’s proposal provides that a manufacturer of consumer products granted an Innovative Product exemption by CARB according to specific regulations shall be exempt from the VOM content limits for the time the exemption remains in effect, provided that all consumer products within the CARB Innovative Products exemption are contained in the proposal’s content limits. Prop. at 40 (proposed Section 223.240(a)), Statement at 18-19; *see* Prop., Att. B(q) (CAL. CODE REGS. tit. 17, § 94511 (1997)), Prop., Att. B(r) (CAL. CODE REGS. tit. 17, § 94503.5 (1996)). In its second *errata* sheet, the Agency proposed to clarify that the applicable California regulations were incorporated by reference. *Errata 2* at 5 (§6). The Agency also proposes that manufacturers claiming this exemption must submit to the Agency the CARB decision granting the exemption, including all applicable conditions established by CARB. Prop. at 40, Statement at 19.

The Agency also seeks special recordkeeping requirements. The Agency proposes to require that all information specified in the approval of the innovative product exemption “shall be maintained by the responsible party for a minimum of three years after the expiration of such exemption.” Prop. at 40 (proposed Section 223.240(b)(1)), Statement at 19. The Agency also proposes to require that “[s]uch records shall be clearly legible and maintained in good condition during this period.” Prop. at 40, Statement at 19. Finally, the Agency also offers language providing that these records “shall be made available to the Agency, or its authorized representative, upon request.” Prop. at 40 (proposed Section 223.240(b)(2)), Statement at 19.

### **Alternative Compliance Plans (Section 223.245)**

The Agency proposes to add a section providing for an alternative compliance plan (ACP), which allows “for approved manufacturers of affected consumer products to use emissions averaging for their product lines.” TSD at 20, Statement at 10. The Agency states that, generally,

emissions averaging under approved ACP plans allows manufacturers to choose the least-cost or other advantageous reformulation options for its product lines. Rather than directly complying with the VOC limit for each product, manufacturers can choose to ‘overcomply’ with some reformulations in order to offset the ‘undercompliance’ of other product lines. TSD at 20, citing Prop., Att. A(6) at 222 (Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulations (Sept. 10, 1999)); Statement at 10-11.

The Agency’s proposal indicates that the purpose of the ACP provisions is to provide an alternative method for compliance with VOM content limits. Prop. at 40 (proposed Section 223.245(a)), Statement at 11, 19. Specifically, the Agency proposes to allow responsible ACP parties the option of voluntarily entering into separate ACPs for consumer products and limits the option to those responsible parties. Prop. at 40, Statement at 19; *see* Prop. at 24 (defining “Responsible ACP Party”).

The Agency's proposal provides that a manufacturer of consumer products that have been granted an ACP agreement by CARB according to specific regulations shall be exempt from the VOM content limits for the time the ACP agreement remains in effect, provided that all consumer products used for emissions credits are contained in the proposal's content limits. Prop. at 40-41 (proposed Section 223.245(b)), Statement at 19-20; *see* Prop., Att. B(p) (CAL. CODE REGS. tit. 17, § 94540-55 (1996)). In its second *errata* sheet, the Agency proposed to clarify that the California regulations were incorporated by reference. *Errata 2* at 5 (§7). The Agency also proposes that manufacturers claiming to have an ACP agreement must submit to the Agency the CARB decision on the ACP, including all applicable conditions established by CARB. Prop. at 41, Statement at 20.

The Agency also seeks special recordkeeping requirements. The Agency proposes to require that all information specified in the approval of the ACP "shall be maintained by the responsible ACP party for a minimum of three years after the expiration of such ACP." Prop. at 41 (proposed Section 223.245(c)(1)), Statement at 20. The Agency also proposes to require that "[s]uch records shall be clearly legible and maintained in good condition during this period." Prop. at 41, Statement at 20. Finally, the Agency also offers language providing that these records "shall be made available to the Agency or its authorized representative upon request." Prop. at 41 (proposed Section 223.240(c)(2)), Statement at 20.

### **Product Dating (Section 223.250)**

The Agency proposes to add a new section regarding product dating. The proposal first requires that manufacturers of consumer products subject to VOM content limits "shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date." Prop. at 41 (proposed Section 223.250(a)), Statement at 20. Second, the proposal provides a code for indicating the date of manufacture and states that, if the code is separate from other codes on the product container so that it is easily recognizable, then the manufacturer need not comply with additional product dating requirements. Prop. at 41 (proposed Section 223.250(b)), Statement at 20; *see* Prop. at 42 (proposed Section 223.255 Additional Product Dating Requirements).

Third, the Agency originally proposed that "[t]his date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable [VOM content] standard." Prop. at 41 (proposed Section 223.250(c)), Statement at 20. In its third *errata* sheet, the Agency proposed instead to strike the words "twelve months prior to," stating that it had inadvertently left this language in the proposal. *Errata 3* at 7-8 (§5); *see* Tr.2 at 56. Fourth, the Agency proposes language regarding the location of the date or date code information on the container of the product. Prop. at 41-42 (proposed Section 223.250(d)), Statement at 20-21. Fifth, and finally, the Agency also proposes that these labeling requirements "shall not apply to products containing no VOMs (as defined in Section 223.203), or containing VOMs at 0.10% by weight or less." Prop. at 42 (proposed Section 223.250(e)), Statement at 21.

### **Additional Product Dating Requirements (Section 223.255)**

The Agency also proposes language establishing additional product labeling requirements. In its third *errata* sheet, the Agency proposed to clarify this language by striking the first two subsections it had originally proposed. *Errata* 3 at 8 (§6). The Agency stated that this language had been inadvertently left in the proposed rule. *Id.*; see Tr.1 at 18-21, Tr.2 at 56, Yost Test. at 6-7. As amended by the third *errata* sheet, the Agency’s proposal first provides that “[n]o person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacturer from any regulated product container without the express authorization of the manufacturer.” Prop. at 42 (proposed Section 223.255(a)), Statement at 21. The same subsection also provides that “[n]o manufacturer shall affix a date code that is not true for the date the item was manufactured.” Prop. at 42, Statement at 21. The Agency also proposes language providing that explanation of codes indicating date of manufacture “are public information and may not be claimed as confidential.” Prop. at 42 (proposed Section 223.255(b)), Statement at 21.

### **Most Restrictive Limit (Section 223.260)**

The Agency proposes to add a section providing that, notwithstanding the definition of “product category,”

if anywhere on the principal display panel of any consumer product manufactured before January 1, 2009, or any FIFRA-registered insecticide manufactured before January 1, 2010, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in Section 223.205(a), then the lowest VOC limit shall apply. Prop. at 42 (proposed Section 223.260(a)), Statement at 21-22.

The proposal further states that “[t]his requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.” Prop. at 42, Statement at 22.

Similarly, the Agency proposes to provide that, notwithstanding the definition of “product category,”

if anywhere on the container or packaging of any consumer product manufactured on or after January 1, 2009, or any FIFRA-registered insecticide manufactured on or after January 1, 2010, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in Section 223.205(a), then the lowest VOC limit shall apply. Prop. at 43 (proposed Section 223.260(b)), Statement at 21-22.

The proposal further states that “[t]his requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.” Prop. at 43, Statement at 22.

### **Additional Labeling Requirements for Aerosol Adhesives, Adhesive Removers, Electronic Cleaners, Energized Electrical Cleaners, and Contact Adhesives (Section 223.265)**

The Agency proposes to add a section requiring that, in addition to the requirements of other specified sections of the proposal, “both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this regulation” must ensure that all products clearly display five specific items of information on product containers manufactured on or after January 1, 2009. Prop. at 43 (proposed Section 223.265(a)), Statement at 22. First, the container must display either the specific product category or an abbreviation of it. Prop. at 43 (proposed Section 223.265(a)(1)), Statement at 22. Second, except for energized electrical cleaner, it must also display the applicable VOM standard for the product expressed as a percentage by weight, unless the product is included in an ACP approved by the Agency and the product exceeds the applicable VOM standard. Prop. at 43 (proposed Section 223.265 (a)(2)), Statement at 22-23.

Third, if the product is included in an ACP approved by the Agency and the product exceeds the applicable VOM standard, it must be labeled with the term “ACP” or “ACP product.” Prop. at 43 (proposed Section 223.265(a)(3)), Statement at 23. Fourth, “[i]f the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate and/or application that qualifies the product as special purpose shall be displayed.” Prop. at 43 (proposed Section 223.265(a)(4)), Statement at 23. Fifth, if a manufacturer or responsible party uses an abbreviation as allowed by this section, then an explanation of that abbreviation must be filed with the Agency before the abbreviation is used. Prop. at 43 (proposed Section 223.265(a)(5)), Statement at 23.

In addition, the Agency proposes language regarding the location of this required information on the container of the product. Prop. at 44 (proposed Section 223.265(b)), Statement at 23. Finally, the Agency also proposes language forbidding any person from removing, altering, concealing, or defacing the information required in Section 223.265(a) before the final sale of the product. Prop. at 44 (proposed Section 223.265(c)), Statement at 23.

### **Reporting Requirements (Section 223.270)**

In its original proposal, the Agency sought to require that responsible parties must submit specified information to the Agency within 30 days of a request. Prop. at 44 (proposed Section 223.270(a)), Statement at 23. In its second *errata* sheet, responding to concerns voiced by members of the public, the Agency proposed to clarify that this information is due to the Agency within 90 days of a request. *Errata 2* at 5-6 (§8); *see Yost Test.* at 7-8, Tr.1 at 13-16, 35.

The specified information first includes “[t]he name, address, and telephone number of the responsible party and name and telephone number of the party’s designated contact person.” Prop. at 44 (proposed Section 223.270(a)(1)), Statement at 23. Second, for each product subject to VOM content standards at the proposed Section 223.205(a), the information includes the product brand name, product label, product category, applicable product form(s) listed separately, and identification of the product as a household product, institutional product, or both. Prop. at 44 (proposed Section 223.270(a)(2)(A-E)), Statement at 23-24. Third, the responsible party must submit “[s]eparate Illinois sales in pounds per year, to the nearest pound, and the method used to calculate Illinois sales for each product form.” Prop. at 44 (proposed Section 223.270(a)(3)), Statement at 24.

Fourth, regarding information submitted by multiple companies, the responsible party must submit “an identification of each company which is submitting relevant data separate from that submitted by the responsible party. All information from each company shall be submitted by the date requested by the Agency.” Prop. at 44 (proposed Section 223.270(a)(4)), Statement at 24. Fifth, for each product brand name and form, the required information includes the net percent by weight of the total product, less container and packaging and rounded to the nearest one-tenth of a percent, of the following: total section 223.205(a) compounds; total LVP-VOMs that are not fragrances; total all other carbon-containing compounds that are not fragrances; total all non-carbon-containing compounds; total fragrance; for products containing greater than two percent by weight fragrance, both the percentage of fragrance that are LVP-VOMs and the percent of fragrance that are all other carbon-containing compounds; and total parachlorobenzene. Prop. at 44-45 (proposed Section 223.270(a)(5)(A-G)), Statement at 24.

Sixth, the required information also includes, for each product brand name and form, “the identity, including the specific chemical names and associated Chemical Abstract Service (CAS) number” of each Section 223.205(a) compound and each LVP-VOM that is not a fragrance. Prop. at 45 (proposed Section 223.270(a)(6)), Statement at 24. Seventh, the responsible party must also submit, if a product includes a propellant, both “[t]he weight percent comprised of propellant for each product; and [a]n identification of the type of propellant, such as Type A, Type B, or Type C, or a blend of the different types.” Prop. at 45 (proposed Section 223.270(a)(7)), Statement at 24.

The Agency also proposes a subsection (b) providing that, in addition to the requirements of the proposed subsection (a)(6), “the responsible party shall report or arrange to have reported to the Agency, the net percent by weight of each ozone-depleting compound which is: “[l]isted in Section 223.210(a) [Products Containing Ozone-Depleting Compounds]; and contained in a product subject to reporting under subsection (a) of this Section in any amount greater than 0.1% by weight.” Prop. at 45 (proposed Section 223.270(b)), Statement at 25. In its first *errata* sheet, the Agency proposed to clarify that this information on ozone-depleting compounds has only to be submitted to the Agency upon request. *Errata* 1 at 1 (§1). The Agency stated that “[i]t was not intended that companies should be required to provide this information without a request from the Illinois EPA.” *Id.*

Finally, the Agency proposes language requiring that, “[i]n addition, all manufacturers must submit the information requested in subsection (a) and (b) above upon commencement of the selling of each such product in Illinois.” Prop. at 45 (proposed Section 223.270(c)), Statement at 25. In its first *errata* sheet, the Agency proposed to clarify that this information has needs to be submitted to the Agency only upon request. *Errata* 1 at 1-2 (§2). The Agency stated that “[i]t was not the intention of the Illinois EPA to require every manufacturer to submit information every time they sell a new product in Illinois.” *Id.*

**Special Reporting Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride (Section 223.275)**

The Agency proposes to add a new section establishing special recordkeeping requirements. The Agency offers language stating that this provision applies to all responsible parties for consumer products that are subject to Section 223.205(a) [Standards] and contain perchloroethylene or methylene chloride and Energized Electrical Cleaners as defined in Section 223.203 that contain perchloroethylene or methylene chloride. Prop. at 46 (proposed Section 223.275(a)), Statement at 25. The proposal also states that “[f]or the purposes of this Section, a product ‘contains perchloroethylene or methylene chloride’ if the product contains 1.0 percent or more by weight (exclusive of the contained or packaging) of either perchloroethylene or methylene chloride.” Prop. at 46, Statement at 25.

The Agency proposes to require that, for each consumer product that contains perchloroethylene or methylene chloride, the responsible party must report to the Agency the following information for products sold in Illinois: product brand name and label with legible use instructions; product category; applicable product form(s) (listed separately); for each listed product form, total sales in Illinois during the calendar year to the nearest pound, exclusive of the container or packaging, and the method used to calculate Illinois sales; and the weight percent of perchloroethylene and methylene chloride in the consumer product, to the nearest 0.10 percent. Prop. at 46 (proposed Section 223.275(b)), Statement at 25-26. In its second *errata* sheet, responding to concerns voiced by members of the public, the Agency proposed to clarify that this information is due to the Agency within 90 days of a request. *Errata 2* at 6 (§9); *see* Tr.1 at 16-18.

#### **Calculating Illinois Sales (section 223.280)**

The Agency proposes to add a section providing in its entirety that, “[i]f direct sales data for Illinois are not available, sales may be estimated by prorating national or regional sales data by population.” Prop. at 46 (proposed new Section 223.280), Statement at 26.

#### **Test Methods (Section 223.285)**

In this proposed new section, the Agency first seeks to provide that “[t]esting to determine compliance with the requirements of this Subpart [B] shall be performed using CARB Method 310, Determination of Volatile Organic Materials (VOM) in Consumer Products, adopted September 25, 1997, and as last amended on May 5, 2005, which is incorporated by reference in Section 223.120.” Prop. at 46 (proposed Section 223.285(a), Statement at 26; *see* Prop., Att. B(1) (Method 310 last amended May 5, 2005). The Agency also proposes that compliance may be demonstrated through calculation of the VOM content from records of the amounts of constituents used to make the product, if the demonstration is made according to specified criteria. Prop. at 46-47 (proposed Section 223.285(b)(1-5)), Statement at 26.

The Agency also proposes language providing that “[t]esting to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90, which is incorporated by reference at Section 223.120, or an equivalent method approved by the CARB.” Prop. at 47 (proposed Section 223.285(c)); *see* Prop., Att. B(f)(9) (ASTM D4359-90 reapproved 2006). In its second *errata* sheet, the Agency proposed “to correct the citation to the ASTM and reconcile

it with the newer version which was incorporated by reference. *Errata 2* at 6 (§10); *see* Tr.1 at 32; *see also Errata 3* at 9 (§7) (same proposed correction).

The Agency also proposes that “[t]esting to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the SCAQMD Test Protocol Rule 1174 Ignition Method Compliance Certification Protocol dated February 28, 1991, which is incorporated by reference in Section 223.120.” Prop. at 47 (proposed Section 223.285(d)); *see* Prop., Att. B(m) (Rule 1174).

In addition, the Agency originally proposed that “[t]esting to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-04b, 2004 edition, which is incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.” Prop. at 47 (proposed Section 223.285(e)). In its third *errata* sheet, the Agency proposed “to correct the citation to the ASTM [86-07b, 2007] and reconcile it with the newer version which was incorporated by reference.” *Errata 3* at 9 (§7); *see* Tr. 2 at 56-57. Above, the Board noted that the Agency in its third *errata* sheet proposed to add to the materials incorporated by reference ASTM D86-07b, approved 2007. *Errata 3* at 3-4; *see supra* at 7.

### **Subpart C: Architectural and Industrial Maintenance Coatings**

USEPA now regulates AIM coatings through rules codified at 40 C.F.R Part 59, Subpart D. TSD at 39 (noting authority under Section 183(e) of the Clean Air Act). “Emissions of VOM from this source category occur when the solvent carrying coating material evaporates and leaves the coating material on the surface during application and drying.” TSD at 34, Statement at 7. “The current federal rule is estimated to reduce VOM emissions from AIM coatings by approximately 20% from uncontrolled levels.” TSD at 39. The Agency proposes to separate this source category into 49 coating categories, each with a specific VOM content limit. TSD at 35-37 (Table 3.2.1 AIM Coating Categories and VOM Limits), Statement at 7-8, Prop. at 56-59 (proposed Section 223.310).

For the purposes of the Agency’s proposal, an AIM coating “is a coating to be applied to stationary structures or the appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.” TSD at 34 (Description and Sources of Emissions), Statement at 7. Also for purposes of the proposal, “[c]oatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered “Architectural Coatings.” TSD at 34, Statement at 7. The Agency states that “AIM coatings are used to protect and beautify homes, office buildings, factories, pavements, curbs and on a variety of surfaces inside and outside of such structures as metal, wood, plastic, concrete, and wallboard. AIM coatings are applied by brush, roller, or spray gun, and are applied by consumers, contractors, or maintenance staff.” TSD at 34, Statement at 7.

The Agency states that it prepared a comprehensive inventory of VOM emissions attributable to VOM both statewide and in the NAAs. TSD at 38, citing Prop., Att. A(2) (Illinois Periodic Emission Inventory and Milestone Demonstration for 2002, November 2004); *see* Prop.,

Att. A(15) (Illinois Base Year Ozone Inventory for 2002 (June 2006)). These data show that, “[i]n Illinois, AIM coatings emissions account for approximately 4.30% of the total anthropogenic VOM emissions during the ozone season, and approximately 3.97% of all anthropogenic VOM emissions in Illinois for the entire year. TSD at 34, citing Prop., Atts. A(2), A(15); Statement at 8. In the Metro East/St. Louis NAA, AIM Coatings account for approximately 4.28% of total anthropogenic VOM emissions during the ozone season and approximately 3.20% of those emissions for the entire year. TSD at 34-35, 38, Statement at 8. In the Chicago NAA, AIM coatings account for approximately 8.01% of total anthropogenic VOM emissions during the ozone season and approximately 6.26% of those emissions for the entire year. TSD at 34-35, 38, Statement at 8. AIM coatings are estimated to emit 71.10 tons of VOM per day in Illinois during the ozone season and to emit 58.14 tons per day over the entire year. TSD at 38 (Table 3.2.2).

The Agency states that “[t]he most effective approach for reducing emissions of VOM from AIM coatings is reformulation of the coatings themselves.” TSD at 39. The Agency indicates that this reformulation could involve “using water based formulations, using formulations employing acetone or other exempt solvents, or increasing the coating material content of the coating.” *Id.*

The Agency estimates that adoption of its proposed rule “would result in a reduction of VOM emissions of 21% beyond the current federal regulation.” Statement at 8 (citing MACTEC figures), TSD at 45. “Adoption of the proposed regulation will account for the reduction of 12.21 tons of VOM per day or 4,456 tons of VOM annually.” Statement at 8, TSD at 45, citing Prop., Att. A(3). This represents “a reduction of nearly 1% of the total anthropogenic VOM emissions in the State.” TSD at 45.

