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Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the Virginia Register, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006,** refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register*'s Internet home page (http://register.state.va.us).

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*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Agency Decision

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations.**

Statutory Authority: §§ 46.2-1059 and 46.2-1165 of the Code of Virginia.

Name of Petitioner: J. Tyler Ballance.

Nature of Petitioner's Request: Restoring the proper use of automobile horns solely as a warning device.

Horns are defined as warning devices and are intended to be used solely for that purpose. In recent years, manufacturers have coupled their electronic keyless entry systems to the auto horn or auto alarm, so that operators may select an entry option that sounds the horn or auto alarm, or both, upon entry and exit from the vehicle. The resulting cacophony of spurious horn or alarm blasts adds to ambient noise pollution and diminishes the effectiveness of horns as warning devices.

An amendment to 19VAC30-70-240 or a new section that specifically requires verification during annual inspections that electronic entry systems are set to silent entry and exit is recommended.

Agency Decision: Take no action.

Statement of Reasons for Decision: The department, after consideration of the petition, four public comments, existing regulations, possible economic impact, and the Code of Virginia has determined that no action will be taken on the petition. It should be noted that the regulations in question have been reviewed by Office of the Attorney General and deemed exempt regulations from the Virginia Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

As is noted in 19VAC30-70-1, the Virginia Annual Motor Vehicle Inspection Program was developed and adopted to promote highway safety. Its aim is to assure that all Virginia registered vehicles are mechanically safe to operate over the highways of the Commonwealth. The proposed change to the regulation has no significant nexus to this stated purpose. The argument that the chips diminish the effectiveness of horns as warning devices is not persuasive and the abuse of such devices may properly be handled as violations of appropriate noise ordinances.

Of the four public comments received, only the comment submitted by the petitioner himself supported the proposed action. The other comments focused on the usefulness of such devices and the adoption being outside the proper scope of the regulation in question.

The additional requirement would place an economic burden on consumers, manufacturers, and inspections stations. Consumers would be required to have their vehicles altered to comply with the law. Inspection stations would be required to spend additional time ensuring compliance without any additional compensation, which is limited by Code. Manufacturers would be required to ensure that vehicles sold or registered in Virginia are capable of complying with the law.

In reaching its determination the department also considered the fact that the effectiveness of the proposed regulation would be minimal as it would only apply to those vehicles registered in Virginia and subject to the Virginia Annual Motor Vehicle Inspection Program. Out-of-state vehicles operating in the Commonwealth would not be prohibited from having the devices in active mode.

Agency Contact: Ronald B. Saunders, Captain, Safety Division, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-6774, FAX (804) 674-2961, or email safety@vsp.virginia.gov.

VA.R. Doc. No. R10-12; Filed January 20, 2010, 2:10 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Proposed Regulation

Title of Regulation: **4VAC10-30. Virginia State Forests Regulations (amending 4VAC10-30-170).**

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Public Hearing Information:

March 2, 2010 - 1 p.m. - Buckingham Agricultural Center, Buckingham County, VA

Public Comment Deadline: April 16, 2010.

Agency Contact: Ronald S. Jenkins, Administrative Officer, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 293-2768, or email ron.jenkins@dof.virginia.gov.

Basis: Section 10.1-1101 of the Code of Virginia provides the Department of Forestry, with the approval of the State Forester, the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia.

Purpose: The right to bear arms is protected by the second amendment to the Constitution. Citizens are requesting the department to remove the prohibition against carrying handguns within state forests because they believe this action is necessary to protect their health, safety, and welfare against violent people and wild animals.

The proposed amendment allows the lawful carrying of concealed handguns by persons with a valid concealed handgun permit on state forest properties. The current prohibition against persons carrying open carried handguns will remain in place. The agency received a petition to eliminate the prohibition against both open carried handguns and concealed handguns from the Virginia Citizens' Defense League. The department received 1,926 comments supporting the amendment during the notice of intended regulatory action (NOIRA) comment period. The State Forester proposes to amend the regulations to match the state park regulations regarding handguns.

Substance: The agency proposes lifting the ban against persons who possess a valid concealed handgun permit from carrying legal concealed handguns on state forest properties. The agency will propose to continue to ban users from carrying open handguns.

Issues: Citizens may carry concealed handguns with a valid permit in Virginia. Citizens are currently prohibited from carrying concealed handguns onto state forest properties even when they possess a valid concealed handgun permit issued by law enforcement. The state forest amendment will ensure that law abiding citizens will not violate a regulation that carries a Class 4 misdemeanor penalty.

The Virginia Citizens Defense League requested the Department of Forestry to allow the carrying of firearms within state forests. If the regulatory amendment is approved, citizens may carry concealed handguns within state forests with a valid concealed weapon permit. If the regulatory amendment is approved as suggested, the regulations would match the firearms section of the state park regulations.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Forestry proposes to allow the holders of concealed weapons permits to carry their concealed handguns in state forests.

Result of Analysis. The benefits likely exceed the costs for this proposed change.

Estimated Economic Impact. Current state forestry regulations prohibit any individual from bringing any explosives or firearms into state forests. The department proposes to amend this prohibition so that it does not apply to "the carrying of concealed handguns within state forests by holders of a valid concealed handgun permit" issued pursuant to the Code of Virginia.

This change will allow concealed carry permit holders to have the protection of a weapon in state forests which will likely provide a benefit for them as well as any other unarmed citizens that might receive ancillary protection from crime or animal attack. It is very unlikely that any individual would suffer costs from increased crimes on account of this change because concealed carry holders appear to commit far fewer crimes than individuals who do not hold concealed carry permits.[1]

Businesses and Entities Affected. This proposed regulatory change will affect all holders of valid concealed carry permits in the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] David Kopel of Stanford University's Hoover Institute writes, in an overview of research on concealed carry permit holders and crime, that "In Florida… permit holders are about 300 times less likely to perpetrate a gun crime than Floridians without permits." http://www.hoover.org/publications/policyreview/3574822.html.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Forestry concurs with the findings of the Department of Planning and Budget. The proposed regulatory amendment will allow persons to carry concealed handguns on state forest lands so long as they possess a valid concealed weapon permit. The change does not add new responsibilities to state or local officials responsible for enforcing weapons laws. Virginia law allows individuals to carry concealed handguns with a valid concealed weapon permit. The Department of Forestry regulatory amendment would allow valid permit holders to carry their handguns on state forest properties, which is currently prohibited by regulation.

Summary:

The proposed amendment allows the lawful carrying of concealed handguns with a valid concealed handgun permit on state forest properties.

4VAC10-30-170. Explosives, ~~fires~~ firearms, etc.

No person shall bring into or have in any forest any explosive or explosive substance, except commercial sporting firearms ammunition; explosives, explosive substances and firearms of all types are prohibited in any portion of a forest assigned to the Department of Forestry, for administration as a recreational area. This regulation shall not apply to the carrying of concealed handguns within state forests by holders of a valid concealed handgun permit issued pursuant to § 18.2-308 of the Code of Virginia.

VA.R. Doc. No. R09-06; Filed January 27, 2010, 11:33 a.m.

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (adding 4VAC15-20-75).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-530.5 of the Code of Virginia.

Public Hearing Information:

March 2, 2010 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: February 18, 2010.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The proposal is to (i) provide that, upon receipt from a state participating in the interstate Wildlife Violator Compact (WVC) of a report of a conviction in that state of a Virginia resident, the Virginia Department of Game and Inland Fisheries (DGIF) would enter the conviction in its records and treat it as though it had occurred in the Commonwealth, including for purposes of suspension of hunting, fishing, and trapping license privileges; (ii) provide that, upon receipt from a WVC-participating state a report of other related events such as the failure of a Virginia resident to comply with the terms of a citation issued in that state, or the suspension of license privileges issued to a Virginia resident by that state, DGIF would initiate certain actions, to include possible suspension of the Virginia resident's license or licenses issued in Virginia; (iii) provide for certain notification and procedural requirements in relation to these actions; (iv) establish procedures for DGIF to report to WVC-participating states convictions or failures to comply with citations in Virginia by residents of those respective states; and (v) authorize the director of DGIF to appoint an administrator to represent Virginia on the interstate WVC Board of Compact Administrators.

4VAC15-20-75. Wildlife Violator Compact.

A. This section is adopted pursuant to authority granted to the Board of Game and Inland Fisheries under §§ 29.1-103 and 29.1-530.5 of the Code of Virginia.

B. Definitions used herein unless the contrary is clearly indicated are those used in § 29.1-530.5 of the Code of Virginia, the Wildlife Violator Compact, herein referred to as the compact.

C. In accordance with Article VII of the compact, the board hereby authorizes the Director of the Department of Game and Inland Fisheries to appoint the Commonwealth's representative to the Board of Compact Administrators. Such appointment shall be consistent with and subject to the aforesaid provisions of the compact and such representative shall serve at the pleasure of the director.

D. In accordance with Article IV of the compact, upon receipt from a participating state of a report of the conviction in that state of a resident of the Commonwealth, the department shall enter such conviction in its records and such conviction shall be treated as though it had occurred in the Commonwealth and therefore as a violation of the board's applicable regulations for purposes of suspension of license privileges.

E. In accordance with Article IV of the compact, upon receipt from a participating state of a report of the failure of a resident of the Commonwealth to comply with the terms of a citation issued by that state, the department shall notify such person of that report in accordance with the procedures set forth in subsections G through J of this section and shall initiate a proceeding to suspend any applicable licenses issued to such person by the board until the department has received satisfactory evidence of compliance with the terms of such citation.

F. In accordance with Article V of the compact, upon receipt from a participating state of a report of the suspension of license privileges of a resident of the Commonwealth issued by that state, the department shall notify such person of that report in accordance with the procedures set forth in subsections G through J of this section and shall initiate a proceeding to suspend any applicable licenses issued to such person by the board until the department has received satisfactory evidence that such suspension has been terminated.

G. Upon receipt of a report pursuant to subsections D, E, or F of this section, the director or his designee shall provide notice thereof to the resident of the Commonwealth who is the subject of such report. Such notice shall advise such person of the contents of the notice and of any action that the department proposes to take in response thereto.

H. The person who is the subject of such notice shall be provided an opportunity to request within 30 days from the date of such notice an opportunity to contest the department's proposed action by requesting an informal fact-finding conference to be conducted by a representative of the department designated by the director. Although such proceedings are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) as provided by § 2.2-4002 A 3 thereof, the department shall to the extent practicable afford such persons seeking an informal fact-finding conference the rights provided under § 2.2-4019 of the Code of Virginia. Those include but are not limited to the right to receive reasonable notice as described in subsection G of this section and the right to appear in person or by counsel before the designated representative of the department. However, no discovery shall be conducted and no subpoenas shall be issued as part of any such proceeding.

I. An informal fact-finding proceeding shall be completed within 60 days of receipt by the department of the request described in subsection H of this section. Upon such completion the designated representative of the department shall make a recommended final decision to the director or to such person designated by the director to make such final decision. The final decision maker shall promptly issue a written decision to the person who requested the proceeding. Such decision shall constitute the final and nonappealable decision of the department.

J. Any decision upholding the suspension of licensing privileges as a result of the process described in subsections D through I of this section shall be entered by the department on its records and shall be treated as though it had occurred in

the Commonwealth and therefore as a violation of the board's applicable regulations.

K. The director shall establish procedures for reporting to participating states convictions or failures to comply with citations in the Commonwealth by residents of those respective states. Such procedures shall comply with the reporting requirements established by and pursuant to the provisions of the compact.

VA.R. Doc. No. R10-2302; Filed January 27, 2010, 10:19 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Proposed Regulation

Title of Regulation: **4VAC25-170. Geothermal Energy Regulations (amending 4VAC25-170-10 through 4VAC25-170-80).**

Statutory Authority: §§ 45.1-161.3, 45.1-179.6, and 45.1-179.7 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 16, 2010.

Agency Contact: Tabitha Hibbitts Peace, Policy Analyst, Department of Mines, Minerals and Energy, 3405 Mountain Empire Road, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8212, FAX (276) 523-8148, TTY (800) 828-1120, or email tabitha.peace@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in §§ 45.1-161.3, 45.1-179.6, and 45.1-179.7of the Code of Virginia.

Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.

Section 45.1-179.6 of the Code of Virginia gives DMME jurisdiction and authority necessary to enforce the provisions of this chapter and make and enforce rules, regulations, and orders.

Section 45.1-179.7 of the Code of Virginia empowers DMME to promulgate such rules and regulations as may be necessary to provide for geothermal drilling and the exploration and development of geothermal resources in the Commonwealth.

Purpose: The purpose of the subject chapter is to protect the public and the environment during the development of geothermal energy resources. The proposed regulatory action will correct outdated sections of the chapter and clarify language that is currently ambiguous. The amendments will make the chapter more accurate and easier to understand.

Substance: Section 4VAC25-170-10 will be amended to correct the current technical language referring to "geothermal resource," which does not clarify that the regulation applies to nonresidential use only. The amendment will clarify that the regulation does not apply to residential geothermal heat pumps, a common misconception.

Amendments to 4VAC25-170-30 and 4VAC25-170-40 are being made to bring consistency to data submission requirements for the DMME's Division of Gas & Oil. The use of latitude and longitude and the Virginia Coordinate System of 1927 have been replaced by the Virginia Coordinate System of 1983 in other Division of Gas & Oil regulations. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Division of Gas & Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

4VAC25-170-40 is being amended to change the name of the "Virginia Soil and Water Conservation Board" to the "Virginia Department of Conservation & Recreation." This change will reflect accurately the amended name for the state board statutorily responsible for erosion and sediment control regulation.

Issues: DMME's position is that the regulation should be amended, consistent with the stated objectives of applicable law, and that the amendments will have a positive economic impact on small business by reducing workload and increasing efficiency for applicants.

In addition, due to the renewed interest in alternative energy sources such as geothermal energy, an increased need exists for this regulation to be clarified so that the agency and the public will be able to better apply the regulation.

The agency is not using a participatory approach in the development of the proposal because the amendments are expected to be noncontroversial. The fact that no public comments were received in response to the Notice of Periodic Review and Notice of Intended Regulatory Action supports the agency's decision.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to require that the map of proposed wells accompanying exploration permit applications uses the Virginia Coordinate System of 1983. The current regulations require the use of the Virginia Coordinate System of 1927. Additionally, DMME proposes to make several clarifications and to update technical language.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The use of the Virginia Coordinate System of 1927 has been replaced by the Virginia Coordinate System of 1983 in other DMME Division of Gas & Oil regulations. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the DMME's Division of Gas & Oil. The process of converting each well or core hole location datum takes approximately five minutes.[1] If as proposed the requirement is switched from the 1927 system to the 1983 system, then firms will have about 5 minutes of their time saved for each well or core hole location datum.

According to the Department the 1983 coordinate system is more accurate and as stated above DMME already uses the 1983 system for other purposes. In addition to time saving for firms and improved accuracy of data, having a consistent coordinate system in the department database is beneficial as well. There are no apparent costs associated with requiring the use of the 1983 coordinate system rather than the 1927 system. Thus, the proposal clearly produces a net benefit.

Businesses and Entities Affected. According to the Department of Mines, Minerals and Energy, there are no companies presently developing commercial-scale geothermal resources in Virginia, and the extent of possible future developments is unknown.

Localities Particularly Affected. Commercial-scale geothermal resources have, in the past, been considered in parts of Virginia where hot springs are present (Bath County, for example); but warm water from deep wells could conceivably be exploited in almost any part of the Commonwealth.[2]

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to require that the map of proposed wells accompanying exploration permit applications uses the Virginia Coordinate System of 1983 rather than the Virginia Coordinate System of 1927 will moderately reduce costs for firms engaged in geothermal exploration.

Small Businesses: Costs and Other Effects. The proposed amendments do not produce costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments moderately reduce costs for developing real estate for geothermal exploration.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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[1] Source: Department of Mines, Minerals and Energy

[2] Ibid

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments (i) make a technical amendment to the definition of "geothermal resource" to clarify that the regulation applies to nonresidential use only, (ii) bring consistency to data submission requirements for the Division of Gas and Oil by requiring applicants to use the Virginia Coordinate System of 1983, and (iii) change the name of the "Virginia Soil and Water Conservation Board" to the "Virginia Department of Conservation and Recreation" to reflect accurately the name of the board statutorily responsible for erosion and sediment control regulation.

4VAC25-170-10. Definitions.

The following words and terms~~,~~ when used in this chapter~~,~~ shall have the following meanings~~,~~ unless the context clearly indicates otherwise:

"Bottom hole temperature" means the highest temperature measured in the well or bore hole. It is normally attained

directly adjacent to the producing zone, and commonly at or near the bottom of the borehole.

"Board" means the Virginia Gas and Oil Board.

