

CONSUMER PRODUCTS RULE

This document is intended as guidance only and may be impacted by changes in legislation, rules, and regulations adopted after the date of publication. Although the document makes every effort to teach users how to meet applicable compliance obligations, use of this document does not constitute the rendering of legal advice.

An amendment to the Michigan Consumer Products Rule is currently in development. This amendment will adopt the Ozone Transport Commission’s (OTC) September 13, 2006, [Consumer Products Rule](#). Therefore, when the amendment is passed by the Michigan Legislature (expected in the fall of 2007), the current Michigan Consumer Products Rule will change.

Q: What is Michigan’s Consumer Products Rule?

A: The Michigan Consumer Products Rule (CPR) prohibits the distribution, sale or offering for sale of consumer products manufactured after January 29, 2007, whose volatile organic compound (VOC) content exceeds specific thresholds identified in the CPR. The rule applies to the distribution, sale or offering for sale of consumer products used in households and institutions within the state of Michigan. Those consumer products range from deodorants to aerosol paints. The reduction of VOC in consumer products will be done through product reformulation.



The Michigan CPR adopts the March 6, 2001 [Ozone Transport Commission’s \(OTC’s\) “Model Rule for Consumer Products,”](#) (OTC Rule) with just a few exceptions (go to www.otcair.org and select “Stationary/Area Sources” from the TOPIC drop down menu).

The Michigan CPR is found in Rule 660 of the [Michigan Air Pollution Control Rules](#). See page 10 on how to obtain a copy of Rule 660 and the OTC Rule.

Q: What is the Ozone Transport Commission and its Model Rule for Consumer Products?

A: The OTC is a multi-state organization created under the [Clean Air Act \(CAA\) amendments of 1990](#). The OTC is responsible for advising the [U. S. Environmental Protection Agency \(USEPA\)](#) on transport issues and for developing and implementing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions of the United States. The OTC member states are Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia.

The OTC modeled their rule from USEPA's "[National Volatile Organic Compound Emission Standards for Consumer Products](#) (September 11, 1998)."

Q: Is Michigan the only state to regulate Consumer Products?

A: No, California and all of the [OTC member states](#) except for Vermont have rules in place. Three USEPA Region 5 states, Illinois, Indiana, and Ohio, are in the process of developing consumer products rules that will adopt the September 13, 2006, OTC Rule.

Q: What are the health and environmental benefits from Michigan's Consumer Products Rule?

A: The Michigan CPR will reduce the release of smog-causing volatile organic compounds (VOCs). VOCs lead to the formation of ground level ozone, an air pollutant that triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It is expected that the Michigan CPR will reduce total VOC emissions by over 5,900 tons per year, which will help Michigan achieve attainment status for ground level concentrations of ozone.

Q: When did Michigan's Consumer Products Rule go into effect?

A: The Michigan CPR became effective as of January 29, 2007. All consumer products manufactured on or after January 29, 2007, for sale in Michigan must be in compliance with the CPR.

Any noncompliant consumer products that were manufactured before January 29, 2007, may continue to be supplied, offered for sale and sold in Michigan. This is known in the CPR as the "*sell through provision.*"

Q: Who is subject to the Consumers Product Rule?

A: The Michigan Consumer Products Rule (CPR) applies not only to the manufacturers of consumer products but to the distributors, suppliers, and retailers of consumer products.

If the consumer product is manufactured in Michigan but is shipped out of the state for sale, then it is not regulated under the Michigan CPR. However, be aware that other states have similar regulations. “Manufacturer,” “distributor,” and “retailer” are defined in Section 2 of the [OTC Rule](#).

Q: Is a consumer product, which is sold exclusively to another manufacturer and used in their manufacturing process, subject to the Michigan Consumer Products Rule?

A: Consumer products subject to the CPR are those products for household or institutional use for the maintenance and operation of the facility. Products that are incorporated into or used exclusively in the manufacture or construction of goods or commodities at the site of the establishment are not considered consumer products and are not subject to this regulation. Examples include such items as mold-release products and non-aerosol adhesives used in the manufacturing of goods or commodities.

Also exempt are those products used directly in the manufacturing process that do not actually become part of the finished product but are nonetheless essential to the manufacturing process. For example, cleaning, degreasing, and lubricating products may be exempt from the definition of “consumer products” if the manufacturing process is the only use for these products.

Products that may be used at a manufacturing facility that are consumer products subject to the CPR include products that are used in general cleaning or maintenance of the manufacturing facility. Such products are often similar to commonly available household products and are used to perform tasks (such as cleaning and waxing) that are similar to those performed by a household consumer. Examples include air fresheners, floor waxes, general purpose cleaners and insecticides.

Q: What is a Consumer Product?