At the second hearing, the Board heard testimony from Mr. Dave Carey of W.R. Meadows, Inc., a manufacturer of products used in commercial construction, including architectural coatings and waterproofing membranes. Tr.2 at 48. Mr. Carey stated that, with different requirements in effect in various parts of the country, “there are significant costs associated with reformulating products, retrofitting and changing equipment, and one of the things that hurts us as a company is inconsistency from one region of the country to the next.” *Id.* at 48-49. Mr. Carey noted that there are two factors leading his industry to reduce VOC content in its products. First, he stated that the cost of some solvents have increased by 100 percent. *Id.* at 49-50. Second, he indicated that builders increasingly seek environmentally friendly products. *Id.* at 50. Mr. Carey concluded by asking the Agency to consider waiting for a federal rule, “especially if it’s going to be more restrictive than the Illinois rule and it would preempt the Illinois rule,” which would simplify the transition for industry. *Id.* at 49-50.

### **Purpose (Section 223.300)**

The Agency proposes to add a section providing in its entirety that “[t]he purpose of this Subpart [C] is to limit emissions of VOMs by requiring reductions in the VOM content of architectural and industrial maintenance coatings and required work practices to minimize VOM emissions in the application of architectural and industrial maintenance coatings to surfaces.” Prop. at 48 (proposed new Section 223.300), Statement 26.

### **Applicability (Section 223.305)**

The Agency proposes to add a section providing that “[t]his Subpart [C] is applicable to any person who supplies, sells, offers for sale, or manufacturers (sic) any architectural coating for use within the state of Illinois, as well as any person who applies or solicits the application of any architectural coating within Illinois.” Prop. at 48 (proposed Section 223.305), Statement at 26-27. The Agency also proposes language providing that Subpart C does not apply to three specific categories of coating products: architectural coatings sold or manufactured for use outside of Illinois “or for shipment to other manufacturers for reformulation or repackaging;” aerosol coating products; and architectural coatings sold in a container with a volume of one liter or less. Prop. at 48 (proposed Sections 223.305(a-c)), Statement at 27.

### **Definitions for Subpart C (Section 223.307)**

The Agency proposes to add a section defining terms applicable to Subpart C. Prop. at 48-56 (proposed Section 223.307), Statement at 27. The Agency also proposed to include language providing that, “[u]nless otherwise defined herein, the definitions of terms used in this Subpart [C] shall have the meanings specified for those terms in 35 Ill. Adm. Code Part 211.” Prop. at 48, Statement at 27; *see* 35 Ill. Adm. Code 211 (definitions and general provisions applicable to emission standards and limitations for stationary sources).

In its second *errata* sheet, the Agency proposed technical changes. *Errata 2* at 6-7. Among them, the Agency in five definitions changed the term “Part” to “Subpart” to clarify the applicability of those definitions. *Errata 2* at 6-7 (§12). The Agency also clarified that two ASTM methods included in the definition of “nuclear coating” are incorporated by reference. *Id.* at 7 (§13); *see* Prop. at 3-6 (proposed new Section 223.120).

In a written public comment, NPCA stated that it had responded to the Agency’s draft rulemaking proposal by requesting that the Agency “include additional definitions and limits for specific specialty coatings” in order to be consistent with sources including the OTC model rule. PC 2 at 1. NPCA indicated that, although IEPA made suggested changes, it inadvertently had not added a definition and limits applicable to “concrete surface retarder.” *Id.* NPCA requested that this language be added to various sections of Subpart C of the Agency’s proposal. *Id.*; *see* Tr.2 at 42-43. Also, at the second hearing, the hearing officer noted that the definition of “nuclear coating” refers to two ASTM methods, different versions of which appeared to be incorporated by reference in Section 223.120 of the Agency’s proposal. Tr.2 at 57.

In its third *errata* sheet, the Agency proposed changes addressing these issues. First, the Agency proposed to correct references to three ASTM methods “to clarify the definitions of certain words.” *Errata 3* at 9 (§8); *see* Prop., Att. B(f)(8) (ASTM E84-07, Standard Test Method for Surface Burning Characteristics of Building Materials, approved 2007), Prop., Att. B(f)(5) (ASTM Method D4082-02, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, approved 2002), Prop., Att. B(f)(4) (ASTM Method D3912-95, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, reapproved 2001). Also in the third *errata* sheet, the Agency

proposed to add definitions of the terms “colorant” and “lacquer” and, as requested by NPCA, the term “concrete surface retarder.” *Errata 3* at 10 (§9); *see PC 2* at 1.

### **Standards (Section 223.310)**

The Agency proposes to add a section stating that, except as provided in subsection (c) regarding most restrictive VOM limits, “no person shall manufacture, blend, or repackage for sale in Illinois, or solicit for application or apply within Illinois, any architectural coating manufactured on or after January 1, 2009, which contains a VOM content in excess” of specified limits. Prop. at 56-59 (proposed Section 223.310(a)), Statement at 27, TSD at 35-37 (Table 3.2.1 AIM Coating Categories and VOM Limits). In a public comment filed January 22, 2008, NPCA suggested that Agency amend the VOM content of 450 grams per liter for nuclear coatings in order to be consistent with sources including the OTC model rule. PC 1 at 2; *see Tr.2* at 42-43. In its first *errata* sheet, the Agency proposed to correct the listed VOM content limit for nuclear coatings to reflect an amended OTC model rule. *Errata 1* at 2 (§3). In a public comment filed May 19, 2008, NPCA requested that, in addition to adding a definition of “concrete surface retarder,” the Agency also amend its proposal to include a VOM content limit for that category of 780 grams per liter. PC 2 at 1. In its third *errata* sheet, the Agency proposed to add this limit. *Errata 3* at 10 (§10).

The proposal expresses VOM content limits in terms of both grams per liter and pounds per gallon. Prop. at 56. The proposed subsection includes a Board Note stating that one pound of VOM per U.S. gallon is equal to 119.95 grams per liter. *Id.* at 59. The proposal also states that “[l]imits are expressed in grams of VOM per liter of coating thinned to the manufacturer’s maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. ‘Manufacturers maximum recommendation’ means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.” Prop. at 59 (proposed Section 223.310(b)).

The Agency also proposes that,

[i]f anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Section 223.310(a), then the most restrictive VOM content limit shall apply. Prop. at 59 (proposed Section 223.310(c)), Statement at 28.

The Agency also seeks to provide that this “Most Restrictive VOM Limit” provision does not apply to 20 specified categories of coatings. Prop. at 59-60, Statement at 28. In its public comment filed May 19, 2008, NPCA requested that the category of concrete surface retarder be added to the list of categories exempt from this provision. PC 2 at 1. In its third *errata* sheet, the Agency proposed to add concrete surface retarded as the 21st exempt category. *Errata 3* at 10 (§11).

The Agency proposes a number of additional subsections pertaining to VOM content limits. The proposal provides that architectural coating containers such as drums, buckets, cans, pails, and trays used to apply their contents “directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use.” Prop. at 60 (proposed Section 223.310(d)), Statement at 27. The Agency also proposed language providing that “[n]o person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOM limit specified in Section 223.310(a).” Prop. at 60 (proposed Section 223.310(e)), Statement at 27. The Agency also proposes to address rust preventive coatings by providing that no person shall apply them or solicit their application “for industrial use unless such a rust preventive coating complies with the industrial maintenance coating VOM limit specified in Section 223.310(a).” Prop. at 60 (proposed Section 223.310(f)), Statement at 27. If another Subpart also regulates that coating, then the more restrictive limit applies. Prop. at 60. The Agency also offers a provision for determining the VOM content limit of a coating that does not meet any of the definitions for the special coatings categories listed in Section 223.310(a). Prop. at 60-61 (proposed Section 223.310(g)), Statement at 27.

### **Container Labeling Requirements (Section 223.320)**

The Agency proposes to add a section requiring that each manufacturer of architectural coatings subject to Subpart C must include specified information “on the coating container (or label) in which the coating is sold or distributed.” Prop. at 61 (proposed Section 223.320), Statement at 28. First, the label, lid, or bottom of the coating container must include the date the coating was manufactured or a code representing that date. Prop. at 61 (proposed Section 223.320(a)), Statement at 28. This provision requires that, “[i]f the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the Agency.” Prop. at 61. In its second *errata* sheet, the Agency proposed to clarify that manufacturers only have to submit explanations of date codes to the Agency upon request. *Errata 2* at 7 (§15). “It was not intended that companies should be required to provide this information without a request from the Illinois EPA.” *Id.*

Second, the proposal requires that the label or lid of the container include “[a] statement of the manufacturer’s recommendation regarding thinning of the coating.” Prop. at 61 (proposed Section 223.320(b)), Statement 28. The Agency proposes that “[t]his requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.” Prop. at 61.

Third, the Agency seeks to require that “[e]ach container of any coating subject to this rule shall display either the maximum or the actual VOM content of the coating, as supplied, or the actual VOM content including the maximum thinning as recommended by the manufacturer.” Prop. at 61 (proposed Section 223.320(c)), Statement at 28. The Agency proposes that “VOM content displayed shall be calculated using product formulation data, or shall be determined using the test methods in subsection 223.340(b).” Prop. at 61; *see* Prop. at 65 (proposed Section 223.340(b) determining physical properties of a coating). The Agency further proposes that “[t]he equations in subsection 223.340(a) shall be used to calculate VOM

content.” Prop. at 61; *see* Prop. at 64-65 (proposed Section 223.340(a) providing calculation of VOM content). The proposal requires displaying VOM content in grams of VOM per liter of coating. Prop. at 61. In its public comment filed January 22, 2008, NPCA acknowledged that the Agency had clarified that “VOC Content” and “VOM content” had the same meaning. PC 1 at 2. Based on the possibility of confusion over the two terms, NPCA requested that the Agency clarify that either “VOM Content” or “VOC Content” may be displayed. *Id.*; *see* Tr. 1 at 22-24. In its second *errata* sheet, the Agency proposed language repeating and clarifying that the two terms have the same meaning. *Errata 2* at 8 (§16).

Fourth, in addition to the preceding requirements, the Agency proposed to require that manufacturers of industrial maintenance coatings must display on the coating’s container one or more specific descriptions: “[f]or industrial use only,” “[f]or professional use only,” and “[n]ot for residential use” or “[n]ot intended for residential use.” Prop. at 61 (proposed Section 223.320(d)(1-3)), Statement at 28. Fifth, the proposal would require that “[t]he labels of all clear brushing lacquers shall prominently display the statements ‘For brush application only,’ and ‘This product must not be thinned or sprayed.’” Prop. at 61 (proposed Section 223.320(e)), Statement at 28. Sixth, addressing rust preventive coatings, the Agency proposes to require that their labels “shall prominently display the statement ‘For Metal Substrates Only.’” Prop. at 62 (proposed Section 223.320(f)), Statement at 28-29.

Seventh, regarding specialty primers, sealers, and undercoaters, the Agency would require that their labels display one or more specific descriptions: “[f]or blocking stains,” “[f]or fire-damaged substrates,” “[f]or smoke-damaged substrates,” “[f]or water-damaged substrates,” or “[f]or excessively chalky substrates.” Prop. at 62 (proposed Section 223.320 (g)(1-5)), Statement at 29. Eighth, the Agency proposes that “[t]he labels of all quick dry enamels shall prominently display the words ‘Quick Dry’ and the dry hard time.” Prop. at 62 (proposed Section 223.320(h)), Statement at 29. Ninth, the Agency also proposes that “[t]he labels of all non-flat high-gloss coatings shall prominently display the words ‘High Gloss.’” Prop. at 62 (proposed Section 223.320(i)), Statement at 29. Tenth, the Agency seeks to require that, “[e]ffective January 1, 2010, the labels of all Stone Consolidants shall prominently display the statement ‘Stone Consolidant – For Professional Use Only.’” Prop. at 62 (proposed Section 223.320(j)), Statement at 29.

### **Recordkeeping and Reporting Requirements (Section 223.330)**

The Agency proposes to add a section prescribing recordkeeping and reporting requirements for six specific categories of coatings. Prop. at 62-64 (proposed Section 223.330), Statement at 29. First, the proposal requires manufacturers of clear brush lacquers, at the request of the Agency, to report “[t]he number of gallons of clear brushing lacquer sold in the state during the preceding calendar year; and [t]he method used by the manufacturer to calculate state sales.” Prop. at 62 (proposed Section 223.330(a)(1-2)), Statement at 29. Second, the proposal requires manufacturers of rust preventive coatings, at the request of the Agency, to report “[t]he number of gallons of rust preventive coatings sold in the state during the preceding calendar year; and [t]he method used by the manufacturer to calculate state sales.” Prop. at 62-63 (proposed Section 223.330(b)(1-2)), Statement at 29. Third, the proposal also requires manufacturers of specialty primers, sealers, and undercoaters, at the request of the Agency, to

report “[t]he number of gallons of specialty primers, sealers, and undercoaters sold in the state during the preceding calendar year; and [t]he method used by the manufacturer to calculate state sales.” Prop. at 63 (proposed Section 223.330(c)(1-2)), Statement at 29.

Fourth, the proposal requires manufacturers of architectural coatings that contain perchloroethylene or methylene chloride to report the following information at the request of the Agency: “[t]he product name and a copy of the product label with the legible usage instructions,” “[t]he product category listed in Section 223.210(a) to which the coating belongs,” “[t]he total sales in Illinois during the calendar year to the nearest gallon,” and “[t]he volume percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the coating.” Prop. at 63 (proposed Section 223.330(d)(1-4)), Statement at 29-30.

Fifth, the Agency also proposes requirements for manufacturers of recycled coatings. Those manufacturers “must submit a letter to the Agency self-certifying their status as a Recycled Paint Manufacturer upon request of the Agency.” Prop. at 63 (proposed Section 223.330(e)(1)), Statement at 30. The proposal also requires recycled coatings manufacturers, at the request of the Agency, to report “[t]he number of gallons of recycled coatings sold in the state during the preceding calendar year; and [t]he method used by the manufacturer to calculate state sales.” Prop. at 63 (proposed Section 223.330(e)(2)(A-B)), Statement at 30. Sixth, the proposal requires manufacturers of “Bituminous Roof Coatings” or “Bituminous Roof Primers” to report, at the request of the Agency, “[t]he number of gallons of “Bituminous Roof Coatings” or “Bituminous Roof Primers” sold in the state during the preceding calendar year; and [t]he method used by the manufacturer to calculate state sales.” Prop. at 64 (proposed Section 223.330(f)(1-2)), Statement at 30.

In its original proposal, the Agency sought to require that the affected manufacturers report the specified information “upon request of the Agency, within 30 days written notice.” Prop. at 62-64 (proposed Section 223.330). In its public comment filed January 22, 2008, NPCA expressed concern that these proposed reporting requirements are burdensome, “especially the requirements that reports would need to be provided within 30 days of written notice.” PC 1 at 1. NPCA claimed that these requirements originated with a 2000 CARB Suggested Control Measure (SCM) and that CARB deleted them from a subsequent SCM on the basis that “this information was no longer needed.” *Id.* In its second *errata* sheet, the Agency noted that the 30-day requirement generated public concern and clarified “that companies have 90 days, not 30, to submit the pertinent information to the Illinois EPA.” *Errata 2* at 8-9 (§17).

### **Compliance Provisions and Test Methods (Section 223.340)**

The Agency proposes to add a section providing procedures for determining the VOM content of a coating in order to determine compliance with the VOM content limits at Section 223.310(a). Prop. at 64-65 (proposed Section 223.340(a)(1-2)), Statement at 30. With the exception of low solids coating, the equation at Section 223.340(a)(1) determines “the VOM content in grams of VOM per liter of coating thinned to the manufacturer’s maximum recommendation, excluding the volume of any water and exempt compounds.” Prop. at 64, Statement at 31. For low solids coatings, the equation at Section 223.340(a)(2) determines “the VOM content in units of grams of VOM per liter of coating thinned to the manufacturer’s

maximum recommendation, excluding the volume of any water and exempt compounds.” Prop. at 64-65, Statement at 31.

The Agency also proposes a Section 223.340(b) providing that, “[t]o determine the physical properties of a coating in order to perform the calculations in subsection 223.340(a), the reference method for VOM content is USEPA Method 24, incorporated by reference in Section 223.120, except as provided in subsections 223.350 [Alternative Test Methods] and 223.360 [Methacrylate Traffic Coating Markings].” Prop. at 65, *see* Prop., Att. B(c) (40 C.F.R. 60, Appendix A, Method 24, Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings (July 1, 2006)).

The Agency also proposes to provide that “[a]n alternative method to determine the VOM content of coatings is SCAQMD Method 304-91 (Revised February 1996), incorporated by reference in Section 223.120.” Prop. at 65; *see* Prop., Att. B(g) (South Coast Air Quality Management District (SCAQMD) Method 304-91, Determination of Volatile Organic Compounds in Various Materials, revised February 1996). The Agency also proposes to provide that “[t]he exempt compounds content shall be determined by SCAQMD Method 303-91 (Revised August 1996),” which is also incorporated by reference. Prop. at 65; *see* Prop., Att. B(g)(2) (SCAQMD Method 303-91, Determination of Exempt Compounds, revised February 1993).

The Agency proposes that, “[t]o determine the VOM content of a coating, the manufacturer may use USEPA Method 24, or an equivalent alternative method, as provided in Section 223.350, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (*e.g.*, quality assurance checks, recordkeeping).” Prop. at 65, Statement at 32. The Agency also proposes, however, that, “if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOM content, the Method 24 results will govern, except when an equivalent alternative method is approved as specified in Section 223.350.” Prop. at 65, Statement at 32.

The Agency also seeks to add language providing that “[t]he Agency may require the manufacturer to conduct a Method 24 analysis.” Prop. at 65, Statement at 32.

#### **Alternative Test Methods (Section 223.350)**

The Agency proposes to add a section providing in its entirety that “[o]ther test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subsection 223.340(b), after review and approved in writing by the Agency and the USEPA, may also be used.” Prop. at 65 (proposed Section 223.350), Statement at 32.

#### **Methacrylate Traffic Coating Markings (Section 223.360)**

The Agency proposes to add a section providing that “[a]nalysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of USEPA Method 24 . . . or an equivalent method approved by the CARB.” Prop. at 65 (proposed Section 223.360), Statement at 32. The proposed language also provides that

“[t]his method has not been approved for methacrylate multi-component coatings used for purposes other than as traffic marking coatings or for other classes of multi-component coatings.” Prop. at 65, Statement at 32-33.

### **Test Methods (Section 223.370)**

The Agency proposes to add a section listing test methods incorporated by reference and states that they “shall be used to test coatings subject to the provisions of this Subpart [C]. Prop. at 65-67 (proposed Section 223.370(a-m)), Statement at 33.

In subsection (a), the proposal states that “[t]he flame spread index of a fire-retardant coating shall be determined by the ASTM Designation E 84-99, ‘Standard Test Method for Surface Burning Characteristics of Building Materials,’ (see Section 223.307, Fire Resistant Coating) or an equivalent method approved by the CARB.” Prop. at 66 (proposed Section 223.370(a)); *see* Prop., Att. B(f)(8) (ASTM E84-07 Standard Test Method for Surface Burning Characteristics of Building Materials, approved 2007). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 10 (§18). In its third *errata* sheet, the Agency proposed to amend this provision to refer to Method E84-07, making it consistent with the method incorporated by reference in Section 223.120. *Errata 3* at 10 (§12).

In subsection (b), the proposal states that “[t]he fire-resistance rating of a fire-resistant coating shall be determined by ASTM designation E 119-98, ‘Standard Test Methods for Fire Tests of Building Construction Materials,’ (see Section 223.307, Fire-Resistant Coating) or an equivalent method approved by the CARB.” Prop. at 66 (proposed Section 223.370(b)); *see* Prop., Att. B(f)(1) (ASTM E119-05a, Standard Test Methods for Fire Tests of Building Construction and Materials). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 10 (§18).