"Casing" means all pipe set in wells.

~~"Commissioner" means the Director of the Virginia Department of Mines mineral and Energy.~~

"Conservation" means the preservation of geothermal resources from loss, waste, or harm.

"Correlative rights" means the mutual right of each overlying owner in a geothermal area to produce without waste a just and equitable share of the geothermal resources. Just and equitable shares shall be apportioned according to a ratio of the overlying acreage in a tract to the total acreage included in the geothermal area.

"Department" means the Virginia Department of Mines, Minerals and Energy.

"Departmental representative" means the Virginia Gas and Oil ~~Inspector~~ division director or a designated representative.

"Designated agent" means that person appointed by the owner or operator of any geothermal resource well to represent him.

"Drilling log" means the written record progressively describing all strata, water, minerals, geothermal resources, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, caving strata, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include the downhole geophysical survey records or logs~~,~~ if any are made.

"Exploratory well" means an existing well or a well drilled solely for temperature observation purposes preliminary to filing an application for a production or injection well permit.

"Geothermal area" means the general land area ~~which~~ that is underlaid or reasonably appears to be underlaid by geothermal resources in a single reservoir, pool, or other source or interrelated sources, as such area or areas may be from time to time designated by the department.

"Geothermal energy" means the usable energy produced or ~~which~~ that can be produced from geothermal resources.

"Geothermal reservoir" means the rock, strata, or fractures within the earth from which natural or injected geothermal fluids are obtained.

"Geothermal resource" means the natural heat of the earth at temperatures 70°F or above with volumetric rates of 100 gallons per minute or greater and the energy, in whatever form, present in, associated with, or created by, or ~~which~~ that may be extracted from, that natural heat. This definition does not include ground heat or groundwater resources at lower temperatures and rates that may be used in association with heat pump installations.

"Geothermal waste" means any loss or escape of geothermal energy, including, but not limited to:

1. Underground loss resulting from the inefficient, excessive, or improper use or dissipation of geothermal energy; or the locating, spacing, construction, equipping, operating, or producing of any well in a manner ~~which~~ that results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in Virginia; provided, however, that unavoidable dissipation of geothermal energy resulting from oil and gas exploration and production shall not be construed to be geothermal waste.

2. The inefficient above-ground transportation and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause, unnecessary or excessive surface loss or destruction of geothermal energy;

3. The escape into the open air of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

"Geothermal well" means any well drilled for the discovery or production of geothermal resources, any well reasonably presumed to contain geothermal resources, or any special well, converted producing well, or reactivated or converted abandoned well employed for reinjecting geothermal resources.

"Injection well" means a well drilled or converted for the specific use of injecting waste geothermal fluids back into a geothermal production zone for disposal, reservoir pressure maintenance, or augmentation of reservoir fluids.

~~"Inspector" means the Virginia Gas and Oil Inspector or such other public officer, employee, or other authority as may in emergencies be acting in the stead, or by law be assigned the duties of, the Virginia Gas and Oil Inspector under § 45.1-361.1 of the Code of Virginia.~~

"Monitoring well" means a well used to measure the effects of geothermal production on the quantity and quality of a potable groundwater aquifer.

"Operator" means any person drilling, maintaining, operating, producing, or in control of any well, and shall include owner when any well is operated or has been operated or is about to be operated by or under the direction of the owner.

"Owner" means the overlying property owner or lessee who has the right to drill into, produce, and appropriate from any geothermal area.

"Permit" means a document issued by the department pursuant to this chapter for the construction and operation of any geothermal exploration, production, or injection well.

"Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation whether domestic or foreign, agency or subdivision of this or any other state or the federal government, any municipal or quasi-municipal entity whether or not it is incorporated, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

"Production casing" means the main casing string which protects the sidewalls of the well against collapse and conducts geothermal fluid to the surface.

"Production record" means written accounts of a geothermal well's volumetric rate, pressure and temperature, and geothermal fluid quality.

"Sequential utilization" means application of the geothermal resource to a use with the highest heat need and the subsequent channeling of the resource to other uses with lower temperature requirements before injection or disposal of the geothermal fluid.

"Surface casing" (water protection string) means pipe designed to protect the freshwater sands.

"Unitized drilling operation" means the management of separately owned tracts overlying a geothermal area as a single drilling unit.

4VAC25-170-20. Resource conservation.

A. In order to foster geothermal utilization, prevent waste, protect correlative rights, safeguard the natural environment, and promote geothermal resource conservation and management, the department may designate geothermal areas, require well spacing and unitization, and allow sequential utilization on a case-by-case basis.

B. Wells shall be classified as to the geothermal area from which they produce, and geothermal areas shall be determined, designated, and named by the department in accordance with the definition provided in 4VAC25-170-10 of this chapter. In designating geothermal areas, factors to be considered shall include but not be limited to common usage and geographic names; the surface topography and property lines of the land underlain by geothermal energy; the plan of well spacing being employed or proposed for the area; the depth at which resources have been found; and the nature and character of the producing formation or formations. In the event any person is dissatisfied with any such classification or determination, an application may be made to the department for reclassification or redetermination.

C. Information provided the ~~inspector~~ director in the notice of intent to proceed shall be used by the department to determine spacing between production wells and between production and injection wells. The department may also conduct independent investigations as deemed necessary to determine appropriate well spacing and utilization.

When two or more separately owned tracts of land lie within a geothermal area, the department may require unitized operations under supervision of the ~~inspector~~ director or his departmental representative. Unitized drilling operations shall be operated according to the principle of correlative rights.

D. Persons desirous of engaging in sequential utilization shall file a formal request with the department ~~which~~ that shall contain the following items:

1. A statement of the uses to be made of the geothermal resource.

2. Evidence that sequential utilization will not cause heat drawdown in the geothermal aquifer, cause land subsidence, hinder observation of the geothermal resource, or contaminate potable water supplies.

3. Requests for sequential utilization shall be reviewed and acted upon by the department within 45 days of receipt.

4VAC25-170-30. Bonds, permits and fees.

A.1. Before any person shall engage in drilling for geothermal resources or construction of a geothermal well in Virginia, such person shall file with the ~~inspector~~ director a completion bond with a surety company licensed to do business in the Commonwealth of Virginia in the amount of $10,000 for each exploratory and injection well, and $25,000 for each production well. Blanket bonds of $100,000 may be granted at the discretion of the ~~inspector~~ director.

2. The return of such bonds shall be conditioned on the following requirements:

a. Compliance with all statutes, rules, and regulations relating to geothermal regulations and the permit.

b. Plugging and abandoning the well as approved by the ~~inspector~~ director in accordance with 4VAC25-170-80 ~~of this chapter~~.

3. A land stabilization bond of $1,000 per acre of land disturbed shall be required. Such bond will be released once drilling is completed and the land is reclaimed in accordance with 4VAC25-170-40 ~~of this chapter~~.

4. Liability under any bond may not be terminated without written approval of the ~~inspector~~ director.

B. Each exploration, production, and injection well permit application shall be accompanied by payment of a $75 application fee.

1. Applications will not be reviewed until the operator or designated agent submits proof of compliance with all pertinent local ordinances.

Before commencement of exploratory drilling operations on any tract of land, the operator or designated agent shall file an exploration permit application with the department. An accurate map of the proposed wells on an appropriate scale showing adjoining property lines and the proposed locations~~, latitude and longitude~~ using the Virginia Coordinate System of 1983 (Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia), and the depths and surface elevations shall be filed with the application. The application also shall include an inventory of local water resources in the area of proposed development.

2. Before commencement of production or injection well drilling, an application to produce and inject geothermal fluids shall be filed in the form of a notice of intent to proceed in accordance with the provisions of 4VAC25-170-40 ~~of this chapter~~.

3. New permit applications must be submitted if, either prior to or during drilling, the operator desires to change the location of a proposed well. If the new location is within the boundaries established by the permit or within an unitized drilling operation, the application may be made orally and the ~~inspector~~ director may orally authorize the commencement or continuance of drilling operations. Within 10 days after obtaining oral authorization, the operator shall file a new application to drill at the new location. A permit may be issued and the old permit cancelled without payment of additional fee. If the new location is located outside the unitized drilling unit covered by the first permit, no drilling shall be commenced or continued until the new permit is issued.

4. All applications, requests, maps, reports, records, and other data (including report forms) required by or submitted to the department shall be signed by the owner, operator, or designated agent submitting such materials.

5. The department will act on all permit applications within 30 days of receipt of an application or as soon thereafter as practical.

4VAC25-170-40. Notification of intent to proceed.

The notification of intent to proceed with geothermal production as required by 4VAC25-170-30 ~~of this chapter~~ must be accompanied by (i) an operations plan, (ii) a geothermal fluid analysis, and (iii) a proposal for injection of spent fluids.

1. The operations plan shall become part of the terms and conditions of any permit ~~which~~ that is issued, and the provisions of this plan shall be carried out where applicable in the drilling, production, and abandonment phase of the operation. The department may require any changes in the operations plan necessary to promote geothermal and water resource conservation and management, prevent waste, protect potable groundwater drinking supplies, or protect the environment, including a requirement for injection or unitization. The operations plan shall include the following information:

a. An accurate plat or map, on a scale not smaller than 400 feet to the inch, showing the proposed location~~, latitude, longitude~~ using the Virginia Coordinate System of 1983 (Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia), and surface elevation of the production and injection wells as determined by survey, the courses and distances of such locations from two permanent points or landmarks on said tract, the well numbers, the name of the owner, the boundaries and acreage of the tract on which the wells are to be drilled, the location of water wells, surface bodies of water, actual or proposed access roads, other production and injection wells on adjoining tracts, the names of the owners of all adjoining tracts and of any other tract within 500 feet of the proposed location, and any building, highway, railroad, stream, oil or gas well, mine openings or workings, or quarry within 500 feet of the proposed location. The location must be surveyed and the plat certified by a registered surveyor and bear his certificate number.

b. A summary geologic report of the area, including depth to proposed reservoir; type of reservoir; anticipated thickness of reservoir; anticipated temperature of the geothermal resource; anticipated porosity, permeability and pressure; geologic structures; and description of overlying formations and aquifers.

c. The method of meeting the guidelines of the Erosion and Sediment Control Regulations as adopted by the Virginia ~~Soil and Water Conservation Board~~ Department of Conservation and Recreation pursuant to §§ 10.1-561 to 10.1-564 of the Code of Virginia.

d. The method of disposing of all drilling muds and fluids, and all cement and other drilling materials from the well site; the proposed method of preventing such muds, fluids, drillings, or materials from seeping into springs, water wells, and surface waters during drilling operations.

e. The method of construction and maintenance of access roads, materials to be used, method to maintain the natural drainage area, and method of directing surface water runoff from disturbed areas around undisturbed areas.

f. The method of removing any rubbish or debris during the drilling, production, and abandonment phases of the project. All waste shall be handled in a manner ~~which~~ that prevents fire hazards or the pollution of surface streams and groundwater.

g. The primary and alternative method of spent geothermal fluid disposal. All disposal methods shall be

in accordance with state and federal laws for the protection of land and water resources.

h. The methods of monitoring fluid quality, fluid temperature, and volumetric rate of production and injection wells.

i. The method of monitoring potable drinking water aquifers close to production and injection zones.

j. The method of monitoring for land subsidence.

k. The method of plugging and abandoning wells and a plan for reclaiming production and injection well sites.

l. The method of cleaning scale and corrosion in geothermal casing.

m. A description of measures ~~which~~ that will be used to minimize any adverse environmental impact of the proposed activities on the area's natural resources, aquatic life, or wildlife.

2. Geothermal fluid analysis.

a. A geothermal fluid analysis shall be submitted with the operations plan, and annually thereafter.

b. Acceptable chemical parameters and sampling methods are set forth in 4VAC25-170-70 B ~~of this chapter~~.

3. Proposal for injection of geothermal fluids.

a. Geothermal fluid shall be injected into the same geothermal area from which it was withdrawn in the Atlantic Coastal Plain. Plans for injection wells in this area shall include information on:

(1) Existing reservoir conditions.

(2) Method of injection.

(3) Source of injection fluid.

(4) Estimate of expected daily volume in gallons per minute per day.

(5) Geologic zones or formations affected.

(6) Chemical analyses of fluid to be injected.

(7) Treatment of spent geothermal fluids prior to injection.

b. Exemptions to the injection rule for geothermal fluid shall be approved by the department. Such requests shall be accompanied by a detailed statement of the proposed alternative method of geothermal fluid disposal; the effects of not injecting on such reservoir characteristics as pressure, temperature, and subsidence; and a copy of the operator's or designated agent's no-discharge permit.

4VAC25-170-50. Well construction and maintenance.

A. Every person drilling for geothermal resources in Virginia, or operating, owning, controlling or in possession of any well as defined herein, shall paint or stencil~~,~~ and post and keep posted in a conspicuous place on or near the well a sign showing the name of the person, firm, company, corporation, or association drilling, owning, or controlling the well, the company or operator's well number, and the well identification number thereof. Well identification numbers will be assigned approved permits according to the USGS groundwater site inventory system. The lettering on such sign shall be kept in a legible condition at all times.

B. The ~~inspector~~ director shall receive notice prior to the commencement of well work concerning the identification number of the well and the date and time that well work is scheduled to begin. Telephone notice will fulfill this requirement.

C.1. Drilling-fluid materials sufficient to ensure well control shall be maintained in the field area and be readily accessible for use during drilling operations.

2. All drilling muds shall be used in a fashion designed to protect freshwater-bearing sands, horizons, and aquifers from contamination during well construction.

3. Drilling muds shall be removed from the drilling site after the well is completed and disposed of in the method approved in the operations plan.

4. Operations shall be conducted with due care to minimizing the loss of reservoir permeability.

D. All wells must be drilled with due diligence to maintain a reasonably vertical well bore. Deviation tests must be recorded in the drilling log for every 1000 feet drilled.

E.1. A well may deviate intentionally from the vertical with written permission by the ~~inspector~~ director. Such permission shall not be granted without notice to adjoining landowners, except for side-tracking mechanical difficulties.

2. When a well has been intentionally deviated from the vertical, a directional survey of the well bore must be filed with the department within 30 days after completion of the well.

3. The department shall have the right to make, or to require the operator to make, a directional survey of any well~~,~~ at the request of an adjoining operator or landowner prior to the completion of the well and at the expense of said adjoining operator or landowner. In addition, if the department has reason to believe that the well has deviated beyond the boundaries of the property on which the well is located, the department also shall have the right to make, or to require the operator to make, a directional survey of the well at the expense of the operator.

F.1. Valves approved by the ~~inspector~~ director shall be installed and maintained on every completed well so that pressure measurements may be obtained at any time.

2. Blow-out preventers during drilling shall be required when the working pressure on the wellhead connection is greater than 1000 psi.

G.1. Geothermal production wells shall be designed to ensure the efficient production and elimination of waste or escape of the resource.

2. All freshwater-bearing sands, horizons, and aquifers shall be fully protected from contamination during the production of geothermal fluids.

3.a. Surface casing shall extend from a point 12 inches above the surface to a point at least 50 feet below the deepest known groundwater aquifer or horizon.

b. The operator, owner, or designated agent shall use new casing. Only casing ~~which~~ that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal production wells.

c. Cement introduced into a well for the purpose of cementing the casing or for the purpose of creating a permanent bridge during plugging operations shall be placed in the well by means of a method approved by the ~~inspector~~ director. In addition:

(1) Each surface string shall be cemented upward from the bottom of the casing.

(2) Cement shall be allowed to stand for 24 hours or until comprehensive strength equals 500 psi before drilling.

d. The department may modify casing requirements when special conditions demand it.

4.a. The owner, operator, or designated agent shall use new casing. Only production casing ~~which~~ that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal production wells.

b. Each well shall be cemented with a quantity of cement sufficient to fill the annular space from the production zone to the surface. The production casing shall be cemented to exclude, isolate, or segregate overlapping and to prevent the movement of fluids into freshwater zones.

c. Cement shall be allowed to stand for 24 hours or until compressive strength equals 500 psi before drilling.

d. Cement introduced into a well for the purpose of cementing the casing or for the purpose of creating a permanent bridge during plugging operations shall be placed in the well by means of a method approved by the ~~inspector~~ director.

e. The department may modify casing requirements when special conditions demand it.

f. The ~~inspector~~ director may require additional well tests if production or monitoring records indicate a leak in the production casing. When tests confirm the presence of a production casing leak, the ~~inspector~~ director may require whatever actions are necessary to protect other strings and freshwater horizons.

H.1. The owner, operator, or designated agent shall use new casing. Only casing ~~which~~ that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal injection wells.

2. The casing program shall be designed so that no contamination will be caused to freshwater strata. Injection shall be done through production casing adequately sealed and cemented to allow for monitoring of the annulus between the injection string and the last intermediate string or water protection string, as the case may be. Injection pressure shall be monitored and regulated to minimize the possibility of fracturing the confining strata.