A: “Consumer product” is defined as a chemically formulated product used by households and institutions 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. The product types listed in this definition are just examples; it is not an exhaustive list.

The definitions for “consumer,” “consumer product,” “household product,” “institutional product” and many of the other terms used in the paragraph above are defined in Section 2 of the [OTC Rule](#).

Q: What Consumer Products are regulated?

A: Under the Michigan CPR, the consumer products regulated are listed in the Table of Standards found in Section 3 of the [OTC Rule](#). Click on “Model Rule – Consumer Products” and go to page 24. The consumer products are categorized and assigned volatile organic compound (VOC) content limits, which are based on the percent VOC by weight of the product. Remember, only those consumer products that contain VOCs are subject to this regulation.

The definitions of these product categories are very specific. It is not always easy to tell if a product is one of these just by looking at the name of the category.

The following procedure will help a manufacturer, supplier, distributor or retailer determine if one of the product categories applies to the consumer product they make or sell.

1. Make a list of all of the possible product categories from Section 3 of the [OTC Rule](#), that might apply to your product.
2. Refer to the definition of one of the product categories on your list that might apply. These definitions are provided in Section 2 of the [OTC Rule](#).
3. Compare the characteristics listed in that definition with the characteristics of your product. If they match, the definition applies.
4. Repeat steps 2 and 3 for each of the other possible product categories that might apply. If more than one definition applies, the most restrictive standard will apply to that product.

For help in making this determination, please contact Asad Khan, Michigan Department of Environmental Quality (DEQ), Air Quality Division, at (517) 335-6825, or email at khana@michigan.gov.

Q: What is a VOC?

A: A VOC is any compound that contains carbon and participates in atmospheric (smog forming) reactions. Refer to [Rule 661](#) of the Michigan Air Pollution Control Rules for a listing of the compounds excluded from the definition of VOC.

Consumer products might be formulated with VOCs, or might contain fragrances, color additives, blowing agents, or propellants that contain VOCs.

Manufacturers provide the VOC content of their products on Material Safety Data Sheets (MSDS) and Certified Product Data Sheets. These sheets may be provided with shipping documents or may be available from the manufacturer upon request. Many consumer products have the VOC content information printed on the product label.

Q: What are the VOC content limits applicable to Consumer Products?

A: The VOC content limits for applicable consumer products are listed in the Table of Standards found in Section 3 of the [OTC Rule](#). Click on “Model Rule – Consumer Products” and go to page 24.

Some of the consumer products listed in the Table of Standards are specifically excluded from having to comply with the VOC content limits:

- a) Air fresheners with VOC content composed entirely of fragrance with a Low Vapor Pressure (LVP) VOC do not have to comply with the VOC content limit for air fresheners. LVP-VOC is defined in Section 2, pp. 32-33 of the [OTC Rule](#).
- b) Air fresheners and insecticides containing at least 98% paradischlorobenzene do not have to comply with the VOC content limits for air fresheners or insecticides. See Section 2, pp. 32-33 of the [OTC Rule](#) for more information.
- c) Adhesives sold in container sizes of 1 fluid ounce or less do not have to comply with the VOC content limit for adhesive. See Section 2, pp. 32-33 of the [OTC Rule](#).
- d) Bait station insecticides (containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight) do not have to comply with the VOC content limits for insecticide. Section 2, pp. 32-33 of the [OTC Rule](#).

Q: How will the DEQ determine if a Consumer Product complies with the VOC content limit?

A: The DEQ may use any number of resources or methods to identify non-compliant products. Among those are advertising literature, shipping information, information on container labels, MSDS, Certified Product Data Sheets, and/or other product use information. The DEQ may also sample consumer products at any point in the supply chain and have them tested by an independent laboratory.

If product literature or other information states the VOC content of the consumer product in terms other than percent VOC by weight (the same terms as the regulatory VOC content limits), then the DEQ may request the information in terms of the proper units. However, if that information is not immediately available, the DEQ may make reasonable assumptions concerning the product and convert the stated VOC content to units of percent by weight for comparison with the standard in order to determine compliance.

Once the DEQ has identified a consumer product that is not in compliance, each person subject to the regulation for that product may be considered by the DEQ to be out of compliance pending a demonstration that the product is, in fact, compliant.

Once a consumer product is identified by the DEQ as non-compliant, the burden of demonstrating compliance rests with the persons or companies subject to the regulation for that consumer product. Compliance might be demonstrated in one of the following ways:

- a) By demonstrating that the consumer product is not subject to the VOC content limit. The DEQ will consider arguments as to why the product does or does not meet the definition of a product category for which a VOC content limit is assigned. The DEQ will make the final determination of applicability.
- b) By demonstrating that the consumer product is compliant through formulation of the product. The DEQ may accept product formulation as an adequate demonstration of the actual VOC

content of the consumer product if the manufacturer keeps and provides sufficient records that meet the requirement of the regulation found in Section 9 (2) 3.5.2. of the [OTC Rule](#). Proper labeling of the product (i.e. usage, recommended dilution, etc.) will usually be considered as part of an adequate demonstration. However, if a product's records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using the approved test method, the results of the approved test method will take precedence over the product records and may be used to establish a violation.