In subsection (c), the proposal states that “[t]he gloss of a coating shall be determined by ASTM Designation D 523-89 (1999), ‘Standard Test Method for Specular Gloss,’ (see Section 223.307, Flat Coating, Non-flat Coating, Non-flat – High-Gloss Coating, and Quick Dry Enamel) or an equivalent method approved by the CARB.” Prop. at 66 (proposed Section 223.370(c)); *see* Prop., Att. B(f)(2) (ASTM D 523-89, Standard Test Method for Specular Gloss (Reapproved 1999)). In its second *errata* sheet, the Agency did not propose to add language clarifying that this test method had been incorporated by reference. *See Errata 2* at 10 (§18).

In subsection (d), the proposal states that “[t]he metallic content of a coating shall be determined by SCAQMD Method 318-95, ‘Determination of Weight Percent Elemental Metal in Coating by X-Ray Diffraction, SCAQMD ‘Laboratory Methods for Analysis of Enforcement Samples,’ (see Section 223.207, Metallic Pigmented Coating).” Prop. at 66 (proposed Section 223.370(d)); *see* Prop., Att. B(i) (SCAQMD Method 318-95, Determination of Weight Percent Elemental Metal in Coating by X-Ray Diffraction, approved August 10, 1998). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 10 (§18).

In subsection (e), the proposal states that “[t]he acid content of a coating shall be determined by ASTM Designation D 1613-96, ‘Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products,’ (see Section 223.307, Pre-Treatment Wash Primer) or an equivalent method approved by the CARB.” Prop. at 66 (proposed Section 223.370(e)); *see* Prop., Att. B(f)(7) (ASTM Designation D 1613-03, ‘Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 10 (§18). At the second hearing, the hearing officer noted that this subsection and Section 223.120 appeared to refer to different editions of this test method. Tr.2 at 58-59. In its third *errata* sheet, the Agency proposed to amend this subsection to refer to ASTM Designation D 1613-03. *Errata 3* at 10-11 (§12).

In subsection (f), the proposal states that

[t]he set-to-touch, dry-hard, dry-to-touch, and dry-to-recoat times of a coating shall be determined by ASTM Designation D 1640-95, ‘Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature,’ (see Section 223.307, Quick-Dry Enamel and Quick-Dry Primer, Sealer, and Undercoater). The tack free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM Designation D 1640-95 or an equivalent method approved by the CARB. Prop. at 66 (proposed Section 223.370(f)); *see* Prop., Att. B(f)(3) (ASTM Designation D1640-03, Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature, approved December 1, 2003).

In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 10-11 (§18). At the second hearing, the hearing officer noted that this subsection and specific definitions appeared to refer to different editions of this test method. Tr.2 at 59. In its third *errata* sheet, the Agency proposed to amend this subsection to refer to ASTM Designation D 1640-03. *Errata 3* at 11 (§12).

In subsection (g), the proposal states that “[t]he chalkiness of a surface shall be determined using ASTM Designation D 4214-98, ‘Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films,’ (see Section 223.307, Specialty Primer, Sealer, and Undercoater) or an equivalent method approved by the CARB.” Prop. at 66 (proposed Section 223.370(g)); *see* Prop., Att. B (ASTM Designation D 4214-98, Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 11 (§18).

In subsection (h), the proposal states that

[e]xempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with Section

223.340 by BAAQMD Method 43, ‘Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials,’ BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996, (see Section 223.307 Volatile Organic Material and subsection 223.340(b)). Prop. at 66-67 (proposed Section 223.370(h)); *see* Prop., Att. B(j) (Bay Area Air Quality Management District (BAAQMD) Method 43, Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials, amended May 18, 2005).

In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 11 (§18). At the second hearing, the hearing officer noted that this subsection and Section 223.120 appeared to refer to different versions of this method. Tr.2 at 59. In its third *errata* sheet, the Agency proposed to amend this subsection to refer to the version adopted May 18, 2005. *Errata 3* at 11 (§12). Also at the second hearing, the hearing officer noted that the proposed subsection refers to a definition of “volatile organic material” in a section in which it is not defined. Tr.2 at 59. In its third *errata* sheet, the Agency proposed to amend the reference to a definition of “VOM content.” *Errata 3* at 11 (§12).

In subsection (i), the proposal states that

“[t]he exempt compound parachlorobenzotrifluoride shall be analyzed as an exempt compound for compliance with Section 223.400 by BAAQMD Method 41, ‘Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride,’ BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, (see Section 223.307 Volatile Organic Material, and subsection 223.340(b)). Prop. at 67 (proposed Section 223.370(i)); *see* Prop., Att. B(k) (BAAQMD Method 41, Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride, amended May 18, 2005).

In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 11 (§18). At the second hearing, the hearing officer noted that this subsection and Section 223.120 appeared to refer to different versions of this method. Tr.2 at 59. In its third *errata* sheet, the Agency proposed to amend this subsection to refer to the version adopted May 18, 2005. *Errata 3* at 11 (§12). In the third *errata* sheet, the Agency also proposed to amend a reference to a nonexistent definition of “Volatile Organic Material” to a reference to a definition of “VOM content.” *Id.* Also, at the second hearing, the hearing office noted that this subsection refers to compliance with Section 223.400, which had been the purpose language under the stricken Subpart addressing aerosol coatings. Tr.2 at 60. The third *errata* sheet did not clarify that reference, and the Board seeks comment in the form of clarification. *See Errata 3* at 11(§12).

In subsection (j), the proposal states that “[t]he content of compounds exempt under USEPA Method 24 shall be analyzed by SCAQMD Method 303-91 (Revised 1993), ‘Determination of Exempt Compounds,’ SCAQMD ‘Laboratory Methods of Analysis for

Enforcement Samples,’ (see Section 223.307 Volatile Organic Material, and subsection 223.340(b).” Prop. at 67 (proposed Section 223.370(j); *see* Prop., Att. B(h) SCAQMD Method 303-91, Determination of Exempt Compounds, revised February 1993). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 11 (§18).

In subsection (k), the proposal states that “[t]he VOM content of a coating shall be determined by USEPA Method 24 as it exists in Appendix A of 40 Code of Federal Regulations (CFR) Part 60, ‘Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings,’ (see subsection 223.340(b)) or an equivalent method approved by the CARB.” Prop. at 67 (proposed Section 223.370(k); *see* Prop., Att.B(c) (40 C.F.R. 60, Appendix A, Method 24, Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings (July 1, 2006)). In its second *errata* sheet, the Agency added language clarifying that this test method had been incorporated by reference in Section 223.120. *Errata 2* at 11 (§18).

In subsection (l), the proposal states that “[t]he VOM content of coatings may be analyzed by either USEPA Method 24 or SCAQMD Method 304-91 (Revised 1996), ‘Determination of Volatile Organic Compounds(VOC) in Various Materials,’ SCAQMD ‘Laboratory Methods of Analysis for Enforcement Samples,’ (see subsection 223.340(b)). Prop. at 67 (proposed Section 223.370(l); *see* Prop., Att. B(c) (Method 24), B(g) (Method 304-91). In its second *errata* sheet, the Agency added language clarifying that these methods had been incorporated by reference in Section 223.120. *Errata 2* at 11-12 (§18).

In subsection (m), the proposal states that

[t]he VOM content of methacrylate multicomponent coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR part 59, subpart D, appendix A, ‘Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings,’ (September 11, 1998), (see subsection 223.260) or an equivalent method approved by the CARB.” Prop. at 67 (proposed Section 223.370(m); *see* Prop., Att. B(a) (40 CFR 59, Subpart D, Appendix A, Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings, 64 Fed. Reg. 35001 (June 30, 1999).

In its second *errata* sheet, the Agency added language clarifying that these methods had been incorporated by reference in Section 223.120. *Errata 2* at 12 (§18). At the second hearing, the hearing officer noted that this subsection refers to language approved on one date and that Section 223.120 appears to incorporate a subsequent version. Tr.2 at 60. In its third *errata* sheet, the Agency proposed to amend this section to make the two references consistent with one another. *Errata 3* at 11 (§12).

## **ECONOMIC AND TECHNICAL CONSIDERATIONS**

### **Request for Economic Impact Study**

In a letter dated January 24, 2008, the Board requested that DCEO conduct an economic impact study on this rulemaking proposal. *See* 415 ILCS 5/27(b)(1) (2006). To date, the Board has received no response to that request. At the second hearing, the Board received no testimony or comment regarding the absence of any response to the request. *See* Tr.2 at 62-63.

### **Background of Federal Requirements**

The Agency states that, “[e]ffective July 17, 1997, the United States Environmental Protection Agency (“USEPA”) revised the national ambient air quality standard (“NAAQS”) for ozone from 0.120 parts per million to 0.080 parts per million, pursuant to its authority under Section 109 of the Clean Air Act (“CAA”).”<sup>3</sup> Statement at 1, *see* TSD at 4, 5. USEPA also revised the time period for measuring compliance with the standard from one hour to eight hours. Statement at 1-2, TSD at 4. The Agency argues that the revision “was based on extensive air pollution research that indicated ozone is more harmful when a person is exposed to it over a longer period of time even if the ozone concentration is lower.” Statement at 2; *see* TSD at 5. The Agency states that the eight-hour standard took effect on June 15, 2004 and that the one-hour standard was revoked one year later on June 15, 2005. Statement at 2, citing 40 C.F.R. 81; *see* TSD at 5.

The Agency states that “[o]zone is not emitted directly by most sources.” Statement at 2. Instead, precursors such as VOM, oxides of nitrogen, and carbon monoxide react to form ozone in the presence of direct sunlight and high ambient temperatures, particularly during the summer months. *Id.*, *see* TSD at 4. The Agency characterizes ozone as a “powerful oxidant” that readily reacts with a wide range of substances. Statement at 2, TSD at 4. The Agency claims that, “[i]n humans, ozone is an irritant to the respiratory system and may damage lung and other tissues. The damage can lead to impaired breathing and reduced immunity to disease for people in good health. The effects may be more severe for young children, the elderly, and people with preexisting diseases such as asthma, bronchitis, and emphysema.” TSD at 4-5, *see* Statement 2-3. The Agency also notes that ozone can damage plant tissue and other substances including rubber. TSD at 5, Statement at 3.

USEPA now regulates consumer and commercial products through a rule promulgated on September 11, 1998. TSD at 5, citing 40 C.F.R. 59 Subpart D; TSD at 5, 17. Use of these products results in solvent evaporation and the emission of VOM. TSD at 9. The USEPA rule limits the VOM content of 24 product categories of consumer and commercial products and is estimated to have reduced VOM emissions from those categories by 20 percent from uncontrolled levels. TSD at 5, 17, Statement at 3. Emissions attributable to those 24 categories, however, “account for only 48 percent of the consumer and commercial products emission

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<sup>3</sup> Under the revised NAAQS, both the Chicago and Metro East/St. Louis areas are designated as moderate nonattainment areas (NAA) for ozone. Statement at 2, TSD at 4. The Chicago NAA includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Goose Lake and Aux Sable Townships in Grundy County and Oswego Township in Kendall County. Statement at 2, TSD at 4. The Illinois portion of the Metro East/St. Louis NAA includes Jersey, Madison, Monroe, and St. Clair Counties. Statement at 2, TSD at 4.

inventory.” Statement at 3, TSD at 5-6, 17, citing Prop., Att. A(3) (Interim White Paper – Midwest Regional Planning Organization Candidate Control Measures, Source Category: Consumer and Commercial Products, MACTEC, December 1, 2005).

USEPA also regulates AIM coatings through rules promulgated on September 11, 1998. Statement at 3, TSD at 39, citing 40 C.F.R Part 59, Subpart D. “Emissions of VOM from this source category occur when the solvent carrying coating material evaporates and leave the coating material on the surface during application and drying.” TSD at 34, Statement at 7. “The current federal rule is estimated to reduce VOM emissions from AIM coatings by approximately 20% from uncontrolled levels.” TSD at 39; *see* Statement at 3.

The Agency states that, although Illinois regulates numerous large sources of VOM, “additional control measures are needed to achieve compliance with the eight-hour ozone NAAQS.” Statement at 4. The Agency indicates that, in reviewing the possibility of reducing VOM emissions from these source categories, it reviewed the findings of organizations including MACTEC, an environmental firm under contract to the Lake Michigan Air Directors Consortium, the OTC, and the California Air Resources Board (CARB). The Agency states that “OTC and CARB have drafted candidate measures for the reduction of VOM that go beyond the current VOM limits, and MACTEC, CARB, and USEPA have independently projected the potential reductions and the associated cost of additional control through these measures.” Statements at 5, TSD at 7.

The Agency argues that it proposed this rulemaking in order to meet the eight-hour ozone NAAQS by 2010 and to protect public health. Statement at 4, *see* TSD at 6. The Agency acknowledges that some of the expected reductions in VOM emission may “have already taken place due to nationwide compliance by many of the larger manufacturers of these products.” Statement at 5, *see* TSD at 60-61. However, the Agency claims that “adoption of these limits in Illinois will further the trend toward nationwide compliance, leading to much larger reductions.” Statement at 5. In addition, it is the Agency’s position “that further regulation of these source categories is an integral part of the state implementation plan for attainment of the NAAQS in Illinois.” TSD at 7.

In his prefiled testimony on behalf of the Agency, Mr. Davis expressed the understanding that that the Agency’s proposed regulation mirrors language that USEPA is now developing for consideration as national rules. Davis Test. at 3. He further testified, however, that, “[a]t the time the proposed regulation was submitted to the Board it was considered unlikely that national rules for these source categories would be finalized and in effect by January 1, 2009.” *Id.* Consequently, he states that the Agency determined to proceed with state rules for these specific categories in order to ensure an earlier effective date and meet ozone attainment goals. *Id.*

### **SOURCE OF AGENCY PROPOSAL**

In his prefiled testimony on behalf of the Agency, Mr. Davis stated that “[i]n drafting the proposed regulations, the Illinois EPA sought at all times to ensure that the regulation would be as consistent as possible with similar regulations in other parts of the country.” Davis. Test. at 2; *see* Tr.1 at 9. He emphasized that consistency allows uniform products to be sold in the various

regions of the United States and also limits manufacturers' costs for reformulation, packaging, and shipping. Davis Test. at 2; *see* Yost Test. at 4-5 (supporting uniform regulations). He further stated that the proposed rules governing consumer products and AIM coatings are based on rules currently in effect in the OTC states. Davis Test. at 3, *see* Tr.1 at 12, 43; *see also* Prop., Att. A(16) (OTC Model Rule for Consumer Products), Att. A(17) (OTC model rule for architectural coatings).

The Agency states that “[t]he OTC Model Rule for Consumer Products is based upon the CARB midterm measures for control of VOM in the source category and the associated background data for the CARB rules.” TSD at 18; *see* Statement at 7. The Agency further states that CARB developed significant technical documentation in its own rulemaking process and that “[t]he technical basis for the proposed VOC content limits lies within the framework that the CARB developed for its consumer products rules.” TSD at 18. The Agency notes that the proposed consumer products limits have been adopted in all of the OTC states and in California. *Id.* at 60.

With regard to AIM coatings, the Agency states that its proposal is based on OTC's AIM model rule. TSD at 39, citing Prop., Att. A(17). The Agency further states that “[t]he AIM OTC Model Rule and its VOM content limits were based on the affected coatings and VOM content limits in CARB's suggested control measures for AIM coatings so that the coating formulations of the eastern states in the OTC would be consistent with formulations being used in California.” TSD at 39, citing Prop., Att. A(13) (Staff Report for the Proposed Suggested Control Measures for Architectural Coatings (June 2000)); *see* Statement at 8. The Agency notes that the proposed consumer products limits have been adopted in all of the OTC states and in California. TSD at 60.

Testifying at the second hearing, Mr. Davis stated that the Agency drafts its proposed rules according to its own format so that its proposal is “not precisely the OTC model rule.” Tr.2 at 13, *see id.* at 14. Noting that the OTC updated its 2001 model rule with a 2006 version, he stated that the Agency's proposal “is probably closer to the 2006 and its limits, but I think a lot of the technical support might have come from earlier, and I believe that there wasn't much updating to that technical support for the 2006 ruling.” *Id.* at 13. Mr. Davis stated, however, that, when the Agency began drafting this proposal, “it was more based on 2001.” *Id.* at 12. Further addressing the two versions, Mr. Davis stated that “neither rule was the sole basis for our rule.” *Id.* at 14.

During the second hearing, the 2006 version of the OTC model rule was admitted into the record as Exhibit 3. Tr.2 at 21; *see* Exh.3; *see also* Prop., Att. A (16), (A)(17) (2001 model rules for consumer products and AIM coatings). In its post-hearing comments, the Agency stated that “the proposed regulation was not in fact based on the 2001 OTC Model Rule. The 2006 OTC Model Rule was used as a resource, in addition to input from affected industries, and the omission of the [2006] document from the documents relied upon submitted to the Board was inadvertent.” PC 3 at 1-2; *see* Prop., Att. A.

In its post-hearing comments, IERG states that the Agency apparently drew upon the 2006 OTC model rule in drafting the proposed rules. PC 4 at 1-2 (¶2). IERG further states that

the Agency did not refer to the 2006 version in its list of “Document Relied Upon” or in its TSD. PC 4 at 3 (¶6); *see Prop.*, Att. A. Also, IERG claims that the documents the Agency relied upon support adoption of the 2001 version and “do not provide the economic and technical justification to support adoption of OTC 2006.” PC 4 at 2 (¶2). IERG argues that, compared to the 2001 version, the 2006 version both regulates additional categories of products and changes exemptions. *Id.*; *see generally* Exh. 3. Mr. Davis testified that, although the two versions are structurally essentially the same, the 2006 version does make “significant changes.” Tr.2 at 18. Stating that this record “prompt[s] confusion” over the source of the Agency’s proposed rule, IERG “has concluded that the Illinois EPA relied upon emission reduction estimates and economic impact information developed for OTC 2001 but structured the rule to conform most closely to the more restrictive provisions of OTC 2006.” PC 4 at 4 (¶9).

During the second hearing, IERG noted that the Agency indicated its reliance upon a MACTEC interim white paper. Tr.2 at 15; *see Prop.*, Att A(3) (Interim White Paper – Midwest Regional Planning Organization Candidate Control Measures, Source Category: Consumer and Commercial Products, MACTEC, December 1, 2005); *see also* PC 4 at 5 (¶12). IERG suggests that the 2005 date of this white paper indicates that it is based upon the 2001 version of the model rule, which had an effective date of January 1, 2005. PC 4 at 5 (¶13), citing Exh. 3. IERG claims that the Agency cited this white paper as the basis for the claim that implementing the OTC model rule will result in a 14.2% reduction in VOM emissions. PC 4 at 5(¶12).

Mr. Davis indicated that MACTEC regularly updates its white papers and often estimates the emission reductions that can be obtained under various rules. *See* Tr.2 at 15-16. In its post-hearing comments, the Agency submitted the most recent white paper addressing consumer products made available by LADCO. PC 3, Att. 2 (Interim White Paper – Midwest RPO Candidate Control Measures, Source Category: Consumer and Commercial Products, March 10, 2006). The Agency argues that this updated version “is essentially unchanged in any way pertaining to questions posed at hearings. The estimated reductions for the OTC model rule for consumer products remain 14.2% beyond existing federal rules, and include the additional categories in the 2006 OTC model rule.” PC 3 at 2 (¶4). IERG claims that the Agency has clearly used the technical basis of the 2001 model rule to support adoption of the standards in the 2006 version. PC 4 at 6 (¶14).

IERG also noted that the Agency indicated its reliance upon a document prepared by E.H. Pechan and Associates. Tr.2 at 17-18; *see Prop.*, Att. A(18) (Control Measure Development Support Analysis of Ozone Transport Commission Model Rules; March 31, 2001). IERG argues that, “[b]ecause of its date, it is clear that the Pechan Document was also prepared in reference to OTC 2001, and not OTC 2006.” PC 4 at 6 (¶15). IERG also argues that the Agency offered the Pechan document to support its claim that adoption of the OTC would result in a 14.2% emission reduction. *Id.*, *see* Tr.2 at 18.