3. Production casing shall be cemented through the entire freshwater zone.

4. The rate of injection of geothermal fluid shall not exceed the production rate.

5. Adequate and proper wellhead equipment shall be installed and maintained in good working order on every injection well not abandoned and plugged, so that pressure measurements may be obtained at any time.

I.1. The ~~inspector~~ director or a departmental representative shall have access to geothermal well sites during business hours.

2. The state geologist or his designated representative shall have access to any drilling site for the purpose of examining whole cores or cuttings as may be appropriate.

J. At least ~~ten~~ 10 days prior to any chemical cleaning of production casing, the operator shall notify the ~~inspector~~ director in writing of the type and amount of chemical to be used and obtain approval for its use.

K. The well operator, or his designated agent, shall file a completion report within 60 days after well work is completed. The completion report shall be accompanied by copies of any drilling logs required under 4VAC25-170-40 ~~of this chapter~~.

4VAC25-170-60. Records, logs and general requirements.

A.1. During the drilling and production phases of every well, the owner, operator, or designated agent responsible for the conduct of drilling operations shall keep at the well an accurate record of the well's operations as outlined in subsection C of this section. These records shall be accessible to the ~~inspector~~ director at all reasonable hours.

2. The refusal of the well operator or designated agent to furnish upon request such logs or records or to give information regarding the well to the department shall constitute sufficient cause to require the cessation or shutting down of all drilling or other operations at the well site until the request is honored.

3. Drilling logs supplied to the department will be kept in confidence in accordance with § 40.1-11 of the Code of Virginia.

4. Copies of all drilling logs and productions records required by this chapter shall be mailed to:

Virginia Gas and Oil ~~Inspector~~ Director
Department of Mines, Minerals and Energy
Division of Gas and Oil
P.O. Box ~~1416~~ 159
~~Abingdon, VA 24212~~ Lebanon, VA 24266

5. Samples representative of all strata penetrated in each well shall be collected and furnished to the Commonwealth. Such samples shall be in the form of rock cuttings collected so as to represent the strata encountered in successive intervals no greater than 10 feet. If coring is done, however, the samples to be furnished shall consist, at a minimum, of one-quarter segments of core obtained. All samples shall be handled as follows:

a. Rock cuttings shall be dried and properly packaged in a manner that will protect the individual samples, each of which shall be identified by the well name, identification number, and interval penetrated.

b. Samples of core shall be boxed according to standard practice and identified as to well name and identification number and interval penetrated.

c. All samples shall be shipped or mailed, charges prepaid, to:

Department of Mines, Minerals and Energy
Division of Mineral Resources
Fontaine Research Park
900 Natural Resources Drive
P.O. Box 3667
Charlottesville, VA 22903

B. Each well operator, owner, or designated agent, within 30 days after the completion of any well, shall furnish to the ~~inspector~~ director a copy of the drilling log. Drilling logs shall list activities in chronological order and include the following information:

1. The well's location and identification number.

2. A record of casings set in wells.

3. Formations encountered.

4. Deviation tests for every one thousand feet drilled.

5. Cementing procedures.

6. A copy of the downhole geophysical logs.

C. The owner, operator, or designated agent of any production or injection well shall keep or cause to be kept a careful and accurate production record. The following information shall be reported to the ~~inspector~~ director on a monthly basis for the first six months and quarterly thereafter, or as required by permit, unless otherwise stated:

1. Pressure measurements as monitored by valves on production and injection wells.

2. The volumetric rate of production or injection measured in terms of the average flow of geothermal fluids in gallons per minute per day of operation.

3. Temperature measurements of the geothermal fluid being produced or injected, including the maximum temperature measured in the bore-hole and its corresponding depth, and the temperature of the fluid as measured at the discharge point at the beginning and conclusion of a timed production test.

4. Hydraulic head as measured by the piezometric method.

4VAC25-170-70. Groundwater monitoring.

A.1. Groundwater shall be monitored through special monitoring wells or existing water wells in the area of impact, as determined by the department.

2. Monitoring shall be performed and reported to the ~~inspector~~ director daily on both water quality and piezometric head for the first 30 days of geothermal production. Thereafter, quarterly tests for piezometric head and for water quality shall be reported to the ~~inspector~~ director.

3. The monitoring of groundwater shall meet the following conditions:

a. A minimum of one monitoring well per production or injection well is required. Monitoring wells shall monitor those significant potable aquifers through which the well passes as required by the department.

b. The monitoring wells shall be located within the first 50% of the projected cone of depression for the geothermal production well.

c. The well(s) shall be constructed to measure variations in piezometric head and water quality. Groundwater shall be chemically analyzed for the following parameters: mineral content (alkalinity, chloride, dissolved solids, fluoride, calcium, sodium, potassium, carbonate, bicarbonate, sulfate, nitrate, boron, and silica); metal content (cadmium, arsenic, mercury, copper, iron, nickel, magnesium, manganese, and zinc); and general parameters (pH, conductivity, dissolved solids, and hardness).

d. The department may require additional analyses if levels of the above parameters indicate their necessity to protect groundwater supplies.

B.1. Chemical analyses of geothermal fluids shall be filed with the ~~inspector~~ director on an annual basis.

2. Samples for the chemical fluid analysis shall be taken from fluid as measured at the discharge point of the production well at the conclusion of a two-hour production test.

3. The production fluid shall be chemically analyzed for the following parameters: mineral content (alkalinity, chloride, dissolved solids, fluoride, calcium, sodium, potassium, carbonate, bicarbonate, sulfate, nitrate, boron, and silica); metal content (cadmium, arsenic, mercury, copper, iron, nickel, magnesium, manganese, and zinc); gas analyses (hydrogen sulfide, ammonia, carbon dioxide, and gross alpha); and general parameters (pH, conductivity, and dissolved solids).

4. The department may require additional analyses if levels of the above parameters indicate follow-up tests are necessary.

C.1. Subsidence shall be monitored by the annual surveys of a certified surveyor from vertical benchmarks located above the projected cone of depression, as well as points outside its boundaries. The surveys shall be filled with the ~~inspector~~ director by the operator or designated agent.

2. The department may order micro-earthquake monitoring, if surveys indicate the occurrence of subsidence.

D.1. The operator, owner, or designated agent shall maintain records of any monitoring activity required in his permit or by this chapter. All records of monitoring samples shall include:

a. The well identification number.

b. The date the sample was collected.

c. Time of sampling.

d. Exact place of sampling.

e. Person or firm performing analysis.

f. Date analysis of the sample was performed.

g. The analytical method or methods used.

h. Flow-point at which sample was taken.

i. The results of such analysis.

2. The operator, owner, or designated agent shall retain for a period of five years any records of monitoring activities and results, including all original strip chart recordings of continuous monitoring installations. The period of retention will automatically be extended during the course of any litigation regarding the discharge of contaminants by the permittee until such time as the litigation has ceased or when requested by the ~~inspector~~ director. This requirement shall apply during the five-year period following abandonment of a well.

4VAC25-170-80. Abandonment and plugging of wells.

A. Notification of intent to abandon any exploration, production, or injection well must be received by the ~~inspector~~ director during working hours at least one day before the beginning of plugging operations. When notification of intent to abandon an exploratory, production, or injection well is received, the ~~inspector~~ director may send a departmental representative to the location specified and at the time stated to witness the plugging of the well.

B.1. Any drilling well completed as a dry hole from which the rig is to be removed shall be cemented unless authorization to the contrary has been given by the ~~inspector~~ director.

2. The bottom of the hole shall be filled to, or a bridge shall be placed at the top of, each producing formation open to the well bore. Additionally, a cement plug not less than 50 feet in length shall be placed immediately above each producing formation.

3. A continuous cement plug shall be placed through all freshwater-bearing aquifers and shall extend at least 50 feet above and 50 feet below said aquifers.

4. A plug not less than 20 feet in length shall be placed at or near the surface of the ground in each hole.

5. The interval between plugs shall be filled with a nonporous medium.

6. The method of placing cement in the holes shall be by any method approved by the ~~inspector~~ director in advance of placement.

7. The exact location of each abandoned well shall be marked by a piece of pipe not less than four inches in diameter securely set in concrete and extending at least four feet above the general ground level. A permanent sign of durable construction shall be welded or otherwise permanently attached to the pipe, and shall contain the well identification information required by 4VAC25-170-50.

8. When drilling operations have been suspended for 60 days, the well shall be plugged and abandoned unless written permission for temporary abandonment has been obtained from the ~~inspector~~ director.

9. Within 20 days after the plugging of any well, the responsible operator, owner, or designated agent who plugged or caused the well to be plugged shall file a notice with the department indicating the manner in which the well was plugged.

VA.R. Doc. No. R08-1316; Filed January 27, 2010, 9:21 a.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Suspension of Effective Date and Extension of Public Comment Period

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-20, 4VAC50-60-30, 4VAC50-60-40; adding 4VAC50-60-45, 4VAC50-60-48, 4VAC50-60-53, 4VAC50-60-56, 4VAC50-60-63, 4VAC50-60-65, 4VAC50-60-66, 4VAC50-60-69, 4VAC50-60-72, 4VAC50-60-74, 4VAC50-60-76, 4VAC50-60-85, 4VAC50-60-92, 4VAC50-60-93, 4VAC50-60-94, 4VAC50-60-95, 4VAC50-60-96, 4VAC50-60-97, 4VAC50-60-98, 4VAC50-60-99, 4VAC50-60-102, 4VAC50-60-104, 4VAC50-60-106, 4VAC50-60-108, 4VAC50-60-112, 4VAC50-60-114, 4VAC50-60-116, 4VAC50-60-118, 4VAC50-60-122, 4VAC50-60-124, 4VAC50-60-126, 4VAC50-60-128, 4VAC50-60-132, 4VAC50-60-134, 4VAC50-60-136, 4VAC50-60-138, 4VAC50-60-142, 4VAC50-60-154, 4VAC50-60-156, 4VAC50-60-157, 4VAC50-60-158, 4VAC50-60-159; repealing 4VAC50-60-50, 4VAC50-60-60, 4VAC50-60-70, 4VAC50-60-80, 4VAC50-60-90, 4VAC50-60-100, 4VAC50-60-110, 4VAC50-60-120, 4VAC50-60-130, 4VAC50-60-140, 4VAC50-60-150).**

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Public Comment Deadline: 5 p.m. on March 17, 2010.

Notice is hereby given that on December 9, 2009, the Virginia Soil and Water Conservation Board adopted revisions to the Virginia Stormwater Management Program (VSMP) Permit Regulations Parts I, II, and III (4VAC50-60), and that on January 14, 2010, the board, in response to 25 petitions received during the final adoption period, suspended the effective date of this regulatory action in accordance with § 2.2-4007.06 of the Virginia Administrative Process Act to allow time for a 30-day public review and comment period on changes made since the original proposed regulations were approved on September 24, 2008. The board is receiving comment only on the changes that were made between the proposed regulations and the final regulations adopted by the Board on December 9, 2009 (published on January 4, 2010, in Volume 26, Issue 9 of the Virginia Register).

Summary of Regulations:

This final regulatory action amends the technical criteria applicable to stormwater discharges from construction activities; establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs; and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

The proposed version of the regulations established consistent statewide water quality requirements that included a 0.28 lbs/acre/year phosphorus standard for new development and a requirement that total phosphorus loads be reduced to an amount at least 20% below the pre-development phosphorus load on prior developed lands. Concerning water quantity, the proposed version specified that stormwater discharged from a site to an unstable channel must be released at or below a "forested" peak flow rate condition. No exceptions to the standard were provided. As described below, the final regulations change these technical standards and provide additional flexibility that was not present in the proposed regulations.

In the final action, with regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are included in Part II A of the regulations (existing technical criteria will now be maintained in a new Part II B that applies to grandfathered projects). These revised technical requirements in Part II A include:

-- a 0.45 lbs/acre/year phosphorus standard for new development activities statewide;

-- a requirement that total phosphorus loads be reduced to an amount at least 20% below the pre-development phosphorus load on prior developed lands for land disturbing activities greater than or equal to an acre and 10% for redevelopment sites disturbing less than 1 acre;

-- a requirement that control measures be installed on a site to meet any applicable wasteload allocation; and

-- water quantity requirements that include both channel protection and flood protection criteria. In the final version, stormwater that is discharged from a site to an unstable channel must be released at or below a "good pasture" peak flow rate condition unless the pre-developed condition for the site is forest, in which case, the runoff shall be held to the forested condition. Exceptions to the "good pasture" standard are provided to a land disturbing activity that is less than 5 acres on prior developed lands; or less than 1 acre for new development. Under the exceptions, the sites are expected to improve upon the pre-developed runoff condition.

The final regulations also provide five offsite options organized in a new section that may be utilized as specified in the regulation for a developer to achieve the required onsite water quality and where allowed water quantity requirements (the proposed regulations only contained three options). One of the new provisions includes a state buy-down option that would be available in the future should a standard more stringent than 0.45 lbs/acre/year phosphorus be established for projects occurring within the Chesapeake Bay Watershed.

The proposed regulations did not contain grandfathering provisions. The final regulations contain a new section on grandfathering that specifies that if the operator of a project has met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage by July 1, 2010, then the project is grandfathered under today's water quality and quantity technical standards (Part II B) until June 30, 2014. If permit coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019. It also notes that past June 30, 2019, or if a project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A. The grandfathering provisions also contain criteria for the grandfathering of state agency projects for which state or federal funding has been approved as of July 1, 2010, and finally, criteria for grandfathering projects for which governmental bonding or public debt financing has been issued prior to July 1, 2010.

This final action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (board) authorized qualifying local program (Part III A) or for a board-authorized department-administered local stormwater management program (Part III B) which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part III D establishes the procedures the board will utilize in authorizing a locality to administer a qualifying local program. Part III C establishes the criteria the department will utilize in reviewing a locality's administration of a qualifying local program.

Changes to Part III between the proposed and final regulations include the addition of language that specifies that stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot, at the qualifying program's discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspection requirements, maintenance agreement requirements, or construction record drawing requirements. Instead, a qualifying local program is authorized to develop a strategy for addressing maintenance of stormwater management facilities located on and primarily designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Finally, this action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are deleted, needed definitions are added, and many existing definitions are updated. In the final action, several additional definitions were added and other minor refinements were made to address comments received.

Public Participation and Contact Information:

In addition to comments on changes made since the original proposed regulations were approved on September 24, 2008, the board is seeking comments on the costs and benefits of the changes made to the proposed regulations at the time of final adoption.

Anyone wishing to submit written comments pertaining to these final regulations may do so by mail, facsimile, or email. Comments pertaining to the final regulations may be mailed to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be faxed to the Regulatory Coordinator at: (804) 786-6141 or emailed to the coordinator at regcord@dcr.virginia.gov. Written comments (including email) must include the name and address of the commenter. In order to be considered, comments must be received between February 15, 2010, and March 17, 2010. Public comment will be accepted until 5 p.m. on March 17, 2010.

Copies of the final regulations and the Town Hall final regulation discussion forms may be obtained on the Virginia Regulatory Town Hall webpage: http://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=5397 or from the regulatory coordinator at: regcord@dcr.virginia.gov; (804) 786-2291.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219,

telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

VA.R. Doc. No. R08-587; Filed January 26, 2010, 12:59 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

Titles of Regulations: **9VAC5-20. General Provisions (amending 9VAC5-20-21).**

9VAC5-45. Consumer and Commercial Products (adding 9VAC5-45-10 through 9VAC5-45-850).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gegraham@deq.virginia.gov.

Summary:

A new chapter (9VAC5-45) is established for the control of volatile organic compound (VOC) emissions from various consumer and commercial products in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new chapter consists of two parts. The first part contains general requirements pertaining to all of the types of consumer and commercial products regulated. The second part is composed of articles that contain VOC content and emission standards for individual types of consumer products and contain the control technology, testing, monitoring, administrative, recordkeeping, and reporting requirements necessary to determine compliance with each of the applicable standards.

The new chapter includes two articles that control VOC emissions from portable fuel containers and spouts. These articles implement design, performance, and labeling standards for portable fuel container products before and after August 1, 2010, and prohibit owners from manufacturing, distributing, and selling noncompliant products.

The new chapter includes two articles that control VOC emissions from certain types of consumer products. These articles implement VOC content standards for some individual product categories before and after August 1, 2010, and prohibit owners from manufacturing, distributing, advertising, or selling noncompliant products.

The new chapter includes an article for the control of VOC emissions from architectural and industrial maintenance coatings that implements VOC content standards for all such coating products and prohibits owners from manufacturing, distributing, selling, and using noncompliant products.