- c) By demonstrating that the consumer product is compliant by testing the product. The DEQ will normally accept the results of appropriate approved test methods for determining compliance with VOC content limits. Testing to determine compliance with the VOC content requirements of this regulation shall normally be performed using the California Air Resources Board ([CARB Method 310](#)). See page 10 on how to obtain a copy of CARB Method 310. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the [South Coast Air Quality Management District Rule 1174 - Ignition Method Compliance Certification Protocol](#).
- d) By demonstrating that the consumer product is compliant by another means approved by the DEQ.

Contact Asad Khan, Michigan Department of Environmental Quality, Air Quality Division at (517) 335-6825 or by email at khana@michigan.gov if the approved test methods do not provide results representative of the true VOC content of the consumer product.

Q: How can a manufacturer reduce the VOC content of a Consumer Product?

A: A manufacturer can reduce the VOC content through product reformulation (modifying the current formulation of the coating to obtain a lower VOC content). The product reformulation options vary with each product category, and can involve one or more of the following approaches:

- Replacing VOC solvents with a water-based formulation.
- Replacing VOC solvents with acetone or another exempt solvent.
- Increasing the solids content of the product.
- Formulating a non-VOC propellant.
- Changing the valve, container, or delivery system to reduce VOC content.

Q: Are there regulatory standards other than the VOC content limits?

A: Yes, there are additional regulatory standards on certain substances contained in the following consumer products: antiperspirants and deodorants, aerosol adhesives, charcoal lighter material products, and floor wax strippers. These additional limits are referenced in Section 3 (b), (e), (f), (g), and (h) of the [OTC Rule](#).

Q: What do I do if a Consumer Product is not compliant?

- A:** a) Reformulate the product to be compliant or stop providing the product for sale within the state of Michigan.

It is unlawful to supply, sell, or offer for sale in the state of Michigan any consumer product containing VOC that was manufactured on or after January 29, 2007, unless it is compliant. If a non-compliant product is discovered, it should be removed from shelves immediately. Consumer products that were manufactured before January 29, 2007, may continue to be offered for sale until they are sold.

It is unlawful to manufacture a VOC containing consumer product on or after January 29, 2007, that will be supplied, sold, or offered for sale within Michigan unless it is compliant with the VOC content limits in the Table of Standards found in Section 3 of the [OTC Rule](#). If you are a manufacturer and you have reformulated your product so that it is compliant, you may provide the reformulated product (appropriately labeled) to be supplied, sold or offered for sale in the state of Michigan. If you are a manufacturer of consumer products, and you are unable to reformulate your product, then you must take reasonable precautions to ensure that the non-compliant product is not supplied, sold, or offered for sale within Michigan.

- b) Obtain a temporary waiver from compliance with the standards

A person who cannot comply with the requirements set forth in the Table of Standards because of extraordinary reasons beyond the person's reasonable control may apply in writing to the DEQ for a waiver. Among other things, the application must contain a proposed compliance date and a schedule for achieving compliance as expeditiously as possible. Other application requirements and the standards for granting a waiver are set forth in Section 4 (Exemptions) of the [OTC Rule](#).

The review process requires a public hearing and may take several months to complete once the DEQ receives a complete application.

- c) Obtain an Alternative Compliance Plan (ACP) approved for the consumer product.

An "alternative control plan" is an approved emissions averaging program for the purpose of achieving emission reductions equivalent to those achieved by the regulation. It requires significant monitoring, recordkeeping and reporting requirements to demonstrate compliance with the plan. Application and review requirements may be found in Section 11 of the [OTC Rule](#).

The review process for an ACP application may take 18 weeks after the DEQ receives a complete application. If the [California Air Resources Board](#) (CARB) has issued a currently effective ACP for the same group of consumer products, and the ACP application submitted to CARB and the subsequent CARB approval are consistent with the application submitted to the DEQ, the review process may be expedited.

- d) Obtain an Innovative Product Exemption (IPE) approval for the product.

An “innovative product exemption” is for a consumer product that is not in compliance with an applicable VOC content limit, but due to some characteristic of the product formulation, design, delivery systems or other factors, the use of that product will result in less VOC emissions than another representative product that complies with the limit. An IPE requires significant testing, monitoring, recordkeeping, and reporting requirements to demonstrate compliance with the exemption requirements. Application and review requirements may be found in Section 5 of the [OTC Rule](#).