IERG states that the 2006 version of the OTC model rule and the Agency’s proposal both provide VOM content standards for a number of product categories beyond those regulated by the 2001 version of the OTC model rule. PC 4 at 7 (¶17); *see* Exh. 3. IERG identifies those additional categories: a new category for “Adhesive Removers,” including the subcategories of “Floor or Wall covering,” “Gasket or Thread Locking,” “General Purpose,” and “Specialty” (PC

4 at 7 (¶17), Exh. 3 at 21, *see* Tr.2 at 23-24); under the existing category of “Adhesives,” new subcategories of “Contact General purpose” and “Contact Special purpose” (PC 3 at 7 (¶17), Exh. 3 at 21, *see* Tr.2 at 24); under the existing category of “Air Fresheners,” the subcategory of “Solids/gel” changes to “Solids/semisolids” (PC 4 at 7 (¶17), Exh. 3 at 21, *see* Tr.2 at 24); a new category for “Anti-static Product, non-aerosol” (PC 4 at 7 (¶17), Exh. 3 at 21, *see* Tr.2 at 24); a new category for “Electrical Cleaner” (PC 4 at 7 (¶17), Exh. 3 at 22, *see* Tr.2 at 24); a new category for “Electronic Cleaner” (PC 4 at 7 (¶17), Exh. 3 at 21, *see* Tr.2 at 24); a new category for “Fabric Refresher,” including subcategories for both “Aerosol” and “non Aerosol” (PC 4 at 7 (¶17), Exh. 3 at 22, *see* Tr.2 at 24); a new category for “Footwear or Leather Care Products,” including subcategories for “Aerosol,” “Solid,” and “other forms” (PC 4 at 8 (¶17), Exh. 3 at 22, *see* Tr.2 at 24); a new category for “Graffiti Remover,” including subcategories for “Aerosol” and “non-Aerosol” (PC 4 at 8 (¶17), Exh. 3 at 22, *see* Tr.2 at 25); a new category for “Hair Styling Products,” including subcategories for “aerosol and pump sprays” and “all other forms” (PC 4 at 8 (¶17), Exh. 3 at 23, *see* Tr.2 at 25); a new category for “Shaving Gel” (PC 4 at 8 (¶17), Exh. 3 at 23, *see* Tr.2 at 25); a new category for “Toilet/Urinal Care,” including subcategories for “Aerosol” and “non-Aerosol” (PC 4 at 8 (¶17), Exh. 3 at 23, *see* Tr.2 at 25); and a new category for “Wood Cleaner,” including subcategories for “Aerosol” and “non-Aerosol” (PC 4 at 8 (¶17), Exh. 3 at 23-24, *see* Tr.2 at 25). Mr. Davis explained that some of the products had been included in the 2001 model rule and that “they’re in more specific categories than were in the previous rule.” Tr.2 at 25-26. He cited “hairstyling products” and “shaving gels” as products that “might have been” under other more general categories in the 2001 version. *See* Tr.2 at 26.

IERG also notes that the 2006 version of the OTC model rule changes the scope of an exemption. Specifically, IERG states that, under the 2001 model rule, exemption (i) applies to both air fresheners and insecticides containing at least 98% para-dichlorobenzene. PC 4 at 8 (¶18); *see* Exh. 3 at 29-30, Tr.2 at 26-27. IERG further states that, in the 2006 version of the model rule, the exemption applies only to insecticides containing at least 98% para-dichlorobenzene. PC 4 at 8 (¶18); *see* Exh. 3 at 29-30; *see* Tr.2 at 26-27. By modifying this exemption, IERG claims that the Agency seeks to “subject[] additional products to regulation.” PC 4 at 8 (¶18). IERG argues that,

[s]ince it is clear that the Illinois EPA based the technical support for the rulemaking on OTC 2001, including the emission reductions achieved by OTC 2001, and OTC 2001 did not include a number of categories and modified at least one exemption, IERG asserts that the Illinois EPA’s goal of VOM emissions reduction could be achieved without these additional categories and without the modified exemption. PC 4 at 8-9 (¶19).

In its post-hearing comment, the Agency emphasizes that “the most recent and up to date research conducted by LADCO and Mactec does indeed include the additional categories mentioned at the hearing.” PC 3 at 2 (¶6); *see* PC 3, Att. 2 (Mar. 10, 2006 white paper). The Agency recognizes that the most recent white paper does not change the expected percent reduction in VOM emissions and attributes the absence of change to various factors:

(1) the amount of reductions from the additional categories relative to the total amount of reduction from the regulation was insufficient to change the overall total percentage; (2) the percent reduction from the additional categories was comparable to the percent reduction from the existing categories, thus not affecting the overall percentage; and (3) as stated in the hearing, some of the additional categories were already included in the existing categories, but were given more specific categories and limits.” PC 3 at 2 (¶6), *see* Tr.2 at 27.

IERG expresses confusion with this statement by the Agency. *See* PC 4 at 9 (¶20). IERG suggests that the Agency expects a 14.2% reduction in VOM emissions from both the 2001 OTC model rule and the 2006 version regulating additional product categories. *Id.* IERG states that, “[i]f this is true, it would lead one to question the rationale for including the categories at all.” *Id.* Acknowledging that the categories in the 2006 version may be more specific than the 2001 version, IERG asks the Board to require the Agency submit information demonstrating that the 2006 categories provide a more detailed categorization of the products. *Id.*

IERG during the second hearing also inquired about the source of the Agency’s data regarding the reduction of VOM emissions expected to result from adoption of the proposal. Tr.2 at 28-29. The Agency explained that its table estimating VOM reductions originated from “a technical support document from the state of New Jersey that listed all of the categories that were in the rule at that time.” Tr.2 at 29; *see* TSD at 30-33 (Table 2.7.1 Estimated VOM Reductions for Consumer Products). The Agency further explained that it used the New Jersey document because it presented the data concisely. Tr.2 at 29. The Agency did not perform an independent analysis of emissions reductions for its consumer products rule. *Id.*

At the second hearing, IERG suggested that, because the New Jersey emission data is dated 2003, it “covered only the [product] categories in the 2001 OTC rule.” Tr.2 at 29. The Agency acknowledged that this New Jersey data did not include all of the product categories that were added in the 2006 version of the model rule. *Id.* at 30. The Agency further acknowledged that it did not fully consider emissions reductions associated with these additional categories. *Id.* at 30-31. Stating that it relied on New Jersey, MACTEC, LADCO, and California because it lacks the resources to perform case-by-case analyses, the Agency indicated that it does not “know the emission reductions to be achieved from adding these additional categories.” *Id.* at 31; *see* PC 4 at 11 (¶23). IERG asks that Board require the Agency to demonstrate the way in which it considered these additional categories and how reduced emission from them plays any part in the projected 14.2% emission reduction. PC 4 at 11 (¶23).

In its post-hearing comments, the Agency addressed whether its proposal depends upon the product categories added to the 2006 version of the model rule to achieve the projected emissions reductions. PC 3 at 2 (¶7). The Agency stated that “[i]ndeed these categories were included in the estimated 14.2% emission reduction.” *Id.* The Agency argues that, “[s]ince the additional categories were considered in the LADCO/Mactec white papers, a case by case determination for emission reductions from the addition categories would not be necessary.” *Id.* at 2-3 (¶8). IERG responds that, because the Agency’s Table 2.7.1 claims a 14.2% reduction in VOM emissions without including the categories added in the 2006 OTC model rule, “[i]t,

therefore, follows that emission reductions from the new categories were not considered by the Illinois EPA, and are not necessary to achieve the required 14.2% emission reductions that the Illinois EPA is relying upon to attain its air quality goals.” PC 4 at 10 (¶21). IERG argues that the Agency has not adequately explained why it included the additional product categories in its proposal and requests that the Board require the Agency to that information. *Id.*

IERG notes that the 2006 version of the OTC model rule denotes with an asterisk and affects certain compounds that “may or may not cause or contribute to formation of ozone, but due to their hazardous nature are included in this model for convenience of the states, which may regulate such compounds under other states authorities.” Exh. 3 at 1 (Note 1); *see* PC 4 at 11 (¶24), Tr.2 at 34-38. IERG notes that the 2006 model rule marked with an asterisk a number of categories of compounds, including “products containing ozone-depleting compounds.” PC 4 at 12 (¶24); *see* Exh. 3 at 27-29, Tr.2 at 34-35. IERG agrees with the Agency conclusion that these products ozone-depleting compounds are “regulated for other purposes in Illinois and federally and should not be included in an area source VOM regulation.” PC 3 at 3 (¶9); *see* PC 4 at 12 (¶25). However, IERG argues that “no information has been provided by the Illinois EPA as to its basis for including (or not excluding) other new subcategories of compounds that, as the OTC stated, may not cause or contribute to the formation of ozone.” PC 4 at 12 (¶25).

IERG also questioned whether the Agency had considered compliance costs associated with regulating the additional product categories included in the 2006 model rule. Tr.2 at 31-32. The Agency indicated that it did so only to the extent that the resources it relied upon had done so. *Id.* at 32. The Agency similarly indicated that it relied on those resources for an evaluation of the costs involved in the change to the exemption for para-dichlorobenzene. *Id.* at 33. The Agency also expressed the belief that it had done no independent analysis of the compounds marked with an asterisk in the 2006 version of the OTC model rule, which “may or may not cause or contribute to formation of ozone.” Tr.2 at 33-34; *see* Exh. 3 at 1, 27-29.

In its post-hearing comments, the Agency responds that product categories added in the 2006 version of the model rule “have in fact been researched by CARB for similar rulemakings, and this support was the basis for their inclusion in the OTC Model Rule.” PC 3 at 3 (¶10). The Agency states that it “did not include analyses from each of the amendment phases of the California rulemakings as the documentation to be submitted would have been voluminous.” *Id.* The Agency provides the address of a CARB Web site, which it claims “contains a total record of a rulemaking to consider amendment to CARB consumer products rules, and includes technical support and economic analysis for the toilet and urinal care products category.” *Id.* The Agency states that, in addition to providing a citation to this Website, it can formally submit these documents “if the Board so orders.” *Id.* The Agency states that it also relied upon the most recent MACTEC white paper for economic analysis of its proposal. *Id.*; *see id.*, Att. 2.

The Agency states that it will not perform its own technical analysis of the product categories added to the 2006 version of the OTC model rule. PC 3 at 3 (¶11). The Agency suggests that CARB documents and other analyses submitted to the Board provide adequate support for its proposal. *Id.* The Agency also restates its view that “the addition of the categories in question did not significantly impact the overall percentage reduction or economic impact of the proposed regulation.” *Id.* The Agency concludes by stating that “the Board should

move forward with adoption of the proposed rule given that appropriate technical and economic analyses have been performed for all affected categories.” *Id.*

IERG notes that the Agency does not intend to perform an independent economic analysis of its proposal. PC 4 at 14 (¶29). IERG also notes that, while the TSD lists compliance costs of \$800 per ton of VOM reduced, the updated MACTEC white paper shows that product categories beyond the 2001 version of the OTC model rule “have a control cost of \$4,800/ton.” *Id.*, citing PC 3, Att. 2 at 2, 6. IERG characterizes this as a “significant economic impact.” PC 4 at 14 (¶29). IERG disputes the Agency’s claim “that appropriate technical and economic analyses have been performed for all affected categories.” PC 4 at 14-15 (¶30). IERG asks the Board to consider three options “as solution for curing the deficiencies of the Illinois EPA’s proposed rule.” PC 4 at 15 (¶31). First, “[t]he Board could choose to simply wait for the USEPA to adopt the federal consumer and commercial products rule. . . . [T]he USPEA is currently devoting its resources to evaluating the economics of OTC 2006, and anticipates issuing a proposed rule in late summer or early fall of 2008.” *Id.* Second,

“[t]he Board could choose to proceed to First Notice on OTC 2001. Reliance on OTC 2001 would mean deletion of the categories added in OTC 2006 and use of exemption (i) from OTC 2001. This action is justified because . . . both the technical and economic support for the Illinois EPA’s proposal that is currently in the record is for OTC 2001 only, and the 14.2% emission reduction derived from OTC 2001 was used by the Illinois EPA in its attainment demonstration. *Id.*

Third, “[t]he Board could choose to require the Illinois EPA to provide sufficient support and justification so that the Board may meaningfully consider the technical feasibility and economic reasonableness of OTC 2006.” *Id.*

### **Potentially Affected Sources**

The Agency states that “[t]he geographic region subject to the proposed regulations for VOM emitting sources is the entire State of Illinois.” TSD at 11. The Agency claims that manufacturers prefer statewide or even regional standards for consistency, keeping “the number of product lines to a minimum.” *Id.* “There are numerous manufacturing facilities which produce VOM emitting products and still more retail operations which sell VOM emitting products.” *Id.*

With regard to consumer and commercial products, “[t]he proposed regulations affects anyone who sells, supplies, offers for sale, or manufactures any of the products in Table 2.2.1 [of the TSD] in Illinois.” TSD at 33; *see* TSD at 10-14 (Table 2.2.1). With regard to AIM Coatings, “[t]he proposed regulation affects anyone who sells, supplies, offers for sale, or manufactures any of the products in Table 3.2.1 [of the TSD] in Illinois.” TSD at 45; *see* TSD at 35-37 (Table 3.2.1). The TSD includes an Appendix A listing approximately 600 potentially affected manufacturers in Illinois. Statement at 11; *see* TSD, Att. A.

### **Technical Feasibility of Controls**

The Agency states that, in examining the issue of reducing VOM emissions from consumer and commercial products and AIM coatings, it reviewed the work of three organizations that have examined the issue: “MACTEC, an environmental firm that is under contract with the Lake Michigan Air Directors Consortium (“LADCO”), the Ozone Transport Commission (“OTC”), and organization in the eastern United States created under the CAA, and the CARB.” Statement at 4-5. The Agency indicates that OTC and CARB have drafted candidate measures for reducing VOM emissions and that MACTEC, CARB, and USEPA have independently projected emissions reductions and associated costs. *Id.* at 5.

### **Consumer and Commercial Products**

While the Agency views the CARB rules and the OTC model rule to be “very similar” to one another” and considers both of them to be technologically feasible, it considers the OTC model rule preferable on the basis of economic factors. TSD at 17. The Agency emphasizes that the OTC Model Rule for Consumer products took effect on January 1, 2005 in 13 U.S. jurisdictions. *Id.* The Agency states that the OTC model rule is based upon the CARB rule and its background data. *Id.* at 18. The Agency further states that CARB generated “[s]ignificant technical documentation” and that the technical basis for the Agency’s proposal fits within CARB’s technical framework. *Id.* The Agency claims that both CARB and the OTC have concluded that these proposed limits on the VOM content of consumer and commercial products “are technologically feasible.” *Id.* at 33; *see* Davis Test. at 4.

The Agency, “acknowledging that the OTC Model Rule for Consumer Products is currently in place . . . and having reviewed the technical support for the proposed VOM limits created by CARB, is confident that the OTC model rule is technologically feasible for the State of Illinois.” TSD at 18. The Agency stresses that, “[s]ince many national manufacturers of products subject to this rule will have already made modifications to their products in order to comply with the new regulations in the OTC states and in California, it is reasonable to consider that similar reformulations could be made, or have already been made, for products for sale in Illinois.” *Id.*

The Agency argues that the technology to control VOM emissions from this product category “is largely available or being developed.” Statement at 12. The Agency claims that “[t]he most effective approaches for achieving reductions in this source category are reformulating products currently employing VOM solvents and replacing them with water based formulations or formulations employing acetone or other exempt solvents.” TSD at 16, Statement at 6-7, 12. The Agency further argues that “[o]ther measures for reduction in this category include increasing the solids content of products, formulating non-VOM propellants for products, or changing the valves, containers, or delivery systems of the products to reduce VOM content. TSD at 16, Statement at 7, 12. Also, the Agency states that CARB has published formulas complying with its regulations for many specific products. TSD at 33, citing Prop., Att. A(4) (Example Complying Formulas, 2004 Consumer Product Amendments, State of California Air Resources Board (March 18, 2004)).

The Agency accordingly views the technological feasibility of its proposal primarily in terms of its economic impact. TSD at 18. The Agency claims that the OTC model rule is the

language preferred both by LADCO and the states in the Midwest Regional Planning Organization (MRPO).<sup>4</sup> TSD at 19. The Agency states that, by working with California and the jurisdictions in the MRPO and the OTC, its regulations will be technologically feasible and will “also have a greater acceptability and a lesser economic impact. . . .” *Id.*

### **AIM**

The Agency states that AIM coatings proposal is also based upon the OTC model rule, which is derived from CARB’s suggested control measures. TSD at 39, citing Prop., Att. A(13) (Staff Report for the Proposed Suggested Control Measures for Architectural Coatings (June 2000)). The Agency states that it drew on the OTC model rule in order to be consistent with the 13 OTC jurisdictions and California. *See* TSD at 39.

The Agency, “acknowledging that the AIM OTC Model Rule is currently in place . . . and having reviewed the technical support for the proposed VOM limits created by CARB, is confident that the OTC model rule is technologically feasible for the State of Illinois.” TSD at 39. The Agency argues that, “[s]ince many national manufacturers of products subject to this rule will have already made modifications to their products in order to comply with the new regulations in the OTC states and in California, it is reasonable to consider that similar reformulations could be made, or have already been made, for products for sale in Illinois.” *Id.* at 40. The Agency states that manufacturers will most often comply with these proposed regulations by changing the formulation of products available to consumers or contractors. *Id.* at 39-40. “This involves using water based formulations, using formulations employing acetone or other exempt solvents, or increasing the coating material content of the coating.” TSD at 39.

The Agency accordingly views the technological feasibility of its proposal primarily in terms of its economic impact. TSD at 40. The Agency claims that the AIM OTC Model Rule is the emission reduction measure preferred both by LADCO and the states in the MRPO. *Id.* The Agency states that, by working with California and the jurisdictions in the MRPO and the OTC, its regulations will be technologically feasible and will “also have a greater acceptability and a lesser economic impact. . . .” *Id.*

### **Summary of Technical Feasibility**

The Agency emphasizes that the proposed limits for both consumer products and AIM coating have been adopted in California and in the 13 OTC jurisdictions. TSD at 60. The Agency characterizes the technological feasibility of its proposal as “self-evident.” *Id.* at 61. The Agency acknowledges that the arguments by CARB and OTC for the feasibility of these limits predate the adoption of regulations. The Agency claims, however, that, “[s]ince complaint products in every affected category in the proposed regulation are currently being sold and are in use in all states of the OTC and California, no further evidence for technological feasibility is required.” *Id.*

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<sup>4</sup> The MRPO “consists of the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin.” TSD at 19.

## **Emissions Reductions**

Based on estimates by OTC and LADCO, the Agency expects that its proposal will result in significant reductions of VOM emissions from the used of consumer products and AIM coating. Statement at 5, Davis Test. at 3.

For consumer products, the Agency's TSD includes a table detailing "anticipated reductions in VOM from each affected category and the percentage reduction in those categories." TSD at 29; *see* TSD at 30 (Table 2.7.1 Estimated VOM Emission Reductions for Consumer Products). The Agency claims that the figures in this table derive from a USEPA study and a number of CARB staff reports. TSD at 29. The Agency stresses that these staff reports are significant because they support the level of emissions control in the OTC model rule. *Id.* The Agency notes that the New Jersey Department of Environmental Protection compiled data from these reports into a single table for its own consumer products proposal. *Id.* at 30; *see* Prop., Att. A(10) (Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Amendments to Chemically Formulated Consumer Products, New Jersey Department of Environmental Protection, July 3, 2003). The Agency adjusted this data to account for Illinois' population and emissions inventory. TSD at 30; *see* Tr.1 at 9-10.