The new chapter includes an article that controls VOC emissions from adhesives, adhesive primers, sealants, and sealant primers that implements VOC content limits for those products and prohibits owners from manufacturing, distributing, selling, or applying noncompliant products.

Finally, the new chapter includes an article that controls VOC emissions from asphalt paving operations, which prescribes the use of emulsified asphalt coatings except for the purpose of coating residential driveways and prohibits the mixing, storage, and application of noncompliant products.

In the final regulation, the applicability dates and compliance dates for the new VOC emissions standards for portable fuel containers, consumer products, and adhesives and sealants are revised from January 1, 2009, to August 1, 2010. Also, some recordkeeping requirements have been reduced from five years to three years. Finally, a phase-in period is established for standards that apply to the use of single-ply roof membrane adhesives and sealants, and the compliance date for manufacturing, distribution, and sale of those products is delayed until the phase-in period has been completed.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained

in the CFR (2008) in effect July 1, 2008. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50-National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(b) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E -- Reserved.

(f) Appendix F -- Measurement [~~Principle~~ Principle] and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(j) Appendix J -- Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

(k) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(l) Appendix L - Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere.

(m) Appendix M - Reserved.

(n) Appendix N - Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$.

(o) Appendix O - Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(p) Appendix P - Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(q) Appendix Q - Reference Method for the Determination of Lead in Suspended Particulate Matter as PM_{10} Collected from Ambient Air.

(r) Appendix R - Interpretation of the National Ambient Air Quality Standards for Lead.

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

[(a)] Appendix M -- Recommended Test Methods for State Implementation Plans.

[~~(a)~~ (b)] Appendix S -- Emission Offset Interpretive Ruling.

[~~(b)~~ (c)] Appendix W -- Guideline on Air Quality Models (Revised).

[~~(c)~~ (d)] Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(4) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

(5) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et

seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(6) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(7) 40 CFR Part 59, Subpart D-National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."

(8) 40 CFR Part 64, Compliance Assurance Monitoring.

(9) 40 CFR Part 72, Permits Regulation.

(10) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(12) 40 CFR Part 75, Continuous Emission Monitoring.

(13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

(14) 40 CFR Part 77, Excess Emissions.

(15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

(16) 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

(17) 40 CFR Part 152 [,] Subpart I, Classification of Pesticides.

(18) 49 CFR Part 172, Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 [,] Subpart F, Fire Protection and Prevention.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency [, "" (GD-35),] Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) [of this subdivision] may be obtained online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/index.html. Copies of the document identified in subdivision E 2 a (3) of this subdivision are only available online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/emc/guidlnd.html.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) ~~D86-01~~ D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" ~~(2001)~~ (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) ~~Test Method 512, "Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).~~ Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) ~~Test~~ Method 310 ~~(including Appendices A and B)~~, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" ~~(July 18, 2001)~~ (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

CHAPTER 45
CONSUMER AND COMMERCIAL PRODUCTS

Part I
Special Provisions

9VAC5-45-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to:

1. Any product for which an emission standard or other requirement is prescribed under this chapter; and

2. Any owner or other person that engages in or permits an operation that is subject to the provisions of this chapter. Such operations may include, but are not limited to, the manufacture, packaging, distribution, marketing, application, sale or use, or contracting for the application, sale, or use, of the products specified in subdivision 1 of this subsection.

B. The provisions set forth in subdivisions 1 through 6 of this subsection, unless specified otherwise, shall not apply to any product or operation for which emission standards are prescribed under this chapter.

1. The provisions of 9VAC5-20-160 (Registration).

2. The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction).

3. The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and Article 1 (9VAC5-50-60 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

4. The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

5. The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) and Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

6. The provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

C. Nothing in this chapter shall be interpreted to exempt a stationary source from any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), 9VAC5-60 (Hazardous Air Pollutant Sources) or 9VAC5-80 (Permits for Stationary Sources) that may apply.

D. Any owner or other person subject to the provisions of this chapter may provide any report, notification, or other document by electronic media if acceptable to both the owner and board. This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.

9VAC5-45-20. Compliance.

A. Unless otherwise specified in this chapter, no owner or other person shall engage in or permit any applicable operation (such as the manufacture, packaging, distribution, marketing, application, sale or use, or contracting for the application, sale or use, of any product) in violation of a standard prescribed under this chapter after the effective date of such standard.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by emission tests

established by 9VAC5-45-30, unless specified otherwise in the applicable standard.

2. Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:

a. New source performance standards established pursuant to § 111 of the federal Clean Air Act.

b. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

c. Limitations and conditions that are part of an implementation plan.

d. Limitations and conditions that are part of a § 111(d) or § 111(d)/129 plan.

e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

3. Compliance with opacity standards in this chapter shall be determined by conducting observations in accordance with Reference Method 9 or any alternative method. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards.

4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard. This exception shall not apply to the following federal requirements:

a. Limitations and conditions that are part of an implementation plan.

b. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

c. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

B. No owner or other person subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

C. No owner or other person subject to the provisions of this chapter shall fail to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner or other person subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records, or report emission test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any equipment associated with an operation subject to the provisions of this chapter including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the operation.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers that are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. For the purpose of submitting compliance certifications or establishing whether or not an owner or other person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate emission or compliance test or procedure had been performed.

9VAC5-45-30. Emission testing.

A. Emission tests for operations and products subject to standards prescribed under this chapter shall be conducted

and reported, and data shall be reduced as set forth in this chapter and in the appropriate reference methods unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether such operation or product is in compliance; (iv) waives the requirement for emission tests because the owner or other person has demonstrated by other means to the board's satisfaction that such operation or product is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. In cases where no appropriate reference method exists for an operation or product subject to an emission standard for volatile organic compounds, the applicable test method in 9VAC5-20-121 may be considered appropriate.

B. Emission testing for operations and products subject to standards prescribed under this chapter shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgment, and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established emission standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Emission tests for operations and products subject to standards prescribed under this chapter shall be conducted under conditions that the board shall specify to the owner, based on representative performance of such operation or product. The owner shall make available to the board such records as may be necessary to determine the conditions of the emission tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an emission test unless otherwise specified in the applicable standard.

D. An owner may request that the board determine the opacity of emissions from operations or control devices that are subject to the provisions of this chapter during the emission tests required by this section.

E. Except as otherwise specified in the applicable test method or procedure, each emission test for an operation or product subject to standards prescribed under this chapter shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions acceptable to the board. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost, or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

F. The board may test emissions of volatile organic compounds from any operation or product subject to standards prescribed under this chapter. Upon request of the board the owner shall provide, or cause to be provided, emission testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source. This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct with acceptable flow characteristics during emission tests, as demonstrated by applicable test methods and procedures.

2. Safe sampling platforms.

3. Safe access to sampling platforms.

4. Utilities for sampling and testing equipment.

5. Test enclosures for determining capture efficiency.

G. The board may, at its discretion, accept other demonstrations of compliance in lieu of emission testing, such as the results of manufacturer emission testing of a product batch or manufacturer product batch formulation records.

H. Upon request of the board, any owner or other person causing or permitting any operation subject to the provisions of this chapter shall conduct emission tests in accordance with procedures approved by the board.

9VAC5-45-40. Monitoring.

A. Unless otherwise approved by the board, owners or other persons subject the provisions of an standard under this chapter shall install, calibrate, maintain, and operate systems for continuously monitoring and recording emissions of specified pollutants as specified in the applicable article of this chapter. However, nothing in this chapter shall exempt any owner from complying with subsection F of this section.

B. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting emission tests required under 9VAC5-45-30. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device and completion of any conditioning period specified by the appropriate specification in Appendix B of 40 CFR Part 60.

C. During any emissions tests required under 9VAC5-45-30 or within 30 days thereafter and at such other times as may be requested by the board, the owner or other person subject to

the requirements of subsection A of this section shall conduct continuous monitoring system performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures specified in the applicable emission standard, the requirements contained in applicable procedures in 9VAC5-20-121, and the requirements and procedures equivalent to those contained in the appropriate specification of Appendix B of 40 CFR Part 60.

D. Unless otherwise approved by the board, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained, and operated in accordance with (i) applicable requirements in this section, (ii) requirements in the applicable emission standard, and (iii) requirements equivalent to those in 40 CFR 60.13.

E. After receipt and consideration of written application, the board may approve alternatives to any monitoring procedures or requirements of this chapter including, but not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases.

2. Alternative monitoring requirements when the source is infrequently operated.

3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.

4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner can demonstrate the installation at alternate locations will enable accurate and representative measurements.

5. Alternative methods of converting pollutant concentration measurements to units of the standards.

6. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).

7. Alternative monitoring requirements when the effluent from a single source or the combined effluent from two or more sources are released to the atmosphere through more than one point.

8. Alternative procedures for performing calibration checks.

9. Alternative monitoring requirements when the requirements of this section would impose an extreme economic burden on the owner.

10. Alternative monitoring requirements when the continuous monitoring systems cannot be installed due to physical limitations at the source.

F. Upon request of the board, the owner or other person subject to the provisions of this chapter shall install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions or process parameters or both in accordance with methods and procedures acceptable to the board.

9VAC5-45-50. Notification, records and reporting.

A. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 C shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-45-40 C. Notification shall be postmarked not less than 30 days prior to such date.

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked not less than 30 days prior to such date.

3. The anticipated date for conducting the opacity observations required by 9VAC5-45-20 A 3. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked not less than 30 days prior to such date.

B. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 A shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction of the operation subject to the provisions of an article under this chapter; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner or other person required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and either a monitoring systems performance report or a summary report form, or both, to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40

CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9VAC5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions.

2. The process operating time during the reporting period.

3. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source.

4. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

5. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

6. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

D. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 or monitoring requirements of an article under this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standard) following the date of such measurements, maintenance, reports, and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. Any owner or other person that is subject to the provisions of this chapter shall keep records as may be necessary to determine its emissions. Any owner or other person claiming that an operation or product is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. Unless otherwise specified by the provisions of an article under this chapter, all records required to determine compliance with the provisions of an article under this chapter shall be maintained by the owner or other person subject to such provision for two years from the date such record is created and shall be made available to the board upon request.

H. Upon request of the board, the owner or other person subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records, or report emission test or monitoring results in a manner and form and using procedures acceptable to board.

I. [~~All information~~ Information] submitted to the board to meet the requirements of this chapter shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

Part II
Emission Standards

Article 1
Emission Standards for Portable Fuel Containers and Spouts Manufactured before [~~January 1, 2009~~ August 1, 2010]

9VAC5-45-60. Applicability.

A. Except as provided in 9VAC5-45-70, the provisions of this article apply to any portable fuel container or spout manufactured before [~~January 1, 2009~~ August 1, 2010]. The provisions of Article 2 (9VAC5-45-160 et seq.) of this part apply to portable fuel containers and spouts manufactured on or after [~~January 1, 2009~~ August 1, 2010].

B. Except as provided in 9VAC5-45-70, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts.

C. The provisions of this article apply only to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-70. Exemptions.

A. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60.

B. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale a portable fuel container or spout that does not comply with the emission standards specified in 9VAC5-45-90, as long as the manufacturer or distributor can demonstrate that:

(i) the portable fuel container or spout is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60 C; and (ii) the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60 C. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

C. The provisions of this article do not apply to safety cans meeting the requirements of [subpart F of] 29 CFR Part 1926 [~~Subpart F~~].

D. The provisions of this article do not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

E. The provisions of this article do not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided (i) such devices are designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions, and (ii) such devices either create a leak-proof seal against a stock target fuel tank, or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

F. The provisions of this article do not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

G. The provisions of this article do not apply to closed-system portable fuel containers that are used exclusively for fueling remote control model airplanes.

H. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-80. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10 [(General Definitions)] unless otherwise required by context.

C. Terms defined.

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

"CARB" means California Air Resources Board.

"Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout for personal, family, household, or institutional use. Persons acquiring a portable fuel container or spout for resale are not "consumers" for that product.

"Distributor" means any person to whom a portable fuel container or spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers, and consumers.

"Fuel" means all motor fuels subject to any provision of Chapter 12 (§ 59.1-149 et seq.) of Title 59.1 of the Code of Virginia, excluding liquefied petroleum gas, compressed natural gas, and hydrogen. This term includes, but is not limited to, gasoline, diesel fuel, and gasoline-alcohol blends.

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a portable fuel container or spout.

"Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

"Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

"Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

"Portable fuel container" means any container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed, used, sold, advertised [for sale], or offered for sale for receiving, transporting, storing, and dispensing fuel. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled as described in 49 CFR 172.407(a) with language indicating that the containers or vessels are solely intended for use with nonfuel products.

[~~"Product category" means the applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the board.~~]

"Retail outlet" means any establishment at which portable fuel containers or spouts are sold, supplied, or offered for sale.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Spill-proof spout" means any spout that complies with the standards specified in 9VAC5-45-90 B and the administrative requirements in 9VAC5-45-100.

"Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the standards in 9VAC5-45-90 A and the administrative requirements in 9VAC5-45-100.

"Spout" means any device that can be firmly attached to a portable fuel container and through which the contents of the container may be poured. A spout does not include a device that can be used to lengthen the spout to accommodate necessary applications.

"Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

9VAC5-45-90. Standard for volatile organic compounds.

A. No owner or other person shall sell, supply, offer for sale, or manufacture for sale any portable fuel container after the compliance dates specified in 9VAC5-45-120 A unless that portable fuel container meets all of the following standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Has only one opening for both filling and pouring.

4. Does not exceed a permeation rate of 0.4 grams per gallon per day.

5. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale any spout after the compliance dates specified in 9VAC5-45-120 unless that spout meets all of the following standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

C. The test procedures for determining compliance with the standards in this section are set forth in 9VAC5-45-130. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9VAC5-45-130 to show that its product meets the standards of this section prior to allowing the product to be offered for sale. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale and shall make those test results available within 60 days of request.

D. Compliance with the standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the board test for or determine compliance with such other statutes or regulations.

E. The following provisions apply to sell through of portable fuel containers and spouts manufactured before [~~January 1, 2009~~ August 1, 2010]:

1. Notwithstanding the provisions of subsections A and B of this section, a portable fuel container or spout manufactured before the applicable compliance date specified in 9VAC5-45-120 A, may be sold, supplied, or offered for sale after the applicable compliance date, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

2. Notwithstanding the provisions of [~~subdivision 1 of this subsection, a portable fuel container or spout manufactured before January 1, 2009, shall not be sold, supplied, or offered for sale on or after January 1, 2009, unless the date of manufacture or a code representing the date of manufacture is clearly displayed on the portable fuel container or spout. However, portable fuel containers or spouts without such dates or date codes may be sold, supplied or offered for sale on and after January 1, 2009, if they comply with all of the provisions of Article 2 (9VAC5-45-160 et seq.) of this part~~ subsections A and B of this section, a portable fuel container or spout manufactured after the applicable compliance date specified in 9VAC5-45-120 A and before August 1, 2010, may be sold, supplied, or offered for sale after August 1, 2010, if it complies with all of the provisions of Article 2 (9VAC5-45-160 et seq.) of this part].

3. Except as provided in [~~subdivision 1~~ subdivisions 1 and 2] of this subsection, displaying the date of manufacture, or a code indicating the date of manufacture, on the product container or package does not exempt the owner or product from the provisions of this article.

9VAC5-45-100. Administrative requirements.

A. Each manufacturer of a portable fuel container subject to and complying with 9VAC5-45-90 A shall clearly display on each spill-proof system:

1. The phrase "Spill-Proof System";

2. A date of manufacture or representative date [code]; and

3. A representative code identifying the portable fuel container as subject to and complying with 9VAC5-45-90 A.

B. Each manufacturer of a spout subject to and complying with 9VAC5-45-90 B shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

1. The phrase "Spill-Proof Spout";

2. A date of manufacture or representative date [code]; and

3. A representative code identifying the spout as subject to and complying with 9VAC5-45-90 B.

C. Each manufacturer subject to subsection A or B shall file an explanation of both the date code and representative code with the board no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding.

D. Each manufacturer of a spout subject to subsection B [of this section] shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate and for which the manufacturer can demonstrate the container's compliance with 9VAC5-45-90 on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

E. Manufacturers of portable fuel containers not subject to or not in compliance with 9VAC5-45-90 may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout or on any sticker or label affixed thereto or on any accompanying package.

F. Each manufacturer of a portable fuel container or spout subject to and complying with 9VAC5-45-90 that due to its design or other features cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

1. For a portable fuel container sold as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

2. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

9VAC5-45-110. Compliance.

The provisions of subsections B, D, F, and G of 9VAC5-45-20 (Compliance) apply. The other provisions of 9VAC5-45-20 do not apply.

9VAC5-45-120. Compliance schedules.

A. Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; or

2. January 1, 2008, in the Fredericksburg VOC Emissions Control Area.

B. Any owner or other person who cannot comply with the provisions of this article by the date specified in subsection A of this section, due to extraordinary reasons beyond that person's reasonable control, may apply in writing to the board for a waiver. The waiver application shall set forth:

1. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;

2. The proposed date by which compliance with the provisions of this article will be achieved; and

3. A compliance report detailing the methods by which compliance will be achieved.

C. No waiver may be granted unless all of the following findings are made:

1. That, due to reasons beyond the reasonable control of the applicant, required compliance with this article would result in extraordinary economic hardship;

2. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the waiver; and

3. That the compliance report proposed by the applicant can reasonably be implemented and shall achieve compliance as expeditiously as possible.

D. Any approval of a waiver shall specify a final compliance date by which compliance with the requirements of this article shall be achieved. Any approval of a waiver shall contain a condition that specifies the increments of progress necessary to assure timely compliance and such other conditions that the board finds necessary to carry out the purposes of this article.

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

F. Upon the application of any person, the board may review, and for good cause, modify or revoke a waiver from requirements of this article.

9VAC5-45-130. Test methods and procedures.

A. The provisions of subsection G of 9VAC5-45-30 (Emission testing) apply. The other provisions of 9VAC5-45-30 do not apply.

B. Testing to determine compliance with 9VAC5-45-90 B of this article shall be performed by using the following test procedures (see 9VAC5-20-21):

1. CARB "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts."

2. CARB "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts."

C. Testing to determine compliance with 9VAC5-45-90 A of this article shall be performed by using all test procedures in subsection B of this section and the following test procedure: CARB Determination of Permeation Rate for Spill-Proof Systems (see 9VAC5-20-21). Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the board.

9VAC5-45-140. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) do not apply.

9VAC5-45-150. Notification, records and reporting.

The provisions of subsections E, F, and G of 9VAC5-45-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-45-50 do not apply.

Article 2
Emission Standards for Portable Fuel Containers and Spouts Manufactured On or After [~~January 1, 2009~~ August 1, 2010]

9VAC5-45-160. Applicability.

A. Except as provided in 9VAC5-45-170, the provisions of this article apply to any portable fuel container or spout manufactured on or after [~~January 1, 2009~~ August 1, 2010]. The provisions of Article 1 (9VAC5-45-60 et seq.) of this part apply to portable fuel containers and spouts manufactured before [~~January 1, 2009~~ August 1, 2010].

B. Except as provided in 9VAC5-45-170, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale, advertises for sale, or manufactures for sale portable fuel containers or spouts.

C. The provisions of this article apply only to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-170. Exemptions.

A. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-160 C.

B. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale a portable fuel container or spout that does not comply with the emission standards specified in 9VAC5-45-190, as long as the manufacturer or distributor can demonstrate that: (i) the portable fuel container or spout is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-160 C; and (ii) the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the applicable volatile organic compound emissions control areas designated in 9VAC5-45-160 C. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

C. The provisions of this article do not apply to safety cans meeting the requirements of [subpart F of] 29 CFR Part 1926 [~~Subpart F~~].

D. The provisions of this article do not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

E. The provisions of this article do not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons provided (i) such devices are designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions, and (ii) such devices either create a leak-proof seal against a stock target fuel tank, or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

F. The provisions of this article do not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

G. The provisions of this article do not apply to closed-system portable fuel containers that are used exclusively for fueling remote control model airplanes.

H. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-180. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10 [(General Definitions)] unless otherwise required by context.

C. Terms defined.

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

"CARB" means California Air Resources Board.

"CARB certification executive order" means a CARB decision, signed by the CARB [~~executive officer~~ Executive Officer] and specifying that one or more portable fuel containers or spouts has been certified by CARB to meet the requirements of CARB "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (see 9VAC5-20-21)

"Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout for personal, family, household, or institutional use. Persons acquiring a portable fuel container or spout for resale are not "consumers" for that product.

"Distributor" means any person to whom a portable fuel container or spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers, and consumers.

"Fuel" means all motor fuels subject to any provision of Chapter 12 (§ 59.1-149 et seq.) of Title 59.1 of the Code of Virginia, excluding liquefied petroleum gas, compressed natural gas, and hydrogen. This term includes, but is not limited to, gasoline, diesel fuel, and gasoline-alcohol blends.

"Kerosene" or "kerosine" means any light petroleum distillate that is commonly or commercially known, sold, or represented as kerosene, that is used in space heating, cook stoves, and water heaters, and that is suitable for use as a light source when burned in wick-fed lamps.

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a portable fuel container or spout.

"Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

"Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

"Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

"Portable fuel container" means any container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed, used, sold, advertised for sale, or offered for sale for receiving, transporting, storing, and dispensing fuel or kerosene. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled as described in 49 CFR 172.407 (a) with language indicating that the containers or vessels are solely intended for use with nonfuel or nonkerosene products.

"Product category" means the applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the board.

[~~"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.~~]

"Retail outlet" means any establishment at which portable fuel containers or spouts are sold, supplied, or offered for sale.

["Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.]

"Spill-proof spout" means any spout that is certified by the board to be in compliance with the standards specified in 9VAC5-45-190 B and complies with the administrative requirements in 9VAC5-45-220.

"Spill-proof system" means any configuration of portable fuel container and firmly attached spout that is certified by the board to be in compliance with the standards in 9VAC5-45-190 B and complies with the administrative requirements in 9VAC5-45-220.

"Spout" means any device that can be firmly attached to a portable fuel container and through which the contents of the container may be poured. A spout does not include a device that can be used to lengthen the spout to accommodate necessary applications.

"Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

9VAC5-45-190. Standard for volatile organic compounds.

A. The following provisions apply to portable fuel containers and spouts manufactured on or after [~~January 1, 2009~~ August 1, 2010]:

1. No owner or other person shall sell, supply, offer for sale, or advertise for sale any portable fuel container or spout manufactured on or after [~~January 1, 2009~~ August 1, 2010], unless that portable container or spout is certified by the board to be a spill-proof system or spill-proof spout that is in compliance with the standards in subsection B of this section in accordance with the certification procedures specified in 9VAC5-45-200.

2. No owner or other person shall manufacture for sale any portable fuel container or spout on or after [~~January 1, 2009~~ August 1, 2010], unless that portable container or spout is certified by the board to be a spill-proof system or spill-proof spout that is in compliance with the standards in

subsection B of this section in accordance with the certification procedures specified in 9VAC5-45-200.

B. The following standards apply to each portable fuel container or spout manufactured on or after [~~January 1, 2009~~ August 1, 2010], that is subject to the provisions of this article:

1. Portable fuel containers shall be color coded and marked as follows:

a. Portable fuel containers shall be color coded for specific fuels:

(1) Gasoline – red;

(2) Diesel – yellow; and

(3) Kerosene – blue.

b. Each portable fuel container shall have identification markings on the container and on the spill-proof spout.

(1) Red containers shall be permanently identified with the embossed language or permanent durable label "GASOLINE" in minimum 34-point Arial font or a font of equivalent proportions.

(2) Yellow containers shall be permanently identified with the embossed language or permanent durable label "DIESEL" in minimum 34-point Arial font or a font of equivalent proportions.

(3) Blue containers shall be permanently identified with the embossed language or permanent durable label "KEROSENE" in minimum 34-point Arial font or a font of equivalent proportions.

2. Portable fuel containers shall comply with emissions standards as follows:

a. Portable fuel containers that are equipped with an intended spill-proof spout shall emit no more than 0.3 grams per gallon per day.

b. Compliance with emission standards in this subdivision shall be determined using the test procedure specified in 9VAC5-45-250 B 2.

c. Portable fuel containers that share similar designs, that are constructed of identical materials, and that are manufactured using identical processes, but vary only in size or color may be considered for certification as a product family.

3. Portable fuel containers and spouts shall comply with the specifications for durability in subsection 7.4 of the test procedure specified in 9VAC5-45-250 B 2.

4. There shall be no fluid leakage from any point in the spill-proof system or spill-proof spout as specified in the test procedures specified in 9VAC5-45-250 B 1 and 2.

5. The spill-proof system or spill-proof spout shall automatically close when the spill-proof spout is removed from the target tank, seal, and remain completely closed when not dispensing fuel, as specified in the test procedure specified in 9VAC5-45-250 B 1. Also, no liquid, beyond wetted surfaces, shall be retained in the spill-proof spout after fueling that may evaporate into the atmosphere.

6. An applicant seeking certification of a portable fuel container or spout from the board pursuant to this article shall also:

a. Warrant that its spill-proof system or spill-proof spout is free from defects in materials and workmanship that cause such systems or spill-proof spouts to fail to conform with each of the certification and compliance standards specified in CARB "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501," for a period of one year from the date of sale; and

b. Supply a copy of the warranty language specified in subdivision a of this subdivision that is supplied to the buyer in the packaging for each spill-proof system or spill-proof spout at the time of sale identifying the following minimum requirements:

(1) A statement of the terms and length of the warranty period;

(2) An unconditional statement that the spill-proof system or spill-proof spout is certified to the requirements in subdivision a of this subdivision (which may be referred to as being certified to California requirements); and

(3) A listing of the specific certification requirements or limitations to which it was certified.

7. An applicant shall supply a copy of the operating instructions intended for each spill-proof system or spill-proof spout, and fueling application, as supplied to the buyer in the packaging for each spill-proof system or spill-proof spout at the time of sale. These instructions shall include, at a minimum, the following specifications:

a. A listing of any specific equipment types, such as passenger cars and trucks, lawn and garden equipment, off-road motorcycles and snowmobiles, industrial equipment, and marine vessels that the spill-proof system or spill-proof spout, is not intended to refuel; and

b. Other instructions, such as the recommended fueling angle(s) or special instructions such as venting prior to use.

8. Spill-proof systems, spill-proof spouts and all components incorporated therein, such as gaskets, seals, or O-rings must demonstrate compliance with the requirements specified in 9VAC5-45-250 B 3 and 4.

Applicants may request limited certification for use with only specified fuel blends. Such fuel-specific certifications shall clearly specify the limits and restrictions of the certification.

9. A portable fuel container may incorporate a secondary opening or vent hole (i.e., an opening other than the opening needed for the spout) provided the secondary opening or vent hole is not easily tampered by a consumer, and it does not emit hydrocarbon vapors in excess of the amounts specified in this section during fueling, storage, transportation, or handling events.

C. The test procedures for determining compliance with the standards in this section are set forth in 9VAC5-45-250. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9VAC5-45-250 to show that its product meets the standards of this section prior to allowing the product to be offered for sale. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale and shall make those test results available within 60 days of request.

D. Compliance with the standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the board test for or determine compliance with such other statutes or regulations.

9VAC5-45-200. Certification procedures.

A. Provisions follow concerning the requirements and process for board certification of a portable fuel container or spout manufactured on or after [~~January 1, 2009~~ August 1, 2010], as a spill-proof system or spill-proof spout.

B. To be considered by the board for certification, an application for certification shall be submitted in writing to the board by the manufacturer of the portable fuel container or spout.

1. Except as provided in subdivision D 2 of this section, the application shall contain the following information:

a. An identification of the names, addresses, and phone numbers of the company, owner or other persons that are submitting the application, and the names and phone numbers of contact persons that are knowledgeable concerning the application.

b. Model numbers and sizes of spill-proof systems or spill-proof spouts for which certification is requested.

c. Test data that demonstrates that the spill-proof systems or spill-proof spouts comply with each of the certification requirements identified in 9VAC5-45-190 B.

d. Engineering drawings of the spill-proof system or spill-proof spout detailing dimensions specific to each component. If an application is submitted for a spill-proof system (i.e., container and spout), separate dimensioned drawings for the portable fuel container and for the spill-proof spout are required. If more than one type or size of portable fuel container or more than one type of spill-proof spout is included in the application, separate dimensioned drawings are required for each component.

e. Test data from each of the test procedures specified in 9VAC5-45-250 B 1 and 2 demonstrating that the spill-proof system, spill-proof spout, or component meets the applicable criteria.

f. Any other test data that supports the requirements in subdivision e of this subsection and that would assist in the determination of certification.

g. The language, symbols, or patterns that will actually be permanently embossed on the spill-proof system or spill-proof spout. This shall include examples of date code wheels as well as all other permanent markings and their locations on the container and/or spill-proof spout. Once the board certifies a spill-proof system or spill-proof spout, these permanent markings cannot be altered or modified in any way without first obtaining the board's approval.

h. The language or labels that may be affixed to the spill-proof system or spill-proof spout at the time of sale.

i. The manufacturer's recommended instructions, instruction decals, or any other type of placard attached to the spill-proof system or spill-proof spout at the time of sale. Include examples of actual decals or placards if available. Proposed placards or decals are sufficient if actual samples are not available. Once the board certifies a spill-proof system or spill-proof spout, these decals or placards cannot be altered or modified in any way without first obtaining the board's approval.

j. The manufacturer warranty(s) as defined in 9VAC5-45-190 B 6.

k. A description of the materials used in the construction of the spill-proof system or spill-proof spout. Material compositions of gaskets, O-rings, and seals must be described.

l. If the applicant is not the manufacturer of all system components incorporated in a spill-proof system or spill-proof spout, the applicant must include evidence that the component manufacturers have been notified of the applicant's intended use of the manufacturers' components in the spill-proof system or spill-proof spout for which the application is being made.

(1) If the applicant is requesting inclusion of one or more components not manufactured by it on the applicable spill-proof system or spill-proof spout, the applicant shall

notify the component manufacturers and obtain the information required of the application as specified in this subsection.

(2) If the component design and material specifications requested for inclusion in the certification have not been previously incorporated in a spill-proof system or spill-proof spout that has been issued [~~an executive order~~ a CARB certification executive order or has been certified by the board] pursuant to these procedures, [then] each of the components shall be subject to each of the application and test requirements specified in this article.

m. A sample of the spill-proof system or spill-proof spout is not required as part of the initial application for certification. The board may later require that a sample be provided if it is deemed necessary to make the proper certification determination.

n. The document certification statement required by 9VAC5-20-230, signed by a responsible official as defined in that section.

o. The information required by subdivision B 1 a of this section is public information that may not be claimed as confidential. [~~All other~~ Other] information submitted to the board to meet the requirements of this article shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

2. In accordance with the time periods specified in subsection C of this section, the board will certify a portable fuel container or spout. The board will specify such terms and conditions as are necessary to ensure that the emissions from the portable fuel containers or spouts do not exceed the VOC standards specified in 9VAC5-45-190. The certification shall also include operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

C. Provisions follow concerning the portable fuel container or spout certification time frames.

1. The board will take appropriate action on an application within the following time periods:

a. Within 30 working days of receipt of an application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall certify that the requirements have been met in accordance with the requirements of this article. The board will [normally] act to approve or disapprove a complete application within 90 working days after the application is deemed complete. [The board may extend this time period if additional information is needed.]

2. Before the end of each time period specified in this section, the board and the applicant may mutually agree to a longer time period for the board to take the appropriate action.

D. In accordance with the following procedures, the board will take into consideration whether the portable fuel container or spout has been certified by CARB.

1. In lieu of granting certification based upon review of an application as required under subsection B of this section, certification may be granted by the board as follows:

a. Certification may be granted solely on the basis of the effective CARB certification executive order, or

b. Certification may be granted on the basis of the effective CARB certification executive order, modified as necessary by the board to meet the requirements of this article.

2. An abbreviated application may be submitted by a manufacturer requesting certification by the board under subdivision 1 of this subsection. The abbreviated application shall include, as a minimum:

a. A request by the manufacturer that certification be granted by the board based upon an effective CARB certification executive order.

b. A copy of the effective CARB certification executive order, including all conditions established by CARB applicable to the CARB certification executive order.

c. A certification that the manufacturer will (i) comply with the applicable CARB certification executive order within the volatile organic compound emissions control areas specified in 9VAC5-45-160 C and (ii) comply with any additional terms and conditions that the board may specify in granting certification under this subsection.

d. Manufacturer and product information as specified in subdivisions B 1 a and b of this section.

e. The document certification statement required by 9VAC5-20-230 certifying the information in the application and signed by a responsible official.

4. The board's certification shall contain such terms and conditions as necessary to adapt terms and conditions in the CARB certification executive order to satisfy the provisions of this article.

5. Any board certification granted under this subsection is contingent upon the effective CARB certification executive order provided with the application. Board certification granted on the basis of this subsection automatically expires on the date that the CARB certification executive order upon which it was based is no longer effective.

9VAC5-45-210. Innovative products.

Manufacturers of portable fuel containers or spouts may seek an innovative products exemption in accordance with the following criteria:

1. The board will exempt a portable fuel container or spout from one or more of the requirements specified in 9VAC5-45-190 if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing.

