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State or local regulatory agency, such existing records may be submitted under paragraph (d)(3) of this section in lieu of new test data, provided the product formulation is unchanged from that which was previously tested. Such previous testing must have been conducted in accordance with the test protocol described in § 59.208 or a test protocol that is approved by the Administrator as an alternate.

(e) Fragrances incorporated into a consumer product up to a combined level of 2 weight-percent shall not be included in the weight-percent VOC calculation.

(f) The VOC content limits in table 1 of this subpart shall not include any VOC that:

(1) Has a vapor pressure of less than 0.1 millimeters of mercury at 20 degrees Celsius; or

(2) Consists of more than 12 carbon atoms, if the vapor pressure is unknown; or

(3) Has a melting point higher than 20 degrees Celsius and does not sublime (i.e., does not change directly from a solid into a gas without melting), if the vapor pressure is unknown.

(g) The requirements of paragraph (a) of this Section shall not apply to those VOC in antiperspirants or deodorants that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 millimeters of mercury or less at 20 degrees Celsius.

(h) a manufacturer or importer may use the vapor pressure information provided by the raw material supplier as long as the supplier uses a method to determine vapor pressure that is generally accepted by the scientific community.

(i) For hydrocarbon solvents that are complex mixtures of many different compounds and that are supplied on a specification basis for use in a consumer product, the vapor pressure of the hydrocarbon blend may be used to demonstrate compliance with the VOC content limits of this section. Identification of the concentration and vapor pressure for each such component in the blend is not required for compliance with this subpart.

§ 59.204 Innovative product provisions.

(a) Upon notification to the Administrator, a consumer product that is subject to this subpart may exceed the applicable limit in table 1 or 2 of this subpart if the regulated entity demonstrates that, due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of the product will result in equal or less VOC emissions that specified in paragraph (a)(1) or (a)(2) of this section.

(1) The VOC emissions from a representative consumer product, as described in § 59.202, that complies with the VOC standards specified in § 59.203(a); or

(2) The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC standards specified in § 59.203(a). The VOC emissions shall be calculated by using Equation 1.

$$E_R = E_{NC} \times \frac{VOC_{STD}}{VOC_{NC}} \qquad \text{Equation 1}$$

Where

E_R = The VOC emissions from the noncomplying representative product, had it been reformulated.

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

VOC_{STD} = The VOC standard specified in § 59.203(a).

VOC_{NC} = The VOC content of the noncomplying product in its current formulation.

(b) If a regulated entity demonstrates to the satisfaction of the Administrator that the equation in paragraph (a)(2) of the this section yields inaccurate results due to some characteristic of the product formulation or other factors, an alternate method that accurately calculates emissions may be used upon approval of the Administrator.

(c) A regulated entity shall notify the Administrator in writing of its intent to enter into the market an innovative product meeting the requirements of paragraph (a) of this section. The Administrator must receive the written notification by the time the innovative product is available for sale

or distribution to consumers. Notification shall include the information specified in paragraph (c)(1) and (c)(2) of this section.

(1) Supporting documentation that demonstrates the emissions from the innovate product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage;

(2) Any information necessary to enable the Administrator to establish enforceable conditions for the innovative product, including the VOC content of the innovative product expressed as a weight-percentage, and test methods for determining the VOC content.

(d) At the option of the regulated entity, the regulated entity may submit a written request for the Administrator's written concurrence that the innovative product fulfills the requirements of paragraph (a) of this section. If such a request is made, the Administrator will respond as specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The Administrator will determine within 30 days of receipt whether the documentation submitted in accordance with paragraph (d) of this section is complete.

(2) The Administrator will determine whether the innovative product shall be exempt from the requirements of § 59.203(a) within 90 days after an application has been deemed complete. The applicant and the Administrator may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Administrator will notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in paragraph (a) of this section, and that such emissions reductions can be enforced.

(3) If an applicant has been granted an exemption to a State or local regulation for an innovative product by a State or local agency whose criteria for exemption meet or exceed those provided for in this section, the applicant may submit the factual basis for such an exemption as part of the documentation required under paragraph (d) of this section. In such case, the Administrator will make the determination required under this paragraph within 45 days after the applications is considered complete.