For consumer products, the Agency expects a 14.2% reduction in VOM emissions beyond those achieved by the current federal rule. Davis Test. at 4, TSD at 29, citing Prop., Att. A(3) (Interim White Paper – Midwest Regional Planning Organization Candidate Control Measures, Source Category: Consumer and Commercial Products, MACTEC, December 1, 2005). This represents "a reduction of approximately 17.72 tons of VOM per day, or around 6468 tons of VOM reduction per year in Illinois." Davis Test. at 4, Statement at 7, TSD at 29, citing Prop., Att. A(15) (Illinois Base Year Ozone Inventory for 2002 (June 2006)). That reduction equals nearly one percent of total statewide anthropogenic VOM emissions. Davis Test. at 4, Statement at 7, TSD at 29. In his prefiled testimony on behalf of the Agency, Mr. Davis acknowledged that "reduction estimates may be slight over estimates," as similar rules in California and the OTC jurisdictions may have caused national manufacturers to sell compliant products on a nationwide basis. Davis Test. at 3, *see* Statement at 5.

For AIM coatings, the Agency expects a 21% reduction in VOM emissions beyond those achieved by the federal rule. Davis Test. at 4, Statement at 8, TSD at 45. This represents "a reduction of approximately 12.21 tons of VOM per day or around 4456 tons of VOM annually." Davis Test. at 4, Statement at 8, TSD at 45. That reduction equals nearly one percent of total statewide anthropogenic VOM emissions. Davis Test. at 4, TSD at 45. In his prefiled testimony on behalf of the Agency, Mr. Davis acknowledged that "reduction estimates may be slight over estimates," as similar rules in California and the OTC jurisdictions may have caused national manufacturers to sell compliant products on a nationwide basis. Davis Test. at 3, *see* Statement at 5.

## **Cost Effectiveness of Controls**

### **Consumer and Commercial Products**

The Agency states that CARB through various staff reports has evaluated the cost effectiveness of the level of control in its “Midterm Measures II.” TSD at 21, citing Prop., Att. A(12) (CAL. CODE REGS., tit. 17, §§94507-09, 94513-15 (2000)). The Agency describes these measures as the basis of the OTC model rule. TSD at 21. The Agency states that the New Jersey Department of Environmental Protection merged data from these CARB reports into a single table supporting its own consumer and commercial products rule. *Id.* at 21, citing Prop., Att. A(10) (Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Amendments to Chemically Formulated Consumer Products, New Jersey Department of Environmental Protection (July 3, 2003)); *see id.* at 22-27 (Table 2.6.1 Cost Effectiveness Estimates for Consumer Products). This table provides low, high, and average estimates for the cost of control on the bases of dollars per pound of VOM controlled and dollars per average unit of a specified product. *Id.* at 22.

The Agency states that “[t]his economic analysis assumes that the sales and uses of consumer products in Illinois are comparable to those in California and the OTC states.” TSD at 28. The Agency claims that the costs of controlling VOM emission from consumer and commercial products may actually be lower than previous estimates. *Id.* at 21, 28. “Manufacturers of affected products and their consumers have already assumed a great deal of the costs because research and development of alternative compliant products, including alternative delivery systems, reformulations, and repackaging, has been conducted for the similar rules in other regions of the United States.” Davis Test. at 5; *see* TSD at 21, 28, Tr.1 at 11. The Agency notes that CARB’s cost estimates do “not account for the potential savings of manufacturers that produce more than one type of regulated product.” TSD at 28. The Agency suggests that one-time costs such as “research, development, formula ingredient changes, and packaging changes” may be spread among a number of products. *Id.*, citing Prop., Att. A(6) (Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulation (Sept. 10, 1999)).

The Agency states that CARB intentionally sought conservative costs estimates “by using worst case economic scenarios for reformulation of products.” TSD at 28. As one example, The Agency states that CARB assumed the use of higher-cost compliant propellants where alternatives may result in lower costs. *Id.* In addition, the Agency stresses that its proposal includes compliance options such as the Alternative Control Plan and Innovative Products provisions, both of which may lower control costs. *Id.* at 29; *see supra* at 14-16 (summarizing proposed Sections 223.240, 223.245).

The Agency states that MACTEC estimated costs of controlling VOM emissions from consumer and commercial products in the LADCO region. TSD at 20. The Agency elaborates that MACTEC based its estimates on figures from CARB and the OTC. *Id.*, Davis Test. at 4. The Agency states that CARB estimated the costs of its “Midterm Measures II” rule, the VOM content limits of which are reflected in the OTC model rule. TSD at 20-21, citing Prop. Att. A(12) (CAL. CODE REGS., tit. 17, §§94507-09, 94513-15 (2000)); *see* Tr.1 at 11. “This is the basis for MACTEC’s assumption that the CARB and OTC figures for control costs should approximate control costs of the LADCO region.” TSD at 21. MACTEC estimates that control costs for consumer and commercial products will be approximately \$800 per ton of VOM. TSD at 20, citing Prop., Att. A(3) (Interim White Paper – Midwest Regional Planning Organization

Candidate Control Measures, Source Category: Consumer and Commercial Products, MACTEC, December 1, 2005); *see* Davis Test. at 4.

### **AIM Coatings**

The Agency states that CARB in various staff reports evaluated the cost effectiveness of its AIM coatings rule drafted in 2000. TSD at 41, citing Prop., Att. A(13) (Staff Report for the Proposed Suggested Control Measure for Architectural Coatings (June 2000)). The Agency further states that this CARB rule forms the basis of the OTC model rule. TSD at 41. The Agency indicates that its cost effectiveness data relies upon a New Jersey document supporting the OTC model rule for AIM, which in turn relies upon a CARB staff report for its own suggested AIM control measures. *Id.* That data is separated into coating categories and lists the estimated producer cost per gallon for each of them. TSD at 42 (Table 3.5.1), citing Prop. Att. A(14) (Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Amendments to Architectural Coatings Rule, New Jersey Department of Environmental Protection (June 12, 2003)).

The Agency's data also addresses the cost effectiveness of the controls in the proposed regulation. That data draws on a New Jersey technical support document based upon CARB reports. TSD at 42, citing Prop., Att. A(14). The Agency states that the data assumes that sales and use of AIM coatings in Illinois is comparable to those in California and the OTC states and is "modified to reflect slight differences in the AIM OTC Model Rule." TSD at 42-43. The data is separated into various coating categories lists the estimated cost effectiveness for each of them on the basis of dollars per pound of VOM reduced. *Id.* at 43 (Table 3.5.2), citing Prop., Att. A(14). The Agency estimates that control costs for AIM coating products will be approximately \$6400 per ton of VOM. Davis Test. at 5; *see generally* TSD 41-44.

The Agency claims that the costs of controlling VOM emission from AIM coatings may actually be lower than previous estimates. TSD at 43. "Many regulated coatings are manufactured for national sales, and therefore no changes will be necessary for sales in Illinois." TSD at 43; *see* Davis Test. at 5. The Agency notes that CARB's cost estimates do "not account for potential savings of manufacturers that produce more than one type of regulated product." TSD at 43-44. The Agency suggests that one-time costs such as "research, development, formula ingredient changes, and packaging changes" may be spread among a number of products. *Id.* at 44. The Agency also claims that the cost of materials commonly used in reformulating coatings may have decreased, as greater demand for those products could generate economies of scale in their production. *Id.*, citing Prop., Att. A(13).

### **Board Findings**

Throughout the course of this proceeding, the Agency has stressed that it based its proposal on the OTC model rules for consumer and commercial products and AIM coatings, which are in turn based upon California provisions. With regard to consumer and commercial products, OTC amended its 2001 model rule with a 2006 version. *See* Exh. 3 (highlighting changes from previous version), Prop. Att. A(16). The 2006 version of the OTC model rule includes VOM content standards for a number of product categories in addition to those

regulated by the previous version. The 2006 version also changes the scope of an exemption, which may subject additional products to regulation. The Agency itself has characterized these changes as significant.

The Board notes that the Agency did not perform an independent analysis of the VOM emission reductions expected from its proposed consumer products rule. The Agency also has acknowledged that it relied upon data compiled by the New Jersey Department of Environmental Protection that does not include all of the product categories that were added in the 2006 version of the model rule. Furthermore, the Agency has indicated that it does not know the emission reduction to be achieved by adding these product categories from the 2006 OTC model rule to its proposal. In this regard, the Board notes that the Agency expects a 14.2% reduction in VOM emissions both from the 2001 version and the 2006 version that regulates additional product categories. Also, the Board notes that the record does not, either in terms of emissions reduction or compliance costs, clearly demonstrate the effect of changing an exemption in the 2006 version.

The Board acknowledges that the product categories in the 2006 version of OTC model rule may itemize some or all of the products in the 2001 version more specifically into a larger number of categories. The Agency has referred to two of the new categories that may have been regulated under more general categories in the 2001 version of the model rule. Nonetheless, the Agency has not persuasively demonstrated that the additional categories in the 2006 version result to any extent from such a recategorization.

The Board also acknowledges the Agency's claim that CARB has analyzed the product categories added to the 2006 version of the model rule. The Agency stated that this analysis forms the basis for including those categories in the 2006 version. The Agency also provided an address of a CARB Web site regarding consumer products rules. Effectively recognizing that this Web address did not place these supporting documents directly into the record of this proceeding, the Agency indicated that it would file those documents with the Board if ordered to do so.

Consequently, for the purpose of first-notice publication, the Board will omit from the Agency's proposal the product categories and subcategories for which VOM content standards were added by the 2006 version of the OTC model rule. Also for the purpose of first-notice-publication, the Board will not amend the single exemption modified by the subsequent version. Whether in the form of CARB documents for which the Board has supplied a Web address or any other information, the Board invites the Agency and any other participant to submit first-notice comments on the technical feasibility and economic reasonableness of including these product categories and that exemption at second notice.

In all other regards, the Board finds the proposed amendments technically feasible and economically reasonable. The Board adopts the Agency's proposal, amended as described in the preceding paragraph and by the Agency's three *errata* sheets. In addition, the Board makes additional technical corrections that do not merit discussion.

## CONCLUSION

The Board proposes for first notice regulations intended to reduce VOM emissions from consumer products and AIM products. Substantively, the Board is largely adopting the Agency's proposal, including changes as described above and as reflected in three *errata* sheets submitted by the Agency. *See Errata 1, Errata 2, Errata 3.*

Publication of the proposed amendment in the *Illinois Register* will start a period of at least 45 days during which any person may file public comments with the Clerk of the Board at the address provided above. As noted above, persons may also file comments electronically through COOL at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

## ORDER

The Board directs the Clerk to cause publication of the following proposed amendments in the *Illinois Register* for first notice.

**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER**

PART 223

STANDARDS AND LIMITATIONS FOR ORGANIC MATERIAL EMISSIONS FOR AREA  
SOURCES

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223.270	Reporting Requirements
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223.280	Calculating Illinois Sales
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#### SUBPART C: ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

Section	
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223.305	Applicability
223.307	Definitions for Subpart C
223.310	Standards
223.320	Container Labeling Requirements
223.330	Reporting Requirements
223.340	Compliance Provisions and Test Methods
223.350	Alternative Test Methods
223.360	Methacrylate Traffic Coating Markings
223.370	Test Methods

AUTHORITY : Implementing Section 10 [415 ILCS 5/10] and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/27 and 28].

SOURCE: Adopted at \_ Ill . Reg. \_\_\_\_, effective \_\_\_\_\_

#### SUBPART A : GENERAL PROVISIONS

##### **Section 223.100 Severability**

If any Section, subsection, or clause of this Part is found invalid, such finding shall not affect the validity of this Part as a whole or any Section, subsection, or clause not found invalid.

##### **Section 223.105 Abbreviations and Acronyms**

Unless otherwise specified within this Part, the abbreviations used in this Part shall be the

same as those found in 35 Ill. Adm. Code 211. The following abbreviations and acronyms are used in this Part:

ACP	Alternative Control Plan
Act	Environmental Protection Act [415 ILCS 5/1 et seq .]
Agency	Illinois Environmental Protection Agency
ASTM	American Society for Testing and Materials
BAAQMD	Bay Area Air Quality Management District
CARB	California Air Resources Board
°C	Degrees Celsius
CFCs	Chlorofluorocarbons
CO <sub>2</sub>	Carbon Dioxide
°F	Degrees Fahrenheit
FDA	United States Food and Drug Administration
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 through 136y
FRP	Fiberglass reinforced plastic
HVOM	High Volatility Organic Material
HCFCs	Hydrochlorofluorocarbons
HFCs	Hydrofluorocarbons
LVP-VOM	Low Vapor Pressure – Volatile Organic Material
MVOM	Medium Volatility Organic Material
N <sub>2</sub>	Nitrogen
N <sub>2</sub> O	Nitrous Oxide
OER	Original Equipment Manufacturer
PCBTF	Parachlorobenzotrifluoride
ROC	Reactive Organic Compound
ROG	Reactive Organic Gas
SCAQMD	South Coast Air Quality Management District
USEPA	United States Environmental Protection Agency
VOM	Volatile Organic Material

### **Section 223.120      Incorporations by Reference**

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) 40 CFR 59, Subpart D, Appendix A, Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings, 64 Fed. Reg. 35002 (June 30, 1999).
- b) 40 CFR 59, Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products, 69 Fed. Reg. 18803 (April 4, 2004).
- c) 40 CFR 60, Appendix A, Method 24, Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings,

36 Fed. Reg. 24877 (December 23, 1971).

- d) 40 CFR 82, Subpart A, Appendix A, Class I controlled Substances, 68 Fed. Reg. 42892 (July 18, 2003) and Appendix B, Class II Controlled Substances, 68 Fed. Reg. 2859 (January 21, 2003)
- e) 29 CFR 1910.1200(d)(4), Hazard Communication, 61 Fed. Reg. 9245 (March 7, 1996).
- f) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959.
  - 1) ASTM E119-05a, Standard Test Methods for Fire Tests of Building Construction and Materials, approved November 1, 2005.
  - 2) ASTM Designation D523-89 (1999) Standard Test Method for Specular Gloss, approved May 10, 1999.
  - 3) ASTM D1640-03, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature, approved December 1, 2003.
  - 4) ASTM Method D3912-95 (2001) Test Method for Chemical Resistance of Coating Used in Light-Water Nuclear Power Plants, reapproved 2001.
  - 5) ASTM Method D4082-02, Test Method for Effects of Radiation on Coatings Used in Light-Water Nuclear Power Plants, approved 2002.
  - 6) ASTM Designation D4214-98, Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films, approved August 10, 1998.
  - 7) ASTM D1613-03, Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products, approved October 1, 2003.
  - 8) ASTM E84-07, Standard Test Method for Surface Burning Characteristics of Building Materials, approved 2007.
  - 9) ASTM D4359-90 (2006) Standard Test Method for Determining Whether a Material is a Liquid or a Solid, reapproved 2006.
  - 10) ASTM E260-96 (2006) Standard Practice for Packed Column Gas Chromatography, reapproved 2006.
  - 11) ASTM E2167-01, "Standard Guide for Selection and Use of Stone Consolidants" (see section 4, Stone Consolidant), approved 2001.

- 12) ASTM C836-06, Specification for High Solids Content, Cold Liquid-Applied Elastomeric Waterproofing Membrane for Use with Separate Wearing Course, approved 2006.
  - 13) ASTM D86-07b, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved 2007.
- g) South Coast Air Quality Management District, 21865 Copley Dr., Diamond Bar CA 91765.
- 1) South Coast Air Quality Management District (SCAQMD) Method 304-91, Determination of Volatile Organic Compounds in Various Materials, revised February 1996.
  - 2) SCAQMD Method 303-91, Determination of Exempt Compounds, revised February 1993.
  - 3) SCAQMD Method 318-95, Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction, approved July 1996.
- h) Bay Area Air Quality Management, District Office, 939 Ellis Street, San Francisco, CA 94109
- 1) Bay Area Air Quality Management District (BAAQMD) Method 43, Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials, proposed amendment February 4, 2004.
  - 2) BAAQMD Method 41, Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride, proposed amendment February 4, 2004.
- i) California Air Resources Board (CARB) Method 310, Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products, amended May 5, 2005. California Air Resources Board, 1001 I Street, P.O. Box 2815, Sacramento, CA 95812.
- j) SCAQMD Rule 1174, Ignition Method Compliance Certification Protocol (adopted October 5, 1990).
- k) Cal. Admin. Code title 17 § 94509(h), Standards for Consumer Products (2005).
- l) California Code, Health and Safety Code, § 41712(h)(2) (2005).
- m) Cal. Admin. Code title 17, Article 4, Alternate Control Plan §§ 94540-94555, (1996).

- n) Cal. Admin. Code title 17 § 94511, Innovative Products (1997).
- o) Cal. Admin. Code title 17 § 94503.5, Innovative Products (1996).
- p) 7 USC 136 to 136y, FIFRA, Environmental Pesticide Control, published January 19, 2004, in Supplement III of the 2000 Edition of the United States Code.
- q) Federal Specification MMM-A-181D, Adhesives, Phenol, Resorcinol, or Melamine Base (1980).

## SUBPART B: CONSUMER AND COMMERCIAL PRODUCTS

### **Section 223.200 Purpose**

The purpose of this Subpart is to limit emissions of volatile organic materials (VOMs) by requiring reductions in the VOM content of consumer and commercial products.

### **Section 223.201 Applicability**

Except as provided in Section 223.230, below, this Subpart shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2009, for use in Illinois.

### **Section 223.203 Definitions for Subpart B**

The definitions contained in this Section apply only to the provisions of this Subpart. Unless otherwise defined herein, the definitions of terms used in this Subpart shall have the meanings specified for those terms in 35 Ill. Adm. Code Part 211.

“Adhesive” means for purposes of this Subpart, any product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For “Contact Adhesive,” adhesive does not include units of product, less packaging, which consist of more than one gallon. For “Construction, Panel, and Floor Covering Adhesive,” and “General Purpose Adhesive,” “Adhesive” does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. This limitation does not apply to aerosol adhesives.

“Adhesive Remover” means a product designed to remove adhesives from either a specific substrate or a variety of substrates. “Adhesive Remover” does not include products that remove adhesives intended exclusively for use on humans or animals.

For the purpose of this definition and “Adhesive Remover” subcategories 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 purpose of forming a bond.

“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.

“Gasket or Thread Locking Adhesive Remover” means a product designed or labeled to remove gaskets or thread locking adhesives. Products 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.”

“General Purpose Adhesive Remover” means a product designed or labeled to remove cyanoacrylate adhesives as well as non-reactive adhesives or residue from a variety of substrates. “General Purpose Adhesive Remover” includes, but is not limited to the following: products that remove thermoplastic adhesives, pressure sensitive adhesives, dextrine or starchbased adhesives, casein glues, rubber or latex-based adhesives, and products that remove stickers, decals, stencils, or similar materials. “General Purpose Adhesive Remover” does not include “Floor or Wall Covering Adhesive Remover.”

“Specialty Adhesive Remover” means a product designed to remove reactive adhesives from a variety of substrates. Reactive adhesives include adhesives that require a hardener or catalyst in order for the bond to occur. Examples of reactive adhesives include, but are not limited to epoxies, urethanes, and silicones. “Specialty Adhesive Remover” does not include “Gasket or Thread Locking Adhesive Remover.”

“Aerosol adhesive” means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. This does not 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 Spray.”

“Agricultural use” means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers that are intended for home use, use in structural pest control, industrial or institutional use. For the purposes of this definition only:

“Home use” means use in a household or its immediate environment;

“Structural pest control” means a use requiring a license under the Structural Pest Control Act, 225 ILCS 235;

“Industrial use” means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites; or

“Institutional use” means use within the lines of, or on property necessary for the operation of, buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

“Air Freshener” means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. “Air Freshener” does not include products that are used on the human body, products that function primarily as cleaning products as indicated on a product label, “Toilet/Urinal Care Products,” disinfectant products claiming to deodorize by killing germs on surfaces, or institutional and 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 listed under Section 223.205(a) or are a “LVP-VOM.”

“All Other Forms” means all consumer product forms for which no form-specific VOM standard is specified. Unless specified otherwise by the applicable VOM standard, “All Other Forms” include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

“Alternative Control Plan or ACP” means any emissions averaging program approved by the Agency pursuant to the provisions of this regulation.