2. A manufacturer (applicant) shall apply in writing to the board for an innovative product exemption. The application shall include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data. In addition, the applicant must provide the information necessary to enable the board to establish enforceable conditions for granting the exemption. The application shall also include the certification statement required by 9VAC5-20-230 signed by a responsible official. [~~All information~~ Information] submitted by a manufacturer pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia. [~~If information in the application is claimed by the manufacturer to be confidential information, then the application shall also include the showing of confidentiality required by 9VAC5-170-60 B.~~]

3. Within 30 days of receipt of the exemption application, the board will determine whether an application is complete.

4. Within 90 days after an application has been deemed complete, the board will determine whether, under what conditions, and to what extent an exemption from the requirements of 9VAC5-45-190 will be permitted. [~~The applicant and the board may mutually agree to a longer time period for reaching a decision.~~ The board may extend this time period if additional time is needed to reach a decision.] An applicant may submit additional supporting documentation before a decision has been reached. The board will notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in subdivision 1 of this section, and that such emissions reductions can be enforced.

5. In granting an innovative product exemption for a portable fuel container or spout, the board will specify the test methods for determining conformance to the conditions established pursuant to subdivision 4 of this section. The test methods may include criteria for reproducibility, accuracy, and sampling and laboratory procedures.

6. For any portable fuel container or spout for which an innovative product exemption has been granted pursuant to this section, the manufacturer shall notify the board in writing at least 30 days before the manufacturer changes a product's design, delivery system, or other factors that may effect the VOC emissions during recommended usage. The manufacturer shall also notify the board within 30 days after the manufacturer learns of any information that would alter the emissions estimates submitted to the board in support of the exemption application.

7. If the standards specified in 9VAC5-45-190 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in subdivision 8 of this subsection, have no force and effect as of the effective date of the amended standards.

8. If the board believes that a portable fuel container or spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in subdivision 1 of this section, the board may modify or revoke the exemption as necessary to assure that the product will meet these criteria. [~~Modifications and revocations of exemptions are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

9VAC5-45-220. Administrative requirements.

A. Each manufacturer of a portable fuel container subject to and complying with 9VAC5-45-190 shall clearly display on each spill-proof system:

1. The phrase "Spill-Proof System";

2. A date of manufacture or representative date [code]; and

3. A representative code identifying either:

a. The portable fuel container as subject to and complying with 9VAC5-45-190; or

b. The effective CARB certification executive order issued for the portable fuel container.

B. Each manufacturer of a spout subject to and complying with 9VAC5-45-190 shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

1. The phrase "Spill-Proof Spout";

2. A date of manufacture or representative date [code]; and

3. A representative code identifying either:

a. The spout as subject to and complying with 9VAC5-45-190; or

b. The effective CARB certification executive order issued for the spout.

C. Each manufacturer subject to subsection A or B shall file an explanation of both the date code and representative code with the board no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding.

D. Each manufacturer of a spout subject to subsection B of this section shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate and for which the manufacturer can demonstrate the container's compliance with 9VAC5-45-190 on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

E. Manufacturers of portable fuel containers not subject to or not in compliance with 9VAC5-45-190 may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout or on any sticker or label affixed thereto or on any accompanying package.

F. Each manufacturer of a portable fuel container or spout subject to and complying with 9VAC5-45-190 that due to its design or other features cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

1. For a portable fuel container sold as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

2. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

9VAC5-45-230. Compliance.

The provisions of subsections B, D, F, and G of 9VAC5-45-20 (Compliance) apply. The other provisions of 9VAC5-45-20 do not apply.

9VAC5-45-240. Compliance schedules.

A. Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~January 1, 2009~~ August 1, 2010].

B. Any owner or other person who cannot comply with the provisions of this article by the date specified in subsection A of this section, due to extraordinary reasons beyond that person's reasonable control, may apply in writing to the board for a waiver. The waiver application shall set forth:

1. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;

2. The proposed date by which compliance with the provisions of this article will be achieved; and

3. A compliance report detailing the methods by which compliance will be achieved.

C. No waiver may be granted unless all of the following findings are made:

1. That, due to reasons beyond the reasonable control of the applicant, required compliance with this article would result in extraordinary economic hardship;

2. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the waiver; and

3. That the compliance report proposed by the applicant can reasonably be implemented and shall achieve compliance as expeditiously as possible.

D. Any approval of a waiver shall specify a final compliance date by which compliance with the requirements of this article shall be achieved. Any approval of a waiver shall contain a condition that specifies the increments of progress necessary to assure timely compliance and such other conditions that the board finds necessary to carry out the purposes of this article.

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

F. Upon the application of any person, the board may review, and for good cause, modify or revoke a waiver from requirements of this article.

9VAC5-45-250. Test methods and procedures.

A. The provisions of subsection G of 9VAC5-45-30 (Emission testing) apply. The other provisions of 9VAC5-45-30 do not apply.

B. Testing to determine compliance with 9VAC5-45-190 B of this article shall be performed by using the following test procedures specified in CARB "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (see 9VAC5-20-21):

1. CARB "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (see 9VAC5-20-21).

2. CARB "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (see 9VAC5-20-21).

3. ASTM "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use" (see 9VAC5-20-21).

4. ASTM "Standard Specification for Portable Gasoline Containers for Consumer Use" (see 9VAC5-20-21).

C. Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the board.

9VAC5-45-260. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) do not apply.

9VAC5-45-270. Notification, records and reporting.

The provisions of subsections E, F, and G of 9VAC5-45-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-45-50 do not apply.

Article 3
Emission Standards for Consumer Products Manufactured before [~~January 1, 2009~~ August 1, 2010]

9VAC5-45-280. Applicability.

A. Except as provided in 9VAC5-45-290, the provisions of this article apply to any consumer product manufactured before [~~January 1, 2009~~ August 1, 2010], that contains volatile organic compounds (VOCs). The provisions of Article 4 (9VAC5-45-400 et seq.) of this part apply to consumer products manufactured on or after [~~January 1, 2009~~ August 1, 2010].

B. Except as provided in 9VAC5-45-290, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale or manufactures for sale any consumer product.

C. The provisions of this article apply to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

D. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-290. Exemptions.

A. This article shall not apply to any consumer product manufactured in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C for shipment and use outside of those areas.

B. The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards specified in 9VAC5-45-310 A, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to those applicable volatile organic compound emissions control areas. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in those applicable volatile organic compound emissions control areas.

C. The medium volatility organic compound (MVOC) content standards specified in 9VAC5-45-310 A for antiperspirants or deodorants shall not apply to ethanol.

D. The VOC limits specified in 9VAC5-45-310 A shall not apply to fragrances up to a combined level of 2.0% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2.0% by weight contained in any antiperspirant or deodorant.

E. The requirements of 9VAC5-45-310 A for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20°C.

F. The VOC limits specified in 9VAC5-45-310 A shall not apply to any LVP-VOC.

G. The VOC limits specified in 9VAC5-45-310 A shall not apply to air fresheners that are composed entirely of fragrance, less compounds not defined as VOCs or LVP-VOC exempted under subsection F of this section.

H. The VOC limits specified in 9VAC5-45-310 A shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

I. The VOC limits specified in 9VAC5-45-310 A shall not apply to adhesives sold in containers of one fluid ounce or less.

J. The VOC limits specified in 9VAC5-45-310 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 5.0% active ingredients.

K. A person who cannot comply with the requirements set forth in 9VAC5-45-310, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the board for a waiver.

1. The application shall set forth:

a. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;

b. The proposed dates by which compliance with the provisions of 9VAC5-45-310 will be achieved; and

c. A compliance report reasonably detailing the methods by which compliance will be achieved.

2. Upon receipt of an application containing the information required in subdivision 1 of this subsection, the board will hold a public hearing to determine whether, under what conditions, and to what extent, a waiver from the requirements in 9VAC5-45-310 is necessary and will be permitted. A hearing shall be initiated no later than 75 days after receipt of a waiver application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the Virginia Register of Regulations. At least 30 days prior to the hearing, the waiver application shall be made available to the public for inspection. Information submitted to the board by a waiver applicant [~~to meet the requirements of this subdivision~~] shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia. The board may consider both public and confidential information in reaching a decision on a waiver application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

3. No waiver shall be granted unless all of the following findings are made:

a. That, because of reasons beyond the reasonable control of the applicant, requiring compliance with 9VAC5-45-310 would result in extraordinary economic hardship;

b. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air pollutants that would result from issuing the waiver; and

c. That the compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

4. Any waiver may be issued as an order of the board. The waiver order shall specify a final compliance date by which the requirements of 9VAC5-45-310 will be achieved. Any waiver order shall contain a condition that specifies increments of progress necessary to assure timely compliance and such other conditions that the board, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the Virginia Air Pollution Control Law and the regulations of the board.

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

6. Upon the application of anyone, the board may review and for good cause modify or revoke a waiver from requirements of 9VAC5-45-310. [~~Modifications and revocations of waivers are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

L. The requirements of 9VAC5-45-340 A shall not apply to consumer products registered under FIFRA.

9VAC5-45-300. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10[(General Definitions)], unless otherwise required by context.

C. Terms defined.

"ACP" or "alternative control plan" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"ACP agreement" means the document signed by the board that includes the conditions and requirements of the board and that allows manufacturers to sell ACP products pursuant to the requirements of this article.

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

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \ldots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content)\ x\ (Enforceable\ Sales)}{100}$$

where:

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

Enforceable sales = (see definition in this section).

VOC content = one of the following:

1. For all products except for charcoal lighter material products:

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

where:

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

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9VAC5-45-290.

2. For charcoal lighter material products only:

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

where:

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

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

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \ldots + (Limit)_N$$

where:

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

where:

Enforceable sales = (see definition in this section).

ACP standard = (see definition in this section).

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

"ACP product" means any consumer product subject to the VOC standards specified in 9VAC5-45-310 A, except those products that have been exempted as innovative products under 9VAC5-45-330.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two.

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

1. The applicable VOC standard specified in 9VAC5-45-310 A for all ACP products except for charcoal lighter material;

2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$VOC\ Standard\ = \frac{(0.020\ \ pound\ VOC\ \ per\ start\ \ x\ 100)}{Certified\ \ Use\ Rate}$$

where:

0.020 = the certification emissions level for the product, as specified in 9VAC5-45-310 F.

Certified use rate = (see definition in this section).

"Adhesive" means any product that is used to bond one surface to another by attachment. Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For contact adhesive only, adhesive also does not include units of product, less packaging, [~~which~~ that] consist of more than one gallon. In addition, for construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive does not include units of product, less packaging, that weigh more than one pound and consist of more than 16 fluid ounces. The package size limitations do not apply to aerosol adhesives.

"Adhesive remover" means a product designed to remove adhesive 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, adhesive shall mean a substance used to bond one or more materials. Adhesives include, but are not limited to, caulks, sealants, glues, or similar substances used for the purpose of forming a bond.

"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. Aerosol adhesives include special purpose spray adhesives, mist spray adhesives, and web spray adhesives.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's carrier, or by means of a mechanically induced force. Aerosol product does not include pump sprays.

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

1. "Home use" means use in a household or its immediate environment.

2. "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.

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

4. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

"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 fresheners do not include products that are used on the human body, products that function primarily as cleaning products (as indicated on a product label), disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air fresheners do 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 that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

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

"Alternative control plan" or "ACP" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is not limited to, antimicrobial hand or body washes or cleaners, food handler 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 or 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 or 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% in at least 50% of a target population.

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

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

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration that 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 or 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 that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;

2. A solid at room temperature; and

3. Contains no water.

"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. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield washer fluid also includes liquids that are (i) packaged as a pre-wetted, single-use manual wipe and (ii) designed exclusively for cleaning, washing, or wetting automotive glass surfaces for the purpose of restoring or maintaining visibility for the driver. Glass cleaners that are intended for use on other glass surfaces are not included in this definition. Automotive windshield washer fluid 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. Bathroom and tile cleaners do not include products designed primarily to clean toilet bowls or toilet tanks.

"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: (i) biological residues, such as insect carcasses and tree sap, and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake [~~cleaners~~ cleaner] " 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. Carburetor or fuel-injection air intake [~~cleaners do~~ cleaner does] not include 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 or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9VAC5-45-310 F, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21), expressed to the nearest 0.001 pound VOC per start.

"Certified use rate" means the usage level for products approved under 9VAC5-45-310 F, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol[(see 9VAC5-20-21)], expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal lighter material does not include any of the following:

1. Electrical starters and probes;

2. Metallic cylinders using paper tinder;

3. Natural gas;

4. Propane; or

5. Fat wood.

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

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit

is determined, as specified in the ACP agreement approving an ACP.

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

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

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

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

"Consumer" means a person who purchases or acquires a 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, but does not include other paint products, furniture coatings, or architectural coatings. As used in this article, consumer products shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial, or commercial uses.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;

2. Is allowed to dry before the two surfaces are placed in contact with each other;

3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

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

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

"Container or packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances that is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include 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 an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

2. "House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and that 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 any product that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria that cause the decomposition of perspiration. Deodorant includes, but is not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles.

"Device" means an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacterium, virus, or another microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a 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 FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals;

2. Products designed for agricultural use;

3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or

4. Products that, 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.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"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 to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a nonaqueous liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or

2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9VAC5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. Dusting aid does not include pressurized gas dusters.

"Electronic cleaner" means a product labeled for the removal of dirt, grease, or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Enforceable sales" means the total amount of an ACP product sold for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and

3. Other accurate product sales records acceptable to the board.

"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.

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"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. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics that are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their

eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff 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 a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a 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.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. Furniture maintenance products do not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

"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 a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives;

2. Construction, panel, and floor covering adhesives;

3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner 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 a 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. General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to establishments that manufacture or construct goods or commodities; and (ii) 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. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not

include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Gross sales" means the estimated total sales of an ACP product in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the current population of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C; or

2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

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

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair styling gel" means 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.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

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

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

"Household product" means a 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 people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;

2. For a use that requires a structural pest control license under applicable state laws or regulations; or

3. Materials classified for restricted use pursuant to 40 CFR 152.75 and require a pesticide business license from the Virginia Pesticide Control Board pursuant to 2VAC20-40-20 for use and possession.

"Insecticide fogger" means an 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:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or

2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents 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. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of 9VAC5-45-340 C, aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include 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:

1. Sold exclusively to establishments that manufacture or construct goods or commodities; and

2. Labeled "not for retail sale."

"LVP content" means the total weight, in pounds, of LVP-VOC 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-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

1. Has a vapor pressure less than 0.1 mm Hg at 20°C [-], as determined by CARB Method 310 (see 9VAC5-20-21);

2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;

3. Is a chemical compound with a boiling point greater than 216°C [-], as determined by CARB Method 310 (see 9VAC5-20-21); or

4. Is the weight percent of a chemical mixture that boils above 216°C, as determined by CARB Method 310 (see 9VAC5-20-21).

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

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

"Medicated astringent or medicated toner" means a product regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

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

"Metal polish or cleanser" means a 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. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel, and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

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

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that 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.

"Multipurpose dry lubricant" means a lubricant that is:

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

2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multipurpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multipurpose lubricant does not include multipurpose dry lubricants, penetrants, or silicone-based multipurpose lubricants.

"Multipurpose solvent" means an 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. Multipurpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multipurpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish" means a 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.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9VAC5-45-310; or

2. Only one distinct ACP product line subject to the requirements of 9VAC5-45-310, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that 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 a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multipurpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, 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. Penetrant does not include multipurpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a 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 a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the board, based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"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. Pressurized gas duster does not include dusting aids.

"Principal display panel" means that part of a label that is 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 that best describes the product as listed in this section and in Table 45-3A in 9VAC5-45-310 A.

"Product form," for the purpose of complying with 9VAC5-45-390 (notification, records and reporting) only, means the

applicable form that 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.

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

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

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

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9VAC5-45-320 B 1 g (10).

"Responsible ACP party" means the company, firm, or establishment that 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 that the ACP product was "manufactured for" or "distributed by," as noted on the label.

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

"Restricted materials" means pesticides established as restricted materials under Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

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

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

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

"Rubber and vinyl protectant" means a product designed to protect, preserve, or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a 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.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound 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~~ compound] " means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking [~~compounds~~ compound] " means a compound that 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 that 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.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multipurpose lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multipurpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and that does not require that the product container be shaken before use.

"Small business" means any stationary source that is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances that, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

2. "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 5.0%, 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 "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21) or from product formulation data.

3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:

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

b. The touch-up, repair, or attachment of edgebonding 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 that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265°F and at pressures between 1,000 and 1,400 psi.

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275°F.