(e) In granting an exemption for a product, the Administrator will establish conditions that are enforceable. These conditions may include the VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the Administrator to be necessary. The Administrator will also specify the test methods for determining conformance to the conditions established, including criteria for reproducibility, accuracy, and sampling and laboratory procedures.

(f) For any product for which an exemption has been granted pursuant to this section, the regulated entity to whom the exemption was granted shall notify the Administrator in writing within 30 days after any change in the product formulation or recommended product usage directions, and shall also notify the Administrator within 30 days after the regulated entity learns of any information that would alter the emissions estimates submitted to the Administrator in support of the exemption application.

(g) If lower VOC content limits are promulgated for a product category through any subsequent rulemaking, all exemptions granted under this section for products in the product category shall no longer apply unless the innovative product has been demonstrated to have VOC emissions less than the applicable revised VOC content limits.

(h) If the Administrator determines that a consumer product for which an exemption has been granted no longer meets the VOC emissions criteria specified in paragraph (a) of this section for an innovative product, the Administrator may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Administrator will not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing to determine if the

exemption should be modified or revoked.

[63 FR 48815, Sept. 11, 1998; 63 FR 52319, Sept. 30, 1998]

§ 59.205 Labeling.

(a) The container or package of each consumer product that is subject to this subpart shall clearly display the day, month, and year on which the product was manufactured, or a code indicating such date. The requirements of this provision shall not apply to products that are offered to consumers free of charge for the purposes of sampling the product.

(b) In addition, the container or package for each charcoal lighter material that is subject to this subpart shall be labeled according to the provisions of § 59.203(d)(2).

§ 59.206 Variances.

(a) Any regulated entity who cannot comply with the requirements of this subpart because of extraordinary circumstances beyond reasonable control may apply in writing to the Administrator for a variance. The variance application shall include the information specified in paragraph (a)(1) through (a)(3) of this section.

(1) The specific grounds up on which the variance is sought,

(2) The proposed date(s) by which compliance with the provisions of this subpart will be achieved. Such date(s) shall be no later than 5 years after the issuance of a variance; and

(3) A compliance plan detailing the method(s) by which compliance will be achieved.

(b) Upon receipt of a variance application containing the information required in paragraph (a) of this section, the Administrator will publish a notice of such application in the FEDERAL REGISTER and, if requested by any party, will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements of this subpart is necessary and will be granted. If requested, a hearing will be held no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing will be sent to the applicant by certified mail not less than 30 days prior to the hearing. At least 30 days prior to the hearing, the variance application will be made available to the public for inspection. Information submitted to the Administrator by a variance applicant may be claimed as confidential. The Administrator may consider such confidential information in reaching a decision on a variance application. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing.

(c) The Administrator will grant a variance if the criteria specified in paragraphs (c)(1) and (c)(2) of this section are met.

(1) If there are circumstances beyond the reasonable control of the applicant so that complying with the provisions of this subpart by the compliance date would not be technologically or economically feasible, and

(2) The compliance plan proposed by the applicant can be implemented and will achieve compliance as expeditiously as possible.

(d) Any variance order will specify a final compliance date by which the requirements of this subpart will be achieved and increments of progress necessary to assure timely compliance.

(e) A variance shall cease to be effective upon failure of the regulated entity to comply with any term or condition of the variance.

(f) Upon the application of any party, the Administrator may review, and for good cause, modify or revoke a variance after holding a public hearing in accordance with the procedures described in paragraph (b) of this section.

§ 59.207 Test methods.

Each manufacturer or importer subject to the provisions of § 59.203(a) shall demonstrate compliance with the requirements of this subpart through calculation of the VOC content using records of the amounts of constituents used to manufacture the product.

§ 59.208 Charcoal lighter material testing protocol.

(a) Each manufacturer or importer of charcoal lighter material subject to this subpart shall demonstrate compliance with the applicable requirements