“Antimicrobial Hand or Body Cleaner or Soap” means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. This includes, but is not limited to, antimicrobial hand or body washes/cleaners, foodhandler hand washes, healthcare personnel hand washes, pre-operative skin

preparations and surgical scrubs. “Antimicrobial Hand or Body Cleaner or Soap” does not include prescription drug products, antiperspirants, “Astringent/Toner,” deodorant, “Facial Cleaner or Soap,” “General-use Hand or Body Cleaner or Soap,” “Hand Dishwashing Detergent” (including antimicrobial), “Heavy-duty Hand Cleaner or Soap,” “Medicated Astringent/Medicated Toner,” and “Rubbing Alcohol.”

“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.”

“Appurtenance” means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to, bathroom and kitchen fixtures, cabinets, concrete forms, doors, elevators, fences, hand railings, heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools, lampposts, partitions pipes and piping systems, rain gutters and downspouts, stairways, fixed ladders, catwalks and fire escapes, and window screens.

“Architectural Coating” means for purposes of this Subpart, a coating to be applied to stationary structures or the appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered “Architectural Coatings” for the purposes of this rule.

“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 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 an automotive wax or polish which is designed to protect and improve the appearance of automotive paint surfaces, and is a solid at room temperature, and contains 0% water by formulation.

“Automotive Instant Detailer” means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

“Automotive Rubbing or Polishing Compound” means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

“Automotive Wax, Polish, Sealant, or Glaze” means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle’s painted surfaces. This includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. The term 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 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. This does not include fluids placed by the manufacturer in a new vehicle.

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

“Bug and Tar Remover” means a product labeled to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: biological-type residues such as insect carcasses, tree sap and road grime, such as road tar, roadway paint markings, and asphalt.

“Carburetor or Fuel-Injection Air Intake Cleaners” means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages, excluding products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

“Carpet and Upholstery Cleaner” means a 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. This includes, but is not limited to, products that make fabric protectant claims. The term does not include “General Purpose Cleaners,” “Spot Removers,” vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

“Charcoal Lighter Material” means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. The term does not include any of the following: electrical starters and probes, metallic cylinders using paper tinder, natural gas, propane, and fat wood.

“Colorant” means for purposes of this Subpart, any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

“Construction, Panel, and Floor Covering Adhesive” means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of structural and building components that include, but are not limited to, beams, trusses, studs, paneling (including, but not limited to, drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, flooring or subflooring; or floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass. The term 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.

“Consumer Product” means a chemically formulated product used by household and institutional consumers including, but not limited to detergents, cleaning compounds, polishes, floor finishes, cosmetics, personal care products; home, lawn, and garden products, disinfectants, sanitizers, aerosol paints, and automotive specialty products. “Consumer Product” does not include other paint products, furniture coatings, or architectural coatings. As used in this rule, “Consumer Products” shall also refer to “Aerosol Adhesives,” including “Aerosol Adhesives” used for consumer, industrial or commercial uses.

“Contact Adhesive” means an adhesive that is designed for application to both surfaces to be bonded together, and is allowed to dry before the two surfaces are placed in contact with each other, and forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and 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. The term 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 is used to bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch or less in thickness to any porous or nonporous surface, and is sold in units of product, less packaging, that contain more than eight fluid ounces, or is used in automotive

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

“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. This includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

“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, excluding products designed to be used exclusively on humans or animals, or any house dust mite product. For the purposes of this definition only:

“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.

“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.

“Deodorant” means:

For products manufactured before January 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.

For products manufactured on or after January 1, 2009: any product including, but not limited to, aerosol, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can be used on or applied to the human axilla to provide a scent and/or minimize odor. 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

For products manufactured before January 1, 2009, a “Personal Fragrance Product” with 20 percent or less fragrance.

For products manufactured on or after January 1, 2009, a “Personal Fragrance Product” with 20 percent or less fragrance, that is designed for application all over the human body to provide a scent. 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 bacterium, virus, or another microorganism on or in living man or other living animals) but not including equipment used for the application of pesticides when sold separately therefrom.

“Disinfectant” means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.). “Disinfectant” does not include any of the following products designed solely for use on human or animals, products designed for agricultural use, products designed solely for use in swimming pools, therapeutic tubs, or hot tubs, 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.

“Double Phase Aerosol Air Freshener” means an aerosol air freshener with the liquid contents in two or more distinct phases that require 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. This 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. The term 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.

“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. The term 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. The term 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 to clean the casings or housings of electronic equipment.

“Energized Electrical Cleaner” means a product that meets both of the following criteria:

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

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

This does not include “Electronic Cleaner.”

“Engine Degreaser” means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

“Existing Product” means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale in Illinois prior to January 1, 2009, or any subsequently introduced identical formulation.

“Fabric Protectant” means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term 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.

“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 U.S.C. 136 et seq.).

“Facial Cleaner or Soap” means a cleaner or soap designed primarily to clean the face including, but not limited to facial cleansing creams, semisolids, liquids, lotions, and substrate-impregnated forms. The term does not include prescription drug products, “Antimicrobial Hand or Body Cleaner or Soap,” “Astringent/Toner,” “General-use Hand or Body Cleaner or Soap,” “Medicated Astringent/Medicated Toner,” or “Rubbing Alcohol.”

“Fat Wood” means pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling, excluding any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

“Faux Finishing Coating” means a coating labeled and formulated as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

“Flea and Tick Insecticide” means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

“Flexible Flooring Material” means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

“Floor Coating” means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces, which may be subjected to foot traffic.

“Floor Polish or Wax” means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include “Spray Buff Products,” products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

“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. This 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. The term 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 Refresher,” products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than two millimeters thick.

“Fragrance” means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two mm of Hg at 20°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 for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. The term does not include “Dusting Aids,” “Wood Cleaners” and products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

“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. The term does not include contact adhesives, construction, panel, and floor covering adhesives, 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 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. This includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces, and does not include “General Purpose Degreasers” and “Electronic cleaners.”

“General Purpose Degreaser” means any product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. This does not include “Engine Degreaser,” “General Purpose Cleaner,” “Adhesive Remover,” “Electronic Cleaner,” “Electrical Cleaner,” “Energized Electrical Cleaner,” “Metal Polish/Cleanser,” products used exclusively in “Solvent Cleaning Tanks or Related Equipment,” or products that are sold exclusively to establishments which manufacture or construct goods or commodities, and labeled “not for retail sale.”

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

“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, including, but not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. The term does not include prescription drug products, “Antimicrobial Hand or Body Cleaner or Soap,” “Astringent/Toner,” “Facial Cleaner or Soap,” “Hand Dishwashing Detergent” (including antimicrobial), “Heavy-duty Hand Cleaner or Soap,” “Medicated Astringent/Medicated Toner,” or “Rubbing Alcohol.”

“Glass Cleaner” means a cleaning product designed primarily for cleaning surfaces made of glass. The term 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 nonfabric substrates. The term does not include “Paint Remover or Stripper,” “Nail Polish Remover,” or “Spot

Remover.” Products labeled for dual use as both a paint stripper and graffiti remover are considered “Graffiti Removers.”

“Hair Mousse” means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

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

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

“Hair spray” means:

For products manufactured before January 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

For products manufactured on or after January 1, 2009, a consumer product that is applied to styled hair, and is designed or labeled to provide sufficient rigidity, to hold, retain and/or (finish) the style of the hair for a period of time. This 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. This does not include spray products that are intended to aid in styling but does not provide finishing of a hairstyle. For the purposes of this Subpart, “Finish” or “Finishing” means the maintaining and/or holding of previously styled hair for a period of time. For the purposes of this Subpart, “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 January 1, 2009, that is designed or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling and/or sculpting of the hair. This includes, but is not limited to hair balm, clay, cream, creme, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hairstyle, and leave-in volumizers, detanglers and/or conditioners that make styling claims. This does not include “Hair Mousse” “Hair Shine,” “Hair Spray,” or shampoos and/or conditioners that are rinsed from the hair prior to styling. For the purposes of this Subpart, “Finish” or “Finishing” means the maintaining and/or holding of previously styled hair for a period

of time. For the purposes of this Subpart, “Styling” means the 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. The term does not include prescription drug products, “Antimicrobial Hand or Body Cleaner or Soap,” “Astringent/Toner,” “Facial Cleaner or Soap,” “General-use Hand or Body Cleaner or Soap,” “Medicated Astringent/Medicated Toner” or “Rubbing Alcohol.”

“Herbicide” means a pesticide 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.

“High Volatility Organic Material (HVOM)” or “High Volatility Organic Compound” means any volatile organic material or volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (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.

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

“Industrial use” means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

“Insecticide” means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are for agricultural use, for a use which requires a structural pest control license under the Structural Pest Control Act, 225 ILCS 235, or 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 manufactures, transports, or sells goods or commodities, or provides services for profit, or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. “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. This 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.

“Lacquer” means for purposes of this Subpart, a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

“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 Product” means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This 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 Section 223.260 aerosol “Lawn and Garden Insecticides” may claim to kill insects or other arthropods.

“Liquid” means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in Section 223.120, including any subsequent amendments or an equivalent method approved by the California Air Resources Board. This 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. This does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are sold exclusively to establishments which manufacture or construct goods or commodities, and labeled “not for retail sale.”

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

“LVP-VOM” or “LVP-VOC” means a chemical “material” or “mixture” or “compound” that contains at least one carbon atom and meets one of the following:

Has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310; or

Is a chemical “material” or “compound” with more than 12 carbon atoms, or a chemical “mixture” comprised solely of “material” or a “compound” with more than 12 carbon atoms as verified by formulation data, and the vapor pressure and boiling point are unknown; or

Is a chemical “material” or “compound” with a boiling point greater than 216°C, as determined by CARB Method 310; or

Is the weight percent of a chemical “mixture” that boils above 216°C, as determined by CARB Method 310.

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

“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. This includes, but is not limited to, clarifiers and substrate-impregnated products. The term does not include hand, face, or body cleaner or soap products, “Astringent/Toner,” cold cream, lotion, antiperspirants, or products that must be purchased with a doctor’s prescription.

“Medium Volatility Organic Material (MVOM)” or “Medium Volatility Organic Compound (MVOC)” means any volatile organic material or volatile organic compound that exerts a vapor pressure greater than two mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

“Metal Polish /Cleanser” means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To “improve the appearance” means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. This includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. The term does not include “Automotive Wax, Polish, Sealant or Glaze,” wheel cleaner, “Paint Remover or Stripper,” products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

“Mist Spray Adhesive” means 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 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 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. The term does not include “Multi-purpose Dry Lubricants,” “Penetrants,” or “Silicone-based Multi-purpose Lubricants.”

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

“Nail Polish” means 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 any carbon atoms.

“Nonresilient Flooring” means flooring of a mineral content which is not flexible. This 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.

“Oven Cleaner” means any cleaning product designed to clean and to remove dried food deposits from oven walls.

“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. This does not include “Multi-purpose Solvents,” paint brush cleaners, products designed and labeled exclusively as “Graffiti Removers,” and hand cleaner products that claim to remove paints and other related coatings from skin.

“Penetrant” means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. The term 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. This 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 and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term “Pesticide” will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

“Photograph Coating” means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.

“Pressurized Gas Duster” means a pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of surfaces that cannot be cleaned with solvents. This does not include “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 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 this Section 223.203 and in the limits in Section 223.205(a).

“Product Form” for the purpose of complying with Section 223.270 only, means the applicable form which most accurately describes the product's dispensing form as follows:

A = Aerosol Product

S = Solid

P = Pump Spray

L = Liquid

SS = Semisolid

O = Other

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

“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.

“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 applicable Illinois Laws or Regulations.

“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 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. This does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

“Rubbing Alcohol” means 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.

“Rust Preventive Coating” means a coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces and labeled as specified in Section 223.320(f).

“Sanding Sealer” means for purposes of this Subpart, a clear or semi-transparent wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A “Sanding Sealer” that also meets the definition of a “Lacquer” is not included in this category, but it is included in the “Lacquer” category.

“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. This does not include roof cements and roof sealants, insulating foams, removable caulking compounds, clear/paintable/water resistant caulking compounds, floor seam sealers, products designed exclusively for automotive uses, or sealers that are applied as continuous coatings. The term also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

For the purposes of this definition only, “removable caulking compounds” means a compound which temporarily seals windows or doors for three to six month time intervals, and “clear/paintable/water resistant caulking compounds” means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

“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. The term does not include “Shaving Gel.”

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

“Silicone-based Multi-purpose Lubricant” means any lubricant which is designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and designed and labeled for general purpose lubrication, or for use in a wide variety of applications. The term 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.

“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 Section 223.120, or an equivalent method approved by the California Air Resources Board.

“Special Purpose Spray Adhesive” means an aerosol adhesive that meets any of the following definitions:

“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.

“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 E260-96, incorporated by reference in Section 223.120, or from product formulation data or an equivalent method approved by the CARB.

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

“Automobile Headliner Adhesive” means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

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

“Laminate Repair/Edgebanding Adhesive” means an aerosol adhesive designed for:

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

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

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

“Automotive Engine Compartment Adhesive” means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 - 275 degrees F.

“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. This does not include “Dry Cleaning Fluid,” “Laundry Prewash,” 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 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-181D (Type 1, Grade A), and MIL-A-4605 (Type A, Grade A and Grade C), per the Federal Consumer Products Regulation 40 CFR59 Subpart C.

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

“Tire Sealant and Inflation” means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

“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 toilet or urinals in vehicles such as buses, recreational motor homes, boats, ships, and aircraft. This does not include “Bathroom and Tile Cleaner” or “General Purpose Cleaner.”

“Type A Propellant” means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

“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. This 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.

“VOM Content” means, for purposes of this Subpart, except for charcoal lighter products, the total weight of VOM in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to Section 223.285(a) and (b).

For charcoal lighter material products only,

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

Certified Emissions = The emissions level for products approved by the Agency under Section 223.220, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

Certified Use Rate = The usage level for products approved by the Agency under Section 223.220, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

For purposes of Subpart C of this Part, “VOM Content” means the weight of VOM per volume of coating, calculated according to the procedures specified in subsection 223.340(a).

“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, excluding “Fabric Protectants”.

“Wax” means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). This 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.

“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. The term does not include “Dusting Aid,” “General Purpose Cleaner,” “Furniture Maintenance Product,” “Floor Wax Stripper,” “Floor Polish or Wax,” or products designed and labeled exclusively to preserve or color wood.

“Wood Floor Wax” means wax-based products for use solely on wood floors.

#### **Section 223.205      Standards**

- a) Except as provided in Section 223.207, Section 223.230, Section 223.240, or Section 223.245, no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer product manufactured on or after January 1, 2009, which contains VOMs in excess of the limits specified below:

<b>Affected Product</b>	<b>% VOM by Weight</b>
1) Adhesives - Aerosol	
A) Mist Spray	65
B) Web Spray	55
C) Special Purpose Spray Adhesives	
i) Mounting, Automotive Engine Compartment, and Flexible Vinyl	70
ii) Polystyrene Foam and Automotive Headliner	65
iii) Polyolefin and Laminate Repair /Edgebanding	60
2) Adhesives - Construction, Panel, and Floor Contact	15
3) Adhesives - General Purpose	10

4)	Adhesives – Structural Waterproof	15
5)	Air Fresheners	
	A) Single-Phase Aerosol	30
	B) Double Phase Aerosol	25
	C) Liquids / Pump Sprays	18
	D) Solids / Gel	3
6)	Antiperspirants	
	A) Aerosol	40 HVOM 10 MVOM
	B) Non-Aerosol	0 HVOM 0 MVOM
7)	Automotive Brake Cleaners	45
8)	Automotive Rubbing or Polishing Compound	17
9)	Automotive Wax, Polish, Sealant, or Glaze	
	A) Hard Paste Waxes	45
	B) Instant Detailers	3
	C) All Other Forms	15
10)	Automotive Windshield Washer Fluids	35
11)	Bathroom and Tile Cleaners	
	A) Aerosol	7
	B) All Other Forms	5
12)	Bug and Tar Remover	40
13)	Carburetor or Fuel-Injection Air Intake Cleaners	45
14)	Carpet and Upholstery Cleaners	

	A) Aerosol	7
	B) Non-Aerosol (Dilutables)	0.1
	C) Non-Aerosol (Ready-to-Use)	3.0
15)	Charcoal Lighter Material	see Section 223.220
16)	Cooking Spray – Aerosol	18
17)	Deodorants	
	A) Aerosol	0 HVOM 10 MVOM
	B) Non-Aerosol	0 HVOM 0 MVOM
18)	Dusting Aides	
	A) Aerosol	25
	B) All Other Forms	7
19)	Engine Degreasers	
	A) Aerosol	35
	B) Non-Aerosol	5
20)	Fabric Protectants	60
21)	Floor Polishes / Waxes	
	A) Products for Flexible Flooring Materials	7
	B) Products for Nonresilient Flooring	10
	C) Wood Floor Wax	90
22)	Floor Wax Strippers	see Section 223.209
23)	Furniture Maintenance Products	
	A) Aerosol	17

	B) All Other Forms Except Solid or Paste	7
24)	General Purpose Cleaners	
	A) Aerosol	10
	B) Non-Aerosol	4
25)	General Purpose Degreasers	
	A) Aerosol	50
	B) Non-Aerosol	4
26)	Glass Cleaners	
	A) Aerosol	12
	B) Non-Aerosol	4
27)	Hair Mousses	6
28)	Hairshines	55
29)	Hairsprays	55
30)	Hair Styling Gels	6
31)	Heavy Duty Hand Cleaner or Soap	8
32)	Insecticides	
	A) Crawling Bug (Aerosol)	15
	B) Crawling Bug (All Other Forms)	20
	C) Flea and Tick	25
	D) Flying Bug (Aerosol)	25
	E) Flying Bug (All Other Forms)	35
	F) Foggers	45
	G) Lawn and Garden (Aerosol)	20

H)	Lawn and Garden (All Other Forms)	3
I)	Wasp and Hornet	40
33)	Laundry Prewash	
A)	Aerosols / Solids	22
B)	All Other Forms	5
34)	Laundry Starch Products	5
35)	Metal Polishes / Cleansers	30
36)	Multi-Purpose Lubricant (Excluding Solid or Semi-Solid Products)	50
37)	Nail Polish Removers	75
38)	Non-Selective Terrestrial Herbicide - Non-Aerosol	3
39)	Oven Cleaners	
A)	Aerosols / Pump Sprays	8
B)	Liquids	5
40)	Paint Remover or Strippers	50
41)	Penetrants	50
42)	Rubber and Vinyl Protectants	
A)	Aerosol	10
B)	Non-Aerosol	3
43)	Sealants and Caulking Compounds	4
44)	Shaving Creams	5
45)	Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60
46)	Spot Removers	

- |     |                             |    |
|-----|-----------------------------|----|
| A)  | Aerosol                     | 25 |
| B)  | Non-Aerosol                 | 8  |
| 47) | Tire Sealants and Inflators | 20 |
| 48) | Undercoatings – Aerosols    | 40 |
- b) No person shall sell, supply, offer for sale, or manufacture for sale in Illinois, on or after January 1, 2009, any antiperspirant or deodorant that contains any compound listed below:
- Benzene
  - Ethylene Dibromide
  - Ethylene Dichloride
  - Hexavalent Chromium
  - Asbestos
  - Cadmium (metallic cadmium and cadmium compounds)
  - Carbon Tetrachloride
  - Trichloroethylene
  - Chloroform
  - Vinyl Chloride
  - Inorganic Arsenic
  - Nickel (metallic nickel and inorganic nickel compounds)
  - Perchloroethylene
  - Formaldehyde
  - 1,3-Butadiene
  - Inorganic Lead
  - Dibenzo-p-dioxins and dibenzofurans chlorinated in the 2,3,7 and 8 positions and containing 4,5,6 or 7 chlorine atoms

**Section 223.206      Diluted Products**

- a) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOM solvent prior to use, the limits specified in Section 223.205(a) must apply to the product only after the minimum recommended dilution has taken place.
- b) For purposes of subsection (a) of this Section, the minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.
- c) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOM solvent prior to use,

the limits specified in Section 223.205(a) shall apply to the product only after the maximum recommended dilution has taken place.