"Spot remover" means a product labeled to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, or multipurpose 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 an antiperspirant or a 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 the definition in the federal consumer products regulation, 40 CFR 59 Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9VAC5-45-320 F 3, surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

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

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

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

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

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

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

where:

Highest VOC content = the maximum VOC content that the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing [~~Data Days~~ data days] = (see definition in this section).

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

"Type A propellant" means a compressed gas such as CO_2, N_2, N_2O, or compressed air that 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 a halocarbon that is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how and in what quantity the product is to be used.

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9VAC5-45-370 B and C.

For charcoal lighter material products only,

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

where:

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9VAC5-10-20.

"Wasp and hornet insecticide" means an insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

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

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

"Web spray adhesive" means an aerosol adhesive that is not a mist spray or special purpose spray adhesive.

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9VAC5-45-310. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-290, 9VAC5-45-320 and 9VAC5-45-330, no owner or other person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after the applicable compliance date specified in 9VAC5-45-360 or (ii) manufacture for sale a consumer product on or after the applicable compliance date specified in 9VAC5-45-360, that contains volatile organic compounds in excess of the limits specified in Table 45-3A.

TABLE 45-3A

Product Category [÷]	Percent VOC by Weight
Adhesives	
Aerosol adhesives	
Mist spray adhesive:	65%
Web spray adhesive:	55%
Special purpose spray adhesives	
Automotive engine compartment adhesive:	70%
Automotive headliner adhesive:	65%
Flexible vinyl adhesive:	70%
Laminate repair or edgebanding adhesive:	60%
Mounting adhesive:	70%
Polystyrene foam adhesive:	65%
Polyolefin adhesive:	60%
Contact adhesive:	80%
Construction, panel, and floor covering adhesive:	15%
General purpose adhesive:	10%
Structural waterproof adhesive:	15%
Air fresheners	
Single-phase aerosol:	30%
Double-phase aerosol:	25%
Liquid/Pump spray:	18%
Solid/Gel:	3%
Antiperspirants	
Aerosol:	40% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Automotive brake cleaner:	45%
Automotive rubbing or polishing compound:	17%
Automotive wax, polish, sealant, or glaze	
Hard paste wax:	45%
Instant detailer:	3%
All other forms:	15%
Automotive windshield washer fluid:	35%
Bathroom and tile cleaners	
Aerosol:	7%
All other forms:	5%
Bug and tar remover:	40%
Carburetor or fuel-injection air intake cleaner:	45%
Carpet and upholstery cleaners	
Aerosol:	7%
Nonaerosol (dilutable):	0.1%
Nonaerosol (ready-to-use):	3.0%
Charcoal lighter material:	See subsection F of this section.
Cooking spray, aerosol:	18%
Deodorants	
Aerosol:	0% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Dusting aids	
Aerosol:	25%
All other forms:	7%
Engine degreasers	
Aerosol:	35%
Nonaerosol:	5%

Fabric protectant:	60%
Floor polishes/Waxes	
Products for flexible flooring materials:	7%
Products for nonresilient flooring:	10%
Wood floor wax:	90%
Floor wax stripper, nonaerosol:	See subsection H of this section.
Furniture maintenance products	
Aerosol:	17%
All other forms except solid or paste:	7%
General purpose cleaners	
Aerosol:	10%
Nonaerosol:	4%
General purpose degreasers	
Aerosol:	50%
Nonaerosol:	4%
Glass cleaners	
Aerosol:	12%
Nonaerosol:	4%
Hair mousse:	6%
Hair shine:	55%
Hair spray:	55%
Hair styling gel:	6%
Heavy-duty hand cleaner or soap:	8%
Insecticides	
Crawling bug (aerosol):	15%
Crawling bug (all other forms):	20%
Flea and tick:	25%
Flying bug (aerosol):	25%
Flying bug (all other forms):	35%
Fogger:	45%
Lawn and garden (all other forms):	20%
Lawn and garden (nonaerosol):	3%
Wasp and hornet:	40%
Laundry prewash	
Aerosol/Solid:	22%
All other forms:	5%
Laundry starch product:	5%
Metal polish or cleanser:	30%
Multipurpose lubricant (excluding solid or semi-solid products):	50%
Nail polish remover:	75%
Nonselective terrestrial herbicide, nonaerosol:	3%
Oven cleaners	
Aerosol/Pump spray:	8%
Liquid:	5%
Paint remover or stripper:	50%
Penetrant:	50%
Rubber and vinyl protectants	
Nonaerosol:	3%
Aerosol:	10%
Sealant and caulking compound:	4%
Shaving cream:	5%
Silicone-based multipurpose lubricant (excluding solid or semi-solid products):	60%
Spot removers	
Aerosol:	25%
Nonaerosol:	8%
Tire sealant and inflator:	20%
Undercoating, aerosol:	40%

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9VAC5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent

prior to use, the limits specified in Table 45-3A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "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.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 45-3A shall apply to the product only after the maximum recommended dilution has taken place.

D. The following provisions apply to sell through of consumer products manufactured before [~~January 1, 2009~~ August 1, 2010]:

1. Notwithstanding the provisions of subsections A and G, H or I of this section, a consumer product manufactured before the applicable compliance date specified in 9VAC5-45-360, may be sold, supplied, or offered for sale after the applicable compliance date if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the product container or package [~~in accordance with 9VAC5-45-340 A~~].

2. Notwithstanding the provisions of [~~subdivision 1 of this subsection, a consumer product manufactured before January 1, 2009, shall not be sold, supplied, or offered for sale on or after January 1, 2009, unless the date of manufacture or a code representing the date of manufacture is clearly displayed on the product container or package in accordance with 9VAC5-45-340 A. However, consumer products without such dates or date codes may be sold, supplied, or offered for sale on and after January 1, 2009, if they comply with all of the provisions of Article 4 (9VAC5-45-400 et seq.) of this part~~ subsections A, G, H, or I of this section, a consumer product manufactured after the applicable compliance date specified in 9VAC5-45-360 and before August 1, 2010, may be sold, supplied, or offered for sale on or after August 1, 2010, if it complies with all of the provisions of Article 4 (9VAC5-45-400 et seq.) of this part].

3. Except as provided in [~~subdivision 1~~ subdivisions 1 and 2] of this subsection, displaying the date of manufacture, or a code indicating the date of manufacture, on the product container or package does not exempt the owner or product from the provisions of this article.

E. For those consumer products that are registered under FIFRA, the effective date of the VOC standards shall be one year after the applicable compliance date specified in 9VAC5-45-360.

F. The following requirements shall apply to all charcoal lighter material products:

1. Effective as of the applicable compliance date specified in 9VAC5-45-360, no owner or other person shall (i) sell, supply, or offer for sale a charcoal lighter material product manufactured on or after the applicable compliance date or (ii) manufacture for sale a charcoal lighter material product unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that [~~they have~~ it has] been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9VAC5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the executive order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21). The provisions relating to LVP-VOC in 9VAC5-45-290 F and 9VAC5-45-300 C shall not apply to a charcoal lighter material subject to the requirements of 9VAC5-45-310 A and this subsection.

b. The board may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material that meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection that may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal that are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start. [~~Modifications and revocations of certifications are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

G. [~~Requirements for~~ Provisions follow concerning] aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9VAC5-45-290 and 9VAC5-45-330, no owner or other person shall sell, supply, offer for sale, use, or manufacture for sale an aerosol adhesive that, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

2. a. 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 9VAC5-45-300 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9VAC5-45-300 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9VAC5-45-300 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9VAC5-45-310 A.

3. Effective as of the applicable compliance dates specified in 9VAC5-45-360, no person shall (i) sell, supply, or offer for sale an aerosol adhesive manufactured on or after the applicable compliance date or (ii) manufacture for sale an aerosol adhesive that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9VAC5-45-340 D.

H. Effective as of the applicable compliance date specified in 9VAC5-45-360, no owner or other person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required as long as comparable terminology is used.

I. For a consumer product for which standards are specified under subsection A of this section, no owner or other person shall sell, supply, offer for sale, or manufacture for sale a consumer product that contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);

1,1,1-trichloroethane; or

carbon tetrachloride.

J. The requirements of subsection I of this section shall not apply to an existing product formulation that complies with Table 45-3A or an existing product formulation that is reformulated to meet Table 45-3A, provided the ozone-depleting compound content of the reformulated product does not increase.

K. The requirements of subsection I of this section shall not apply to 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.

9VAC5-45-320. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement [~~:~~.]

b. A statement of whether the responsible ACP party is a small business or a one-product business [~~:~~.]

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP [~~:~~.]

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales [~~, which~~ that] is composed of enforceable sales; [and]

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product;

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency [;]

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection [;]

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP [;]

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect [;]

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-300 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period [;]

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article [;]

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging [;]

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP [;]

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely

reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-310 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; [and]

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will [normally] act to approve or disapprove a complete application within 90 working days after the application is deemed complete. [The board may extend this time period if additional information is needed.]

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP [~~Agreement~~ agreement] approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows.

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-300 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP [~~Standards~~ standards] applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the

calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-310 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

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

(1) The date the transfer is to become effective [~~:~~.]

(2) The date the surplus reductions being traded are due to expire [~~:~~.]

(3) The amount (in pounds of VOCs) of surplus reductions that is being transferred [~~:~~.]

(4) The total purchase price paid by the buyer for the surplus reductions [~~:~~.]

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions [~~; and~~.]

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-310 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; [and]

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = Enforceable\ Sales \times \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

$VOC\ content_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

$VOC\ content_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and [~~shall~~ may] not be used for another purpose;

(2) Limited use surplus reduction credits [~~shall~~ may] not be transferred to, or used by, another responsible ACP party; [and]

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a

shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit. [~~Modifications of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

2. If any applicable VOC standards specified in 9VAC5-45-310 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-310 A is modified by the board in a future rulemaking, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; [or]

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship [~~:~~.]

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more) [~~:~~.]

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in [~~9VAC5-170- and~~ 9VAC5-170-40 A 2 and applicable provisions of] Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-310 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. [~~All other~~ Other] information submitted to the board to meet the requirements of this [~~article~~ section] shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

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

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has 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 (see 9VAC5-20-21) may be exempt from Table 45-3A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-3A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-280 C.

9VAC5-45-330. Innovative products.

A. Manufacturers of consumer products may seek an innovative products exemption in accordance with the following criteria:

1. The board will exempt a consumer product from the VOC limits specified in 9VAC5-45-310 A if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

a. The VOC emissions from a representative consumer product that complies with the VOC limits specified in 9VAC5-45-310 A, or

b. The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in 9VAC5-45-310 A. VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

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 limit specified in Table 45-3A.

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

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method that accurately calculates emissions may be used upon approval of the board.

2. For the purposes of this subsection, "representative consumer product" means a consumer product that meets all of the following criteria:

a. The representative product shall be subject to the same VOC limit in 9VAC5-45-310 A as the innovative product;

b. The representative product shall be of the same product form as the innovative product unless the innovative product uses a new form that does not exist in the product category at the time the application is made; and

c. The representative product shall have at least a similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

3. A manufacturer shall apply in writing to the board for an exemption claimed under subdivision A 1 of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide the information necessary to enable the board to establish enforceable conditions for granting the exemption, including the VOC content for the innovative product and test methods for determining the VOC content. [~~All information~~ Information] submitted [~~by a manufacturer~~ to the board] pursuant to this section shall be [available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be] handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia [~~and 9VAC5-170-60~~].

4. Within 30 days of receipt of the exemption application, the board will determine whether an application is complete.

5. Within 90 days after an application has been deemed complete, the board will determine whether, under what conditions, and to what extent an exemption from the requirements of 9VAC5-45-310 A will be permitted. [~~The applicant and the board may mutually agree to a longer time period for reaching a decision~~ The board may extend this time period if additional time is needed to reach a decision], and additional supporting documentation may be submitted by the applicant before a decision has been reached. The board will notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in subdivision 1 of this subsection, and that such emissions reductions can be enforced.

6. In granting an exemption for a product, the board will establish enforceable conditions. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates, and other parameters determined by the board to be necessary. The board will also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.

7. For a product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the board in writing within 30 days of a change in the product formulation or recommended product usage directions and shall also notify the board within 30 days if the manufacturer learns of information that would alter the emissions estimates submitted to the board in support of the exemption application.

8. If the VOC limits specified in 9VAC5-45-310 A are lowered for a product category through a subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subdivision, shall have no force and effect as of the effective date of the modified VOC standard. This subdivision shall not apply to those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the board at least 60 days before the effective date of such limits.

9. If the board believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subdivision 1 of this subsection, the board may modify or revoke the exemption as necessary to assure that the product will meet these criteria. [~~Modifications and revocations of exemptions are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

B. In granting an exemption under this section, the board will take into consideration whether the applicant has been granted an innovative product exemption by CARB. A manufacturer of consumer products that has 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 (see 9VAC5-20-21), may be exempt from Table 45-3A 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 Table 45-3A. A manufacturer claiming such an exemption on this basis must submit to the board a copy of the innovative product exemption decision (i.e., the [~~Executive Order~~ executive order]), including all conditions established by CARB applicable to the exemption [,] and certification that the manufacturer will comply with the CARB innovative product exemption decision for those products in the areas specified in 9VAC5-45-280 C.

9VAC5-45-340. Administrative requirements.

A. Provisions follow concerning product dating.

1. Each manufacturer of a consumer product subject to 9VAC5-45-310 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.

2. A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of subdivision B 1 of this section, 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"~~ YY] = two digits representing the year in which the product was manufactured, and

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

3. The date or date code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by simply removing the cap or cover) without irreversibly disassembling a part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

4. This date or date code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in 9VAC5-45-310 A.

5. The requirements of this section shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. Additional provisions follow concerning product dating.

1. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9VAC5-45-310, an explanation of the date portion of the code must be filed with the board upon request by the board.

2. If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to 9VAC5-45-310 and the board has requested an explanation of any previous product dating code for that consumer product, then an explanation of the modified code shall be submitted to the board before any products displaying the modified code are sold, supplied, or offered for sale within the areas designated in 9VAC5-45-280 C.

3. 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.

4. Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

C. Notwithstanding the definition of "product category" in 9VAC5-45-300 C, if anywhere on the principal display panel of a consumer product, a 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 9VAC5-45-310 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

D. Provisions follow concerning additional labeling requirements for aerosol adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9VAC5-45-390, both the manufacturer and responsible party for each aerosol adhesive product subject to this article shall ensure that all products clearly display the following information on each product container that is manufactured on or after July 1, 2005.

a. The aerosol adhesive category as specified in 9VAC5-45-310 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9VAC5-45-310 A, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the board, as provided in 9VAC5-45-320, and the product exceeds the applicable VOC standard;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9VAC5-45-310 A,

the product shall be labeled with the term "ACP" or "ACP product";

c. If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

d. If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision 1 of this subsection shall be displayed on the product container such that it is readily observable without removing or disassembling a 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 product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9VAC5-45-350. Compliance.

The provisions of 9VAC5-45-20 (Compliance) apply.

9VAC5-45-360. Compliance schedules.

Affected owners or other persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; or

2. January 1, 2008, in the Fredericksburg VOC Emissions Control Area.

9VAC5-45-370. Test methods and procedures.

A. The provisions of 9VAC5-45-30 (Emission testing) apply.

B. 1. Testing to determine compliance with the requirements of this article shall be performed using CARB Method 310 (see 9VAC5-20-21). Alternative methods that can accurately determine the concentration of VOCs in a subject product or its emissions may be used consistent with the approval requirements of 9VAC5-45-30 A.

2. In sections 3.5, 3.6, and 3.7 of CARB Method 310 (see 9VAC5-20-21), a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content." Information submitted to the board to [~~demonstrate compliance with~~ meet] the requirements of this [~~article~~ section] shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the [~~confidentiality~~] procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

C. For VOC content determinations using product formulation and records, testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

2. For the purposes of this subsection, the VOC content shall be calculated according to the following equation:

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

where:

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

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit as specified in 9VAC5-45-290.

3. If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310 (see 9VAC5-20-21), 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 article.

D. Testing to determine whether a product is a liquid or solid shall be performed using ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

E. 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 (see 9VAC5-20-21).

F. Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (see 9VAC5-20-21).

G. 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 other tests, processes, or records used in connection with product manufacture.

9VAC5-45-380. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) apply.

9VAC5-45-390. Notification, records and reporting.