The review process for an IPE application may be expected to take 90 days after the DEQ receives a complete application. If the [California Air Resources Board](#) (CARB) has issued a currently effective IPE for the same consumer product, and if the IPE application submitted to CARB and the CARB approval are consistent with the application submitted to the DEQ, the exemption approval process may be expedited.

- e) Apply to the DEQ for a variance from the standards for your consumer product. A variance is a plan for achieving compliance with the regulatory standard and consists of a temporary standard, sufficient enforceable conditions to ensure compliance with the temporary standard, and enforceable milestones toward compliance with the regulatory standards. Please refer to Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, [Section 324.5535 - 324.5539](#) for information on variances. Application and review requirements can be directed to Asad Khan at (517) 335-6825 or by email at khana@michigan.gov.

The review process for granting a variance includes a public comment period and a public hearing and requires approval of the board. Approval may take from six months to a year after the DEQ receives a complete application.

Q: What are the labeling requirements?

A: The date (day, month, and year) the consumer product is manufactured, or a code indicating the date must be clearly displayed. The date or date-code information must be located on the container or inside the cover/cap so it is readily observable or obtainable without disassembling any part of the container or packaging. Section 6 of the [OTC Rule](#) references the consumer product labeling requirements.

Products with less than 0.1% VOC by weight and products subject to the regulation under the [Federal Insecticide, Fungicide, and Rodenticide Act](#) (7 USC 136 et seq) do not have to comply with the date or date-code requirement. (Refer to Section 4 (g) of the OTC Rule).

Aerosol adhesives have some additional labeling requirements. See Section 6 (d) of the [OTC Rule](#) for details.

Q: What are the reporting requirements?

A: Annual reports are required for consumer products listed in the Table of Standards, found in Section 3 of the OTC Rule, that contain either perchlorethylene or methylene. The annual reports are due by March 1 of the following year. Therefore, the first report is due on March 1, 2008 for the calendar year of 2007. Please refer to Section 7 (d) of the OTC Rule and [Rule 660](#) for exceptions.

Information about a consumer product (regardless of whether or not it is subject to a standard) must be supplied to the DEQ upon 90 days written notice. The information that might be requested is listed in Section 7 (a) (1-12) of the [OTC Rule](#).

Q: Are there separate federal regulations governing Consumer Products?

A: Yes, there are separate federal requirements contained in [40 CFR 59](#) (beginning with Section 59.2.1) for consumer products. These federal requirements are applicable to manufacturers, importers, and distributors of consumer products and do not apply to retailers and persons that sell consumer products.

The USEPA publishes federal regulations in the code of Federal Regulations (CFR). The CFR is divided into 50 titles that represent broad areas subject to federal regulation. Environmental regulations are found in Title 40 (Protection of Environment). The Titles are further subdivided into Chapters, Parts, and Subparts. The consumer and commercial products regulations are found in Part 59.

To obtain a copy of 40 CFR Part 59, go to www.epa.gov, select “Laws, Regulations & Dockets,” select “Code of Federal Regulations,” and then select “The Electronic Code of Federal Regulations (e-CFR).” From this page, use the browse option (drop-down box) to select “Title 40 – Protection of Environment” and click on “Go.” Click on “53-59,” then click on “59.1-59.413” to view the National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

Generally, the provisions of the Michigan CPR are more restrictive than the federal regulation, so in most cases compliance with the Michigan rule assures compliance with the federal standard.

Q: How are consumers affected by the Consumer Products Rule?

A: The consumer or end-user of a consumer product is not subject to the requirements of the CPR *as long as they do not repackage and/or re-sell the product*. Consumers may find that some of the products that they normally buy are not available or are only available as a reformulated product.

Q: Is the Michigan Consumer Products Rule being amended?

A: Yes, an amendment to the Michigan CPR is currently in development. This amendment will adopt the Ozone Transport Commission's (OTC) September 13, 2006, [Model Rule for Consumer Products](#). Therefore, when the amendment is passed by the Michigan Legislature (expected in the fall of 2007), the current Michigan CPR will change.

Q: Who should I contact for information?

A: For general questions concerning the Michigan CPR, contact the Clean Air Assistance Program at 1-800-662-9278 or e-mail DEQ-EAD-Env-Assist@michigan.gov.

For technical questions concerning the applicability of certain consumer products and requests for waivers, variances, and other alternative standards, contact Asad Khan, Air Quality Division, at (517) 335-6825 or by e-mail at khana@michigan.gov.

For a copy of the Michigan CPR (Rules 660-661), CARB Method 310, or the OTC Model Rule for Consumer Products, go to www.michigan.gov/deqair. Click on "Clean Air Assistance" and scroll down to Consumer Products Rule.