**Section 223.207      Products registered under FIFRA**

For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA, 7 U.S.C. Section 136-136y), incorporated by reference in Section 223.120, the effective date of the VOM standards will be January 1, 2010.

**Section 223.208      Requirements for Aerosol Adhesives**

- a) As specified in California Code section 41712(h)(2), incorporated by reference in Section 223.120, the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in Sections 223.207, 223.230, 223.240, 223.245, no person shall sell, supply, offer for sale, use or manufacture for sale in Illinois any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOMs in excess of the specified standard.
- b) “Special Purpose Spray Adhesive.”
  - 1) In order to qualify as a “Special Purpose Spray Adhesive” the product must meet one or more of the definitions for “Special Purpose Spray Adhesive” specified in Section 223.203, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one of the definitions for “Special Purpose Spray Adhesive,” then the product shall be classified as either a “Web Spray Adhesive” or a “Mist Spray Adhesive.”
  - 2) If a product meets more than one of the definitions specified in Section 223.203 for “Special Purpose Spray Adhesive” and is not classified as a “Web Spray Adhesive” or “Mist Spray Adhesive” under Section 223.203, then the VOC limit for the product shall be the lowest applicable VOM limit specified in Section 223.205(a).
- c) Effective January 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in Illinois any aerosol adhesive which contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.
- d) All aerosol adhesives must comply with the labeling requirements specified in Section 223.265.

**Section 223.209      Requirements for Floor Wax Strippers**

On or after January 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in Illinois any floor wax stripper unless the following requirements are met:

- a) 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 VOM concentration of three percent by weight or less;
- b) 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 VOM concentration of 12% by weight or less; and
- c) The terms “light build-up,” “medium build-up,” or “heavy build-up” are not specifically required, as long as comparable terminology is used.

**Section 223.210 Products Containing Ozone-Depleting Compounds**

- a) For any consumer product for which standards are specified under Section 223.205(a), no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer product which contains any of the following ozone-depleting compounds:
  - 1) Trichlorofluoromethane (CFC-11);
  - 2) Dichlorodifluoromethane (CFC-12);
  - 3) 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);
  - 4) 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114);
  - 5) Chloropentafluoroethane (CFC-115);
  - 6) Bromochlorodifluoromethane (Halon 1211);
  - 7) Bromotrifluoromethane (Halon 1301);
  - 8) Dibromotetrafluoroethane (Halon 2402);
  - 9) Chlorodifluoromethane (HCFC-22);
  - 10) 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123);
  - 11) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
  - 12) 1,1-dichloro-1-fluoroethane (HCFC-141b);

- 13) 1-chloro-1,1-difluoroethane (HCFC-142b);
  - 14) 1,1,1-trichloroethane; and
  - 15) Carbon tetrachloride.
- b) The requirements in subsection (a) of this Section, shall not apply to any product formulation existing as of January 1, 2009, that complies with Section 223.205(a) or is reformulated to meet Section 223.205(a), provided the ozone-depleting compound content of the reformulated product does not increase.
  - c) The requirements in subsection (a) of this Section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

**Section 223.220 Requirements for Charcoal Lighter Material**

- a) No person shall sell, supply, or offer for sale on or after January 1, 2009, any charcoal lighter material product unless at the time of the transaction the manufacturer can demonstrate that they have been issued an effective certification by the CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, Section 94509(h), of Title 17 of the California Code of Regulations, incorporated by reference in Section 223.120. This certification remains in effect for Illinois for as long as the CARB certification remains in effect.
- b) Alternatively, the person may demonstrate that at the time of the transaction the manufacturer had been issued a certification by an air pollution agency of another state and the USEPA that was current at the time of the transaction.
- c) Upon request by the Agency, a manufacturer claiming to have a certification as specified in subsection (a) of this Section, must submit to the Agency a copy of the certification decision, including all conditions applicable to the certification established by CARB or the air pollution agency of another state and the USEPA.

**Section 223.230 Exemptions**

- a) This regulation shall not apply to any consumer product manufactured in Illinois for shipment and use outside of Illinois, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of Illinois, and that the manufacturer or distributor has taken reasonable, prudent precautions to assure that the consumer product is not distributed to Illinois. This exemption shall not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in Illinois.

- b) For antiperspirants or deodorants, ethanol shall not be considered a medium volatility organic material (MVOM) for purposes of the content standards specified in Section 223.205(a).
- c) The VOM limits specified in Section 223.205(a) shall not apply to fragrances up to a combined level of two percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of two percent by weight contained in any antiperspirant or deodorant.
- d) The requirements of Section 223.205(a) for antiperspirants or deodorants shall not apply to those volatile organic materials that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20°C.
- e) The VOM limits specified in Section 223.205(a) shall not apply to any LVP-VOM.
- f) The requirements of Section 223.250 shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. Section 136/136y).
- g) The VOM limits specified in Section 223.205(a) shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOMs under Section 211.7150 or exempted under subsection 223.230(f).
- h) The VOM limits specified in Section 223.205(a) shall not apply to air fresheners and insecticides containing at least 98% para-dichlorobenzene;
- i) The VOM limits specified in Section 223.205(a) shall not apply to adhesives sold in containers of one fluid ounce or less.
- j) The VOM limits specified in Section 223.205(a) shall not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.

#### **Section 223.240      Innovative Product Exemption**

- a) Any manufacturer of consumer products which have been granted an Innovative Product exemption 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, both incorporated by reference in Section 223.120, shall be exempt from the limits in 223.205(a) for the period of time that the CARB Innovative Products exemption remains in effect, provided that

all consumer products within the CARB Innovative Products exemption are contained in the limits in 223.205(a) of this regulation. Any manufacturer claiming such an exemption on this basis must submit to the Agency a copy of the CARB Innovative Product exemption decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption.

- b) Recordkeeping and Availability of Requested Information.
  - 1) All information specified in the innovative product exemption approving an innovative product application shall be maintained by the responsible party for a minimum of three years after the expiration of such exemption. Such records shall be clearly legible and maintained in good condition during this period.
  - 2) The records specified in (1) of this subsection shall be made available to the Agency, or its authorized representative, upon request.

**Section 223.245      Alternative Compliance Plans**

- a) The purpose of this section is to provide an alternative method to comply with the limits in Section 223.205(a). This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate ACPs for consumer products, as specified in this Subpart. Only responsible ACP parties for consumer products may enter into an ACP.
- b) Any manufacturer of consumer products which have been granted an ACP Agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations, incorporated by reference in Section 223.120, shall be exempt from the limits in Section 223.205(a) for the period of time that the CARB ACP Agreement remains in effect provided that all ACP Products used for emissions credits within the CARB ACP Agreement are contained in Section 223.205(a) of this regulation. Any manufacturer claiming such an ACP Agreement on this basis must submit to the Agency a copy of the CARB ACP decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption.
- c) Recordkeeping and Availability of Requested Information.
  - 1) All information specified in the ACP Agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after the expiration of such ACP. Such records shall be clearly legible and maintained in good condition during this period.
  - 2) The records specified in (1) of this subsection shall be made available to the Agency or its authorized representative upon request.

**Section 223.250      Product Dating**

- a) Each manufacturer of a consumer product subject to Section 223.205(a) shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.
- b) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of Section 223.255(a), if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

Where:

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

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

- c) This date or code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in Section 223.205(a).
- d) The date or datecode information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable by simply removing the cap/cover without irreversibly disassembling any part of the container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.
- e) The requirements of this Section 223.250 shall not apply to products containing no VOMs (as defined in Section 223.203), or containing VOMs at 0.10% by weight or less.

**Section 223.255      Additional Product Dating Requirements**

- a) No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer. No manufacturer shall affix a date-code that is not true for the date the item was manufactured.
- b) Date code explanations for codes indicating the date of manufacture are public

information and may not be claimed as confidential.

**Section 223.260 Most Restrictive Limit**

- a) Products manufactured before January 1, 2009, and FIFRA-registered Insecticides manufactured before January 1, 2010.

Notwithstanding the definition of “product category” in Section 223.203, if anywhere on the principal display panel of any consumer product manufactured before January 1, 2009, or any FIFRA-registered insecticide manufactured before January 1, 2010, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in Section 223.205(a), then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.

- b) Products manufactured on or after January 1, 2009, and FIFRA-registered Insecticides manufactured on or after January 1, 2010.

Notwithstanding the definition of “Product Category” in Section 223.203, if anywhere on the container or packaging of any consumer product manufactured on or after January 1, 2009, or any FIFRA-registered insecticide manufactured on or after January 1, 2010, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in Section 223.205(a), then the lowest VOM limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.

**Section 223.265 Additional Labeling Requirements for Aerosol Adhesives, Adhesive Removers, Electronic Cleaners, Electrical Cleaners, Energized Electrical Cleaners, and Contact Adhesives**

- a) In addition to the requirements specified in Sections 223.250, 223.260, and 223.270, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this regulation shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2009.
- 1) The product category as specified in Section 223.205(a) or an abbreviation of the category shall be displayed.
  - 2) The applicable VOM standard for the product that is specified in Section 223.205(a) except for Energized Electrical Cleaner, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Agency, as provided in

Sections 223.240, and 223.245, and the product exceeds the applicable VOM standard;

- 3) If the product is included in an alternative control plan approved by the Agency, and the product exceeds the applicable VOM standard specified in Section 223.205(a), the product shall be labeled with the term “ACP” or “ACP product”;
  - 4) If the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate and/or application that qualifies the product as special purpose shall be displayed.
  - 5) If the manufacturer or responsible party uses an abbreviation as allowed by this Section 223.265, an explanation of the abbreviation must be filed with the Agency before the abbreviation is used.
- b) The information required in Section 223.250(a), shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.
  - c) No person shall remove, alter, conceal, or deface the information required in Subsection 223.265(a) prior to final sale of the product.

### **Section 223.270 Reporting Requirements**

- a) Upon request, a responsible party must submit to the Agency any of the following information within 90 days of a request by the Agency:
  - 1) The name, address, and telephone number of the responsible party and the name and telephone number of the party's designated contact person;
  - 2) For each product subject to Section 223.205(a):
    - A) The product brand name;
    - B) The product label;
    - C) The product category to which the consumer product belongs;
    - D) The applicable product form(s) listed separately; and
    - E) An identification of the product as a household product, institutional product, or both;

- 3) Separate Illinois sales in pounds per year, to the nearest pound, and the method used to calculate Illinois sales for each product form;
- 4) For information submitted by multiple companies, an identification of each company which is submitting relevant data separate from that submitted by the responsible party. All information from each company shall be submitted by the date requested by the Agency;
- 5) 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%):
  - A) Total Section 223.205(a) compounds;
  - B) Total LVP-VOMs that are not fragrances;
  - C) Total all other carbon-containing compounds that are not fragrances;
  - D) Total all non-carbon-containing compounds;
  - E) Total fragrance;
  - F) For products containing greater than two percent by weight fragrance:
    - i) The percent of fragrance that are LVP-VOMs; and
    - ii) The percent of fragrance that are all other carbon-containing compounds; and
  - G) Total paradichlorobenzene;
- 6) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:
  - A) Each Section 223.205(a) compound; and
  - B) Each LVP-VOM that is not a fragrance; and
- 7) If the product includes a propellant, the following:
  - A) The weight percent comprised of propellant for each product; and

- B) An identification of the type of propellant, such as Type A, Type B, Type C, or a blend of the different types.
- b) In addition to the requirements of subsection (a)(6) of this Section the responsible party shall report or shall arrange to have reported to the Agency, upon request, the net percent by weight of each ozone-depleting compound which is:
    - 1) Listed in Section 223.210(a); and
    - 2) Contained in a product subject to reporting under subsection (a) of this Section in any amount greater than 0.1% by weight.
  - c) In addition, all manufacturers must submit to the Agency, upon request, the information requested in subsections (a) and (b) above upon commencement of the selling of each such product in Illinois.

**Section 223.275 Special Recordkeeping Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride**

- a) The requirements of this Section shall apply to all responsible parties for consumer products that are subject to Section 223.205(a) and contain perchloroethylene or methylene chloride and Energized Electrical Cleaners as defined in Section 223.203, that contain perchloroethylene or methylene chloride. For the purposes of this Section, a product “contains perchloroethylene or methylene chloride” if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.
- b) For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:
  - 1) The product brand name and a copy of the product label with legible usage instructions;
  - 2) The product category to which the consumer product belongs;
  - 3) The applicable product form(s) (listed separately);
  - 4) For each product form listed in (3), the total sales in Illinois during the calendar year to the nearest pound (exclusive of the container or packaging), and the method used for calculating the Illinois sales; and
  - 5) The weight percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the consumer product.

**Section 223.280      Calculating Illinois Sales**

If direct sales data for Illinois are not available, sales may be estimated by prorating national or regional sales data by population.

**Section 223.285      Test Methods**

- a) Testing to determine compliance with the requirements of this Subpart shall be performed using CARB Method 310, Determination of Volatile Organic Materials (VOM) in Consumer Products, adopted September 25, 1997, and as last amended on May 5, 2005, which is incorporated by reference in Section 223.120.
- b) Compliance with the requirements of this Subpart may also be demonstrated through calculation of the VOM content from records of the amounts of constituents used to make the product pursuant to the following criteria:
  - 1) Accurate manufacturing records shall be kept for each day of production of the amount and chemical composition of the individual product constituents;
  - 2) Records required by (1), above, shall be kept for at least three years;
  - 3) For (4), below, the following shall apply:
    - A) “A” means the total net weight of unit excluding container and packaging;
    - B) “B” means the total weight of all VOMs per unit; and
    - C) “C” means the total weight of all exempted VOMs per unit;
  - 4) For the purposes of this section, the VOM content shall be calculated by subtracting the total weight of VOMs exempted under Section 223.230 per unit from the total weight of all VOMs per unit, divided by the total net weight of unit excluding container and packaging and the product, multiplied by 100 as in the formula below:
 
$$\text{VOM Content} = \frac{\text{B} - \text{C}}{\text{A}} \times 100$$
- 5) If product records appear to demonstrate compliance with the VOM limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this chapter.

- c) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90, which is incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.
- d) Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the SCAQMD Test Protocol Rule 1174 Ignition Method Compliance Certification Protocol dated February 28, 1991, which is incorporated by reference in Section 223.120.
- e) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-07b, 2007, which is incorporated by reference in Section 223.120 or an equivalent method approved by the CARB.
- f) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

## **SUBPART C: ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS**

### **Section 223.300 Purpose**

The purpose of this Subpart is to limit emissions of VOMs by requiring reductions in the VOM content of architectural and industrial maintenance coatings and required work practices to minimize VOM emissions in the application of architectural and industrial maintenance coatings to surfaces.

### **Section 223.305 Applicability**

This Subpart is applicable to any person who supplies, sells, offers for sale, or manufactures any architectural coating for use within the state of Illinois, as well as any person who applies or solicits the application of any architectural coating within Illinois. This Subpart does not apply to:

- a) Any architectural coating that is sold or manufactured for use outside of the state of Illinois or for shipment to other manufacturers for reformulation or repackaging.
- b) Any aerosol coating product.
- c) Any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

**Section 223.307 Definitions for Subpart C**

The definitions contained in this Section apply only to the provisions of this Subpart. Unless otherwise defined herein, the definitions of terms used in this Subpart shall have the meanings specified for those terms in 35 Ill. Adm. Code Part 211.

“Adhesive” means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

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

“Antenna Coating” means a coating labeled and formulated exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

“Antifouling Coating” means a coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an “Antifouling Coating,” the coating must be registered with the USEPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et. seq.)

“Appurtenance” means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to, bathroom and kitchen fixtures, cabinets, concrete forms, doors, elevators, fences, hand railings, heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools, lampposts, partitions pipes and piping systems, rain gutters and downspouts, stairways, fixed ladders, catwalks and fire escapes, and window screens.

“Architectural Coating” means a coating to be applied to stationary structures or the appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this rule.

“Bitumens” means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

“Bituminous Roof Coating” means a coating which incorporates “Bitumens” that is labeled and formulated exclusively for roofing.

“Bituminous Roof Primer” means a primer which incorporates “Bitumens” that is labeled and formulated exclusively for roofing.

“Bond Breaker” means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

“Calamine Recoaters” means a flat solvent born coatings formulated and recommended specifically for recoating calamine-painted ceilings and other calamine-painted substrates.

“Clear Brushing Lacquers” means clear wood finishes, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, which are intended exclusively for application by brush and which are labeled as specified in subsection 223.320(e).

“Clear Wood Coatings” means clear and semi-transparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.

“Coating” means for purposes of this Subpart, a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

“Colorant” means for purposes of this Subpart, a concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

“Concrete Curing Compound” means for purposes of this Subpart, a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

“Concrete Surface Retarder” means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.”

“Conversion Varnish” means a clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

“Dry Fog Coating” means a coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

“Exempt Compound” means a compound identified as exempt under the definition of Volatile Organic Material (VOM) in Part 211.7150. The exempt compound content of a coating shall be determined by USEPA Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91 (Revised February 1993), incorporated by reference on Section 223.120.

“Faux Finishing Coating” means a coating labeled and formulated as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

“Fire-Resistive Coating” means an opaque coating labeled and formulated to protect the structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials, that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing assemblies of structural materials into compliance with federal, state, and local building code requirements. The fire-resistive coating and the testing agency must be approved by building code officials. The fire-resistive coating shall be tested in accordance with ASTM Designation E 119-98, incorporated by reference in Section 223.120.

“Fire-Retardant Coating” means a coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency approved by building code officials for use in bringing building and construction materials into compliance with federal, state, and local building code requirements. The fire-retardant coating and the testing agency must be approved by building code officials. The fire-retardant coating shall be tested in accordance with ASTM Designation E 84-07, incorporated by reference in Section 223.120.

“Flat Coating” means a coating that is not defined under any other definition in this rule and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in Section 223.120.

“Floor Coating” means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces, which may be subjected to foot traffic.

“Flow Coating” means a coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

“Form-Release Compound” means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

“Graphic Arts Coating or Sign Paint” means a coating labeled and formulated for hand-application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

“High-Temperature Coating” means a high performance coating, excluding engine paint, labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

“Impacted Immersion Coating” means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

“Industrial Maintenance Coating” means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates exposed to one or more of the following extreme environmental conditions listed below, and labeled as specified in subsection 223.320(d):

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

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

Repeated exposure to temperatures above 121°C (250°F);

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

Exterior exposure of metal structures and structural components.

“Lacquer” means for purposes of this Subpart, a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

“Low-Solids Coating” means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

“Magnesite Cement Coating” means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by

water.

“Mastic Texture Coating” means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

“Metallic Pigmented Coating” means a coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, incorporated by reference in Section 223.120.

“Multi-Color Coating” means a coating that is packaged in a single container and that exhibits more than one color when applied in a single coat.

“Non-flat Coating” means a coating that is not defined under any other definition in this rule and that registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60 degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in Section 223.120 or an equivalent method approved by the California Air Resources Board.

“Non-flat - High Gloss Coating” means a non-flat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference into Section 223.120 or an equivalent method approved by the CARB.

“Nonindustrial Use” means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities, transportation infrastructure, including highways, bridges, airports and railroads, facilities used in mining activities, including petroleum extraction, utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.

“Nuclear Coating” means a protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusions by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure [ASTM Method D 4082-02], incorporated by reference in Section 223.120, relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed [ASTM Method D 3912-95, incorporated by reference in Section 223.120].

“Post-Consumer Coating” means a finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.

“Pre-Treatment Wash Primer” means a primer that contains a minimum of 0.5 acid, by weight, when tested in accordance with ASTM Designation D 1613-03, incorporated by

reference into Section 223.120 or an equivalent method approved by the CARB, that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

“Primer” means for purposes of this Subpart, a coating labeled and formulated for application to a substrate to provide a firm bind between the substrate and subsequent coats.

“Quick-Dry Enamel” means a non-flat coating that is labeled as specified in subsection 223.320(h) and that is formulated to have the following characteristics:

Is capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27°C (60 and 80°F); and

When tested in accordance with ASTM Designation D 1640-03, incorporated by reference in Section 223.120, or an equivalent method approved by the CARB, sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

Has a dried film gloss of 70 or above on a 60-degree meter.

“Quick-Dry Primer Sealer and Undercoater” means a “Primer,” “Sealer,” or “Undercoater” that is dry to the touch in 30 minutes and can be recoated in two hours when tested in accordance with ASTM Designation D 1640-03, incorporated by reference in Section 223.120 or an equivalent method approved by the CARB.

“Recycled Coating” means an architectural coating formulated such that not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.

“Residence” means areas where people reside or lodge, including, but not limited to, single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

“Roof Coating” means a nonbituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation. Metallic pigmented roof coatings which qualify as metallic pigmented coatings, shall not be considered in this category, but shall be considered to be in the metallic pigmented coatings category.

“Rust Preventive Coating” means a coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces and labeled as specified in Section 223.320(f).

“Sanding Sealer” means for purposes of this Subpart, a clear or semi-transparent wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications

of coatings. A “Sanding Sealer” that also meets the definition of a “Lacquer” is not included in this category, but it is included in the “Lacquer” category.

“Sealer” means for purposes of this Subpart, a coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

“Secondary Coating (Rework)” means a fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process.

“Shellac” means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*Lacifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

“Shop Application” means the application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production, or repairing process (*e.g.*, original equipment manufacturing coatings).

“Solicit” means to require for use or to specify by written or oral contract.

“Specialty Primer, Sealer, and Undercoater” means a coating labeled as specified in subsection 223.320(g) and that is formulated for application to a substrate to seal fire, smoke, or water damage; to condition excessively chalky surfaces, to seal in efflorescence, or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM Designation D 4214-98, incorporated by reference in Section 223.120 or an equivalent method approved by the CARB.

“Stain” means a clear, semitransparent, or opaque coating labeled and formulated to change the color of a surface, but not conceal the grain pattern or texture.

“Stone Consolidant” means a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. Stone Consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material. Stone Consolidants must be specified and used in accordance with ASTM E2167-01, incorporated by reference in Section 223.120.

Stone Consolidants are for professional use only and must be labeled as such, in accordance with the labeling requirements in Section 223.320.

“Swimming Pool Coating” means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

“Swimming Pool Repair and Maintenance Coating” means a rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

“Temperature-Indicator Safety Coating” means a coating labeled and formulated as a color-changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

“Thermoplastic Rubber Coating and Mastics” means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments and modifying resins.

“Tint Base” means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

“Traffic Marking Coating” means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berets, driveways, parking lots, sidewalks, and airport runways.

“Undercoater” means a coating labeled and formulated to provide a smooth surface for subsequent coatings.

“Varnish” means a clear or semitransparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final ~~final~~ sheen or gloss of the finish.

“VOC Content” shall have the same meaning as “VOM Content.”

“VOM Content” means the weight of VOM per volume of coating, calculated according to the procedures specified in subsection 223.340(a).

“Waterproofing Concrete/Masonry Sealers” means clear or pigmented sealers that are formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, or staining.

“Waterproofing Sealer” means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

“Wood Preservative” means a coating labeled and formulated to protect exposed wood from decay or insect attack that is registered with both the USEPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, et. seq.).

**Section 223.310 Standards**

a) VOM Content Limits: Except as provided in subsections 223.310(c), no person shall manufacture, blend, or repackage for sale within Illinois, supply, sell, or offer for sale within Illinois, or solicit for application or apply within Illinois, any architectural coating manufactured on or after January 1, 2009, which contains a VOM content in excess of the corresponding limit specified below:

<b>Coating Category</b>		<b>VOM Content Limit Grams/liter (Pounds/gallon)</b>	
1)	Flat Coatings	100	(0.8)
2)	Non-flat Coatings	150	(1.3)
3)	Non-flat-High Gloss Coatings	250	(2.1)
<b>Specialty Coatings</b>			
4)	Antenna Coatings	530	(4.4)
5)	Antifouling Coatings	400	(3.3)
6)	Bituminous Roof Coatings	300	(2.5)
7)	Bituminous Roof Primers	350	(2.9)
8)	Bond Breakers	350	(2.9)
9)	Calamine Recoaters	475	(4.0)
10)	Clear Wood Coatings		
A)	Clear Brushing Lacquers	680	(5.7)
B)	Lacquers (including lacquer sanding sealers)	550	(4.6)
C)	Sanding Sealers (other than lacquer sanding sealers)	350	(2.9)
D)	Varnishes	350	(2.9)

11)	Concrete Curing Compounds	350	(2.9)
	A) Concrete Surface Retarder	780g/l	(6.5)
12)	Conversion Varnish	725	(6.0)
13)	Dry Fog Coatings	400	(3.3)
14)	Faux Finishing Coatings	350	(2.9)
15)	Fire-Resistive Coatings	350	(2.9)
16)	Fire-Retardant Coatings		
	A) Clear	650	(5.4)
	B) Opaque	350	(2.9)
17)	Floor Coatings	250	(2.1)
18)	Flow Coatings	420	(3.5)
19)	Form-Release Compounds	250	(2.1)
20)	Graphic Arts Coatings (Sign Paints)	500	(4.2)
21)	High-Temperature Coatings	420	(3.5)
22)	Impacted Immersion Coating	780	(6.5)
23)	Industrial Maintenance Coatings	340	(2.8)
24)	Low-Solids Coatings	120	(1.0)
25)	Magnesite Cement Coatings	450	(3.8)
26)	Mastic Texture Coatings	300	(2.5)
27)	Metallic Pigmented Coatings	500	(4.2)
28)	Multi-Color Coatings	250	(2.1)
29)	Nuclear Coating	450	(3.8)
30)	Pre-Treatment Wash Primers	420	(3.5)

31)	Primers, Sealers, and Undercoaters	200	(1.7)
32)	Quick-Dry Enamels	250	(2.1)
33)	Quick-Dry Primers, Sealers and Undercoaters	200	(1.7)
34)	Recycled Coatings	250	(2.1)
35)	Roof Coatings	250	(2.1)
36)	Rust Preventative Coatings	400	(3.3)
37)	Shellacs		
	A) Clear	730	(6.1)
	B) Opaque	550	(4.6)
38)	Specialty Primers, Sealers, and Undercoaters	350	(2.9)
39)	Stains	250	(2.1)
40)	Stone Consolidants	450	(3.8)
41)	Swimming Pool Coatings	340	(2.8)
42)	Swimming Pool Repair and Maintenance Coatings	340	(2.8)
43)	Temperature-Indicator Safety Coatings	550	(4.6)
44)	Thermoplastic Rubber Coatings and Mastics	550	(4.6)
45)	Traffic Marking Coatings	150	(1.3)
46)	Waterproofing Concrete/Masonry Sealers	400	(3.3)
47)	Waterproofing Sealers	250	(2.1)
48)	Wood Preservatives	350	(2.9)

(Board Note: Conversion factor: one pound VOM per gallon (U.S.) = 119.95 grams per liter.)

- b) Limits are expressed in grams of VOM per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. "Manufacturers maximum

recommendation” means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

- c) Most Restrictive VOM Limit. If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Section 223.310(a), then the most restrictive VOM content limit shall apply. This provision does not apply to the coating categories specified in subsections (c)(1) through (c)(20) below:
- 1) Lacquer coatings (including lacquer sanding sealers);
  - 2) Metallic pigmented coatings;
  - 3) Shellacs;
  - 4) Fire-retardant coatings;
  - 5) Pretreatment wash primers;
  - 6) Industrial maintenance coatings;
  - 7) Low-solids coatings;
  - 8) Wood preservatives;
  - 9) High-temperature coatings;
  - 10) Temperature-indicator safety coatings;
  - 11) Antenna coatings;
  - 12) Antifouling coatings;
  - 13) Flow coatings;
  - 14) Bituminous roof primers;
  - 15) Specialty primers, sealers, and undercoaters.
  - 16) Conversion Varnish
  - 17) Calcimine Recoaters

- 18) Impacted Immersion Coatings
  - 19) Nuclear Coatings
  - 20) Thermoplastic Rubber Coating and Mastics
  - 21) Concrete Surface Retarder
- d) **Painting Practices.** All architectural coating containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These architectural coatings containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOM-containing materials used for thinning and cleanup shall also be closed when not in use.
  - e) **Thinning.** No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOM limit specified in Section 223.310(a).
  - f) **Rust Preventive Coatings.** No person shall apply or solicit the application of any rust preventive coating for industrial use unless such a rust preventive coating complies with the industrial maintenance coating VOM limit specified in Section 223.310(a). If the coating is also regulated under another Part, the more restrictive limit shall apply.
  - g) **Coatings Not Listed in Section 223.310(a).** For any coating that does not meet any of the definitions for the specialty coatings categories listed in Section 223.310(a), the VOM content limit shall be determined by classifying the coating as a flat coating, a non-flat coating, or a non-flat high-gloss coating, based on its gloss, as defined in Section 223.307, and the corresponding flat or non-flat coating limit shall apply.

### **Section 223.320      Container Labeling Requirements**

Each manufacturer of any architectural coatings subject to this Subpart shall display the information listed in subsections 223.320(a) through 223.320(j) on the coating container (or label) in which the coating is sold or distributed.

- a) **Date Code.** The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the Agency upon request.
- b) **Thinning Recommendations.** A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the

container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

- c) VOM or VOC Content. Each container of any coating subject to this rule shall display either the maximum or the actual VOM content of the coating, as supplied, or the actual VOM content including the maximum thinning as recommended by the manufacturer. VOM content shall be displayed in grams of VOM per liter of coating. VOM content displayed shall be calculated using product formulation data, or shall be determined using the test methods in subsection 223.340(b). The equations in subsection 223.340(a) shall be used to calculate VOM content. In each of the above cases, the term “VOC content” shall have the same meaning as “VOM content.”
- d) Industrial Maintenance Coatings. In addition to the information specified in subsection (a), (b), and (c), each manufacturer of any industrial maintenance coating subject to this rule shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions listed in subsections (d)(1) through (d)(3):
  - 1) "For industrial use only;"
  - 2) "For professional use only;"
  - 3) "Not for residential use" or "Not intended for residential use."
- e) Clear Brushing Lacquers. The labels of all clear brushing lacquers shall prominently display the statements “For brush application only,” and “This product must not be thinned or sprayed.”
- f) Rust Preventive Coatings. The labels of all rust preventive coatings shall prominently display the statement “For Metal Substrates Only.”
- g) Specialty Primers, Sealers, and Undercoaters. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed in subsection (g)(1) through (g)(5):
  - 1) “For blocking stains;”
  - 2) “For fire-damaged substrates;”
  - 3) “For smoke-damaged substrates;”
  - 4) “For water-damaged substrates;”
  - 5) “For excessively chalky substrates.”

- h) Quick Dry Enamels. The labels of all quick dry enamels shall prominently display the words “Quick Dry” and the dry hard time.
- i) Non-Flat High-Gloss Coatings. The labels of all non-flat high-gloss coatings shall prominently display the words “High Gloss.”
- j) Stone Consolidants: Effective January 1, 2010, the labels of all Stone Consolidants shall prominently display the statement “Stone Consolidant - For Professional Use Only”.

**Section 223.330 Record Keeping and Reporting Requirements**

- a) Clear Brushing Lacquers. Each manufacturer of clear brushing lacquers shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:
  - 1) The number of gallons of clear brushing lacquers sold in the state during the preceding calendar year; and
  - 2) The method used by the manufacturer to calculate state sales.
- b) Rust Preventive Coatings. Each manufacturer of rust preventive coatings shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:
  - 1) The number of gallons of rust preventive coatings sold in the state during the preceding calendar year; and
  - 2) The method used by the manufacturer to calculate state sales.
- c) Specialty Primers, Sealers, and Undercoaters. Each manufacturer of specialty primers, sealers, and undercoaters shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:
  - 1) The number of gallons of specialty primers, sealers, and undercoaters sold in the state during the preceding calendar year; and
  - 2) The method used by the manufacturer to calculate state sales.
- d) Toxic Exempt Compounds. For each architectural coating that contains perchloroethylene or methylene chloride, the manufacturer shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:

- 1) The product brand name and a copy of the product label with the legible usage instructions;
  - 2) The product category listed in Section 223.210(a) to which the coating belongs;
  - 3) The total sales in Illinois during the calendar year to the nearest gallon; and
  - 4) The volume percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the coating.
- e) Recycled Coatings.
- 1) Manufacturers of recycled coatings must submit a letter to the Agency self-certifying their status as a Recycled Paint Manufacturer upon request of the Agency, within 90 days written notice.
  - 2) Each recycled coatings manufacturer shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:
    - A) The number of gallons of recycled coatings sold in the state during the preceding calendar year; and
    - B) The method used by the manufacturer to calculate state sales.
- f) Bituminous Coatings. Each manufacturer of “Bituminous Roof Coatings” or “Bituminous Roof Primers” shall report the following information for products sold in Illinois, upon request of the Agency, within 90 days written notice:
- 1) The number of gallons of “Bituminous Roof Coatings” or “Bituminous Roof Primers” sold in the state during the preceding calendar year; and
  - 2) The method used by the manufacturer to calculate state sales.

**Section 223.340 Compliance Provisions and Test Methods**

- a) Calculation of VOM Content. For the purpose of determining compliance with the VOM content limits in Section 223.310(a), the VOM content of a coating shall be determined by using the procedures described in subsections 223.340(a)(1) or 223.340(a)(2), as appropriate. The VOM content of a tint base shall be determined without colorant that is added after the tint base is manufactured.

- 1) With the exception of low solids coatings, determine the VOM content in grams of VOM per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOM content as follows:

$$\text{VOM Content} = \frac{(W_s - W_w - W_{em})}{(V_m - V_w - V_{em})}$$

Where:

VOM content = grams of VOM per liter of coating  
 $W_s$  = weight of volatiles, in grams  
 $W_w$  = weight of water, in grams  
 $W_{em}$  = weight of exempt materials, in grams  
 $V_m$  = volume of coating, in liters  
 $V_w$  = volume of water, in liters  
 $V_{em}$  = volume of exempt materials, in liters

- 2) For low solids coatings, determine the VOM content in units of grams of VOM per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOM content as follows:

$$\text{VOM Content (ls)} = \frac{(W_s - W_w - W_{em})}{(V_m)}$$

Where:

VOM content (ls) = the VOM content of a low solids coating in grams per liter of coating  
 $W_s$  = weight of volatile, in grams  
 $W_w$  = weight of water, in grams  
 $W_{em}$  = weight of exempt materials, in grams  
 $V_m$  = volume of coating, in liters

- b) VOM Content of Coatings. To determine the physical properties of a coating in order to perform the calculations in subsection 223.340(a), the reference method for VOM content is USEPA Method 24, incorporated by reference in Section 223.120, except as provided in subsections 223.350 and 223.360. An alternative method to determine the VOM content of coatings is SCAQMD Method 304-91 (Revised February 1996), incorporated by reference in Section 223.120. The exempt compounds content shall be determined by SCAQMD Method 303-91, incorporated by reference in subsection Section 223.120. To determine the VOM content of a coating, the manufacturer may use USEPA Method 24, or an equivalent alternative method, as provided in Section 223.350, formulation data, or any other reasonable means for predicting that the coating has been formulated

as intended (*e.g.* quality assurance checks, recordkeeping). However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOM content, the Method 24 results will govern, except when an equivalent alternative method is approved as specified in Section 223.350. The Agency may require the manufacturer to conduct a Method 24 analysis.

### **Section 223.350      Alternative Test Methods**

Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subsection 223.340(b), after review and approved in writing by the Agency and the USEPA may also be used.

### **Section 223.360      Methacrylate Traffic Coating Markings**

Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of USEPA Method 24 (40 CFR 59, subpart D, Appendix A), incorporated by reference in Section 223.120 or an equivalent method approved by the CARB. This method has not been approved for methacrylate multi-component coatings used for purposes other than as traffic marking coatings or for other classes of multi-component coatings.

### **Section 223.370      Test Methods**

The following test methods are incorporated by reference herein, and shall be used to test coatings subject to the provisions of this Subpart:

- a) **Flame Spread Index.** The flame spread index of a fire-retardant coating shall be determined by the ASTM Designation E 84-07, "Standard Test Method for Surface Burning Characteristics of Building Materials," as incorporated by reference in Section 223.120 (see Section 223.307, Fire-Retardant Coating) or an equivalent method approved by the CARB.
- b) **Fire-Resistance Rating.** The fire-resistance rating of a fire-resistive coating shall be determined by ASTM designation E 119-98, "Standard Test Methods for Fire Tests of Building Construction Materials," as incorporated by reference in Section 223.120, (see Section 223.307, Fire-Resistive Coating) or an equivalent method approved by the CARB.
- c) **Gloss Determination.** The gloss of a coating shall be determined by ASTM Designation D 523-89 (1999), "Standard Test Method for Specular Gloss," as incorporated by reference in Section 223.120, (see Section 223.307, Flat Coating, Non-flat Coating, Non-flat - High-Gloss Coating, and Quick Dry Enamel), or an equivalent method approved by the CARB.
- d) **Metal Content of Coatings.** The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of

Analysis for Enforcement Samples,” as incorporated by reference in Section 223.120, (see Section 223.307, Metallic Pigmented Coating).

- e) Acid Content of Coatings. The acid content of a coating shall be determined by ASTM Designation D 1613-03, “Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products,” as incorporated by reference in Section 223.120, (see Section 223.307, Pre-Treatment Wash Primer) or an equivalent method approved by the CARB.
- f) Drying Times. The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM Designation D 1640-03, “Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature,” as incorporated by reference in Section 223.120, (see Section 223.307, Quick-Dry Enamel and Quick-Dry Primer, Sealer, and Undercoater). The tack free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM Designation D 1640-03 or an equivalent method approved by the CARB.
- g) Surface Chalkiness. The chalkiness of a surface shall be determined using ASTM Designation D 4214-98, “Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films,” as incorporated by reference in Section 223.120, (see Section 223.307, Specialty Primer, Sealer, and Undercoater) or an equivalent method approved by the CARB.
- h) Exempt Compounds – Siloxanes. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with Section 223.340 by BAAQMD Method 43, “Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials,” BAAQMD Manual of Procedures, Volume III, proposed amendment February 4, 2004, as incorporated by reference in Section 223.120, (see Section 223.307, VOM content, and subsection 223.340(b)).
- i) Exempt Compounds - Parachlorobenzotrifluoride (PCBTF). The exempt compound parachlorobenzotrifluoride, shall be analyzed as an exempt compound for compliance with Section 223.340 by BAAQMD Method 41, “Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride,” BAAQMD Manual of Procedures, Volume III, proposed amendment February 4, 2004, as incorporated by reference in Section 223.120, (see Section 223.307, Volatile Organic Material, and subsection 223.340(b)).
- j) Exempt Compounds. The content of compounds exempt under USEPA Method 24 shall be analyzed by SCAQMD Method 303-91 (Revised 1993), “Determination of Exempt Compounds,” SCAQMD “Laboratory Methods of Analysis for Enforcement Samples,” as incorporated by reference in Section

223.120, (see Section 223.307, Volatile Organic Material, and subsection 223.340(b)).

- k) VOM Content of Coatings. The VOM content of a coating shall be determined by USEPA Method 24 as it exists in Appendix A of 40 Code of Federal Regulations (CFR) Part 60, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," as incorporated by reference in Section 223.120, (see subsection 223.340(b)) or an equivalent method approved by the CARB.
- l) Alternative VOM Content of Coatings. The VOM content of coatings may be analyzed by either USEPA Method 24 or SCAQMD Method 304-91 (Revised 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," as incorporated by reference in Section 223.120, (see subsection 223.340(b)), as incorporated by reference in Section 223.120.
- m) Methacrylate Traffic Marking Coatings. The VOM content of methacrylate multicomponent coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR part 59, subpart D, appendix A, "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings," (June 30, 1999), as incorporated by reference in Section 223.120, (see subsection 223.360) or an equivalent method approved by the CARB.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 16, 2008, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board