A. The provisions of 9VAC5-45-50 (Notification, records and reporting) apply.

B. Upon 90 days written notice, the board may require a responsible party to report information for a consumer product the board may specify, including, but not limited to, all or part of the following information:

1. The company name of the responsible party and the party's address, telephone number, and designated contact person [:]

2. A showing satisfactory to the board under 9VAC5-170-60 B and C that supports any claim of confidentiality made pursuant to 9VAC5-170-60, §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law, and other applicable state confidentiality requirements [:]

3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label [:]

4. The product category to which the consumer product belongs [:]

5. The applicable product forms listed separately [:]

6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both [:]

7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form [:]

8. For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in this subsection [:]

9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):

a. Total exempt compounds [:]

b. Total LVP-VOCs that are not fragrances [:]

c. Total all other carbon-containing compounds that are not fragrances [:]

d. Total all noncarbon-containing compounds [:]

e. Total fragrance [:]

f. For products containing greater than 2.0% by weight fragrance:

(1) The percent of fragrances that are LVP-VOCs [~~, and;~~ ; and]

(2) The percent of fragrances that are all other carbon-containing compounds [:]

g. Total paradichlorobenzene [:]

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

a. Each exempt compound; and

b. Each LVP-VOC that is not a fragrance [:]

11. If applicable, the weight percent composed of propellant for each product [:]

12. If applicable, an identification of the type of propellant [:]

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percentage by weight of each ozone-depleting compound that is:

1. Listed in 9VAC5-45-310 I; and

2. Contained in a product subject to registration under subsection B of this section in an amount greater than 1.0% by weight.

D. [~~All information~~ Information] submitted by responsible parties pursuant to this section shall be [available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be] handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia [~~and 9VAC5-170-60~~].

E. Provisions follow concerning special recordkeeping and reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9VAC5-45-310 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible

party shall keep records of the following information for products sold during each calendar year, beginning with the year of the applicable compliance date specified in 9VAC5-45-360, and ending with the year 2010:

a. The product brand name and a copy of the product label with legible usage instructions;

b. The product category to which the consumer product belongs;

c. The applicable product form, listed separately;

d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;

e. The weight percentage, to the nearest 0.10% of perchloroethylene and methylene chloride in the consumer product;

3. Upon 90 days written notice, the board may require a responsible party to report the information specified in subdivision 2 of this subsection.

4. Records required by subdivision 2 of this subsection shall be maintained by the responsible party for [~~five~~ three] calendar years from the date such records were created.

5. Alternative control plan notifications, records, and reporting shall be made as required by 9VAC5-45-320 and as required in the ACP agreement.

6. Innovative product notifications, records, and reporting shall be made as required by 9VAC5-45-330 and as required in the innovative products exemption notification letter.

Article 4
Emission Standards for Consumer Products Manufactured on or after [~~January 1, 2009~~ August 1, 2010]

9VAC5-45-400. Applicability.

A. Except as provided in 9VAC5-45-410, the provisions of this article apply to any consumer product manufactured on or after [~~January 1, 2009~~ August 1, 2010], that contains volatile organic compounds (VOCs). The provisions of Article 3 (9VAC5-45-280 et seq.) of this part apply to consumer products manufactured before [~~January 1, 2009~~ August 1, 2010].

B. Except as provided in [~~section~~] 9VAC5-45-410, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale or manufactures for sale any consumer product.

C. The provisions of this article apply to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

D. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell or otherwise provide products to businesses/governmental entities/individuals.

9VAC5-45-410. Exemptions.

A. This article shall not apply to any consumer product manufactured in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C for shipment and use outside of those areas.

B. The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards specified in 9VAC5-45-430 A, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to those applicable volatile organic compound emissions control areas. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in those applicable volatile organic compound emissions control areas.

C. The medium volatility organic compound (MVOC) content standards specified in 9VAC5-45-430 A for antiperspirants or deodorants shall not apply to ethanol.

D. The VOC limits specified in 9VAC5-45-430 A shall not apply to fragrances up to a combined level of 2.0% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2.0% by weight contained in any antiperspirant or deodorant.

E. The requirements of 9VAC5-45-430 A for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20ºC.

F. The VOC limits specified in 9VAC5-45-430 A shall not apply to any LVP-VOC.

G. The VOC limits specified in 9VAC5-45-430 A shall not apply to air fresheners that are composed entirely of fragrance, less compounds not defined as VOCs or LVP-VOC exempted under subsection F of this section.

H. The VOC limits specified in 9VAC5-45-430 A shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

I. The VOC limits specified in 9VAC5-45-430 A shall not apply to adhesives sold in containers of one fluid ounce or less.

J. The VOC limits specified in 9VAC5-45-430 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 5.0% active ingredients.

K. A person who cannot comply with the requirements set forth in 9VAC5-45-430, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the board for a waiver.

1. The application shall set forth:

a. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;

b. The proposed dates by which compliance with the provisions of 9VAC5-45-430 will be achieved; and

c. A compliance report reasonably detailing the methods by which compliance will be achieved.

2. Upon receipt of an application containing the information required in subdivision 1 of this subsection, the board will hold a public hearing to determine whether, under what conditions, and to what extent, a waiver from the requirements in 9VAC5-45-430 is necessary and will be permitted. A hearing shall be initiated no later than 75 days after receipt of a waiver application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the Virginia Register of Regulations. At least 30 days prior to the hearing, the waiver application shall be made available to the public for inspection. Information submitted to the board by a waiver applicant shall be available to the public, except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia. The board may consider both public and confidential information in reaching a decision on a waiver application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

3. No waiver shall be granted unless all of the following findings are made:

a. That, because of reasons beyond the reasonable control of the applicant, requiring compliance with 9VAC5-45-430 would result in extraordinary economic hardship;

b. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air pollutants that would result from issuing the waiver; and

c. That the compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

4. Any waiver may be issued as an order of the board. The waiver order shall specify a final compliance date by which the requirements of 9VAC5-45-430 will be achieved. Any waiver order shall contain a condition that specifies increments of progress necessary to assure timely compliance and such other conditions that the board, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the Virginia Air Pollution Control Law and the regulations of the board.

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

6. Upon the application of anyone, the board may review and for good cause modify or revoke a waiver from requirements of 9VAC5-45-430. [~~Modifications and revocations of waivers are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

L. The requirements of 9VAC5-45-460 A shall not apply to consumer products registered under FIFRA.

9VAC5-45-420. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10 [(General Definitions)], unless otherwise required by context.

C. Terms defined.

"ACP" or "alternative control plan" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"ACP agreement" means the document signed by the board that includes the conditions and requirements of the board and that allows manufacturers to sell ACP products pursuant to the requirements of this article.

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

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \ldots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content)\ x\ (Enforceable\ Sales)}{100}$$

where:

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

Enforceable sales = (see definition in this section).

VOC content = one of the following:

1. For all products except for charcoal lighter material products:

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

where:

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

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9VAC5-45-410.

[2. For charcoal lighter material products only:]

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

[~~2. For charcoal lighter material products only:~~]

where:

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

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

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \ldots + (Limit)_N$$

where:

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

where:

Enforceable sales = (see definition in this section).

ACP standard = (see definition in this section).

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

"ACP product" means any consumer product subject to the VOC standards specified in 9VAC5-45-430 A, except those products that have been exempted as innovative products under 9VAC5-45-450.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9VAC5-45-430 A, whichever is the lesser of the two.

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

1. The applicable VOC standard specified in 9VAC5-45-430 A for all ACP products except for charcoal lighter material;

2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$VOC\ Standard = \frac{(0.020\ \ pound\ VOC\ \ per\ start\ \ x\ 100)}{Certified\ \ Use\ Rate}$$

where:

0.020 = the certification emissions level for the product, as specified in9VAC5-45-430 E.

Certified use rate = (see definition in this section).

"Adhesive" means any product that is used to bond one surface to another by attachment. Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For contact adhesive only, adhesive also does not include units of product, less packaging, [~~which~~ that] consist of more than one gallon. In addition, for construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive does not include units of product, less packaging, that weigh more than one pound and consist of more than 16 fluid ounces. The package size limitations do not apply to aerosol adhesives.

"Adhesive remover" means a product designed to remove adhesive 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 the following adhesive remover subcategories in subdivisions 1 through 4

of this definition, adhesive shall mean a substance used to bond one or more materials. Adhesives include, but are not limited to, caulk, sealant, glue, or similar substances used for the purpose of forming a bond.

1. "Floor and wall covering adhesive remover" means a product designed or labeled to remove floor or wall coverings and associated adhesive from the underlying substrate.

2. "Gasket or thread locking adhesive remover" means a product designed or labeled to remove gaskets or thread locking adhesives. Products labeled for dual use as a paint stripper and as a gasket remover or thread locking adhesive remover are considered gasket or thread locking adhesive remover.

3. "General purpose adhesive remover" means a product designed or labeled to remove cyanoacrylate adhesives and nonreactive adhesives or residue from a variety of substrates. General purpose adhesive remover includes, but is not limited to, products that remove thermoplastic adhesives, pressure sensitive adhesives, dextrin-based or starch-based adhesives, casein glues [~~,~~] rubber-based or latex-based adhesives, as well as products that remove stickers, decals, stencils, or similar materials. General purpose adhesive remover does not include floor or wall covering adhesive remover.

4. "Specialty adhesive remover" means a product designed to remove reactive adhesives from a variety of substrates. Reactive adhesives include adhesives that require a hardener or catalyst in order for the bond to occur. Examples of reactive adhesives include, but are not limited to, epoxies, urethanes, 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. Aerosol adhesives include special purpose spray adhesives, mist spray adhesives, and web spray adhesives.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's carrier, or by means of a mechanically induced force. Aerosol product does not include pump sprays.

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

1. "Home use" means use in a household or its immediate environment.

2. "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.

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

4. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

"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 fresheners do not include products that are used on the human body, products that function primarily as cleaning products (as indicated on a product label) or as toilet/urinal care products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air fresheners do 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 that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

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

"Alternative control plan" or "ACP" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is

not limited to, antimicrobial hand or body washes or cleaners, food handler 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 or 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 or 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% in at least 50% 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 products do not include electronic cleaners, floor polish or waxes, floor coatings, and products that meet the definition of aerosol coating products or architectural coatings.

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

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

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration that 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 or 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 that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;

2. A solid at room temperature; and

3. Contains no water.

"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. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield washer fluid also includes liquids that are (i) packaged as a pre-wetted, single-use manual wipe and (ii) designed exclusively for cleaning, washing, or wetting automotive glass surfaces for the purpose of restoring or maintaining visibility for the driver. Glass cleaners that are intended for use on other glass surfaces are not included in this definition. Automotive windshield washer fluid 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. Bathroom and tile cleaners do 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: (i) biological residues, such as insect carcasses and tree sap, and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaner" 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. Carburetor or fuel-injection air intake cleaner does not include 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 or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids,

or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9VAC5-45-430 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21), expressed to the nearest 0.001 pound VOC per start.

"Certified use rate" means the usage level for products approved under 9VAC5-45-430 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol [(see 9VAC5-20-21)], expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal lighter material does not include any of the following:

1. Electrical starters and probes;

2. Metallic cylinders using paper tinder;

3. Natural gas;

4. Propane; or

5. Fat wood.

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

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

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

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

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

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

"Consumer" means a person who purchases or acquires a 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, but does not include other paint products, furniture coatings, or architectural coatings. As used in this [~~rule~~ article], consumer products shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial, or commercial uses.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;

2. Is allowed to dry before the two surfaces are placed in contact with each other;

3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

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

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

"Contact adhesive - special purpose" means a contact adhesive that is used as follows:

1. 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

2. In automotive applications that are either:

a. Automotive under-the-hood applications requiring heat, oil, or gasoline resistance; or

b. Body-side molding, automotive weatherstrip, or decorative trim.

"Container or packaging" means the part or parts of the consumer or institutional product [~~which~~ that] serve only to

contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances that is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.

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

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

2. "House dust mite" means mites [~~which~~ that] feed primarily on skin cells shed in the home by humans and pets and that 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 any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can be used on or applied to the human axilla to provide a scent 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 a personal fragrance product with 20% 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 an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacterium, virus, or another microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a 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 FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals;

2. Products designed for agricultural use;

3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or

4. Products that, 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.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"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 to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a [~~non-aqueous~~ nonaqueous] liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or

2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9VAC5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. Dusting aid does not include pressurized gas dusters.

"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. Electrical cleaner does not include general purpose cleaners, general purpose degreasers, dusting aids, electronic cleaners,

energized electrical cleaners, pressurized gas dusters, engine degreasers, anti-static products, 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 cleaners, general purpose degreasers, dusting aids, pressurized gas dusters, engine degreasers, electrical cleaners, energized electrical cleaners, anti-static products, 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:

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

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

Energized electrical cleaner does not include electronic cleaner.

"Enforceable sales" means the total amount of an ACP product sold for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and

3. Other accurate product sales records acceptable to the board.

"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.

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"Existing product" means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale prior to March 9, 2005, 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. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics that 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 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 products, carpet and upholstery cleaners, soft household surface sanitizers, footwear or leather care products, spot removers, or disinfectants, 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 FIFRA.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, semisolids, liquids, lotions, and substrate-impregnated forms. Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

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

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff 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 a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a 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 or components, to maintain, enhance, clean, protect, or modify the appearance, durability, fit, or flexibility of the footwear, leather article or component. Footwear includes both leather and non-leather foot apparel. Footwear or leather care product does not include fabric protectants; general purpose adhesives; contact adhesives; vinyl/fabric/leather/polycarbonate coatings; rubber and vinyl protectants; fabric refreshers; products solely for deodorizing; or sealant products with adhesive properties used to create external protective layers greater than 2 millimeters thick.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2 mm of Hg at 20ºC, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. Furniture maintenance products do 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.

"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 a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives;

2. Construction, panel, and floor covering adhesives;

3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner 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 a 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. General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to

establishments that manufacture or construct goods or commodities; and (ii) 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. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Graffiti remover" means a product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish, from a variety of non-cloth or non-fabric substrates. Graffiti remover does not include paint remover 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.

"Gross sales" means the estimated total sales of an ACP product in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the current population of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C; or

2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

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

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling product, hair styling gel, or products whose primary purpose is to condition or hold the hair.

"Hair spray" means a consumer product that is applied to styled hair, and is designed or labeled to provide sufficient rigidity to hold, retain and/or finish the style of the hair for a period of time. Hair spray includes aerosol hair sprays, pump hair sprays, spray waxes; color, glitter, or sparkle hairsprays that make finishing claims; and products that are both a styling and finishing product. Hair spray does not include spray products that are intended to aid in styling but does not provide finishing of a hairstyle. For the purposes of this article, "finish" or "finishing" means the maintaining or holding of previously styled hair for a period of time. For the purposes of this article, "styling" means the forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"Hair styling product" means a consumer product that is designed or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling and or sculpting of the hair. Hair styling product includes, but is not limited to hair balm; clay; cream; creme; curl straightener; gel; liquid; lotion; paste; pomade; putty; root lifter; serum; spray gel; stick; temporary hair straightener; wax; spray products that aid in styling but do not provide finishing of a hairstyle; and leave-in volumizers, detanglers or conditioners that make styling claims. Hair styling product does not include hair mousse, hair shine, hair spray, or shampoos or conditioners that are rinsed from the hair prior to styling. For the purposes of this article, "finish" or "finishing" means the maintaining or holding of previously styled hair for a period of time. For the purposes of this article, "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. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

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

"High volatility organic compound" or "HVOC" means a volatile organic compound that exerts a vapor pressure

greater than 80 millimeters of mercury (mm Hg) when measured at 20ºC.

"Household product" means a 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 people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;

2. For a use that requires a structural pest control license under applicable state laws or regulations; or

3. Materials classified for restricted use pursuant to 40 CFR 152.75 and require a pesticide business license from the Virginia Pesticide Control Board pursuant to 2VAC20-40-20 for use and possession.

"Insecticide fogger" means an 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:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or

2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents 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. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of 9VAC5-45-460 C, aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include 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:

1. Sold exclusively to establishments that manufacture or construct goods or commodities; and

2. Labeled "not for retail sale."

"LVP content" means the total weight, in pounds, of LVP-VOC 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-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

1. Has a vapor pressure less than 0.1 mm Hg at 20ºC , as determined by CARB Method 310 (see 9VAC5-20-21);

2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms as verified by formulation data, and the vapor pressure and boiling point are unknown;

3. Is a chemical compound with a boiling point greater than 216ºC , as determined by CARB Method 310 (see 9VAC5-20-21); or

4. Is the weight percent of a chemical mixture that boils above 216ºC, as determined by CARB Method 310 (see 9VAC5-20-21).

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

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

"Medicated astringent or medicated toner" means a product regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

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

"Metal polish or cleanser" means a 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. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel, and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

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

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that 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.

"Multipurpose dry lubricant" means a lubricant that is:

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

2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multipurpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multipurpose lubricant does not include multipurpose dry lubricants, penetrants, or silicone-based multipurpose lubricants.

"Multipurpose solvent" means an 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. Multipurpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multipurpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish" means a 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.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9VAC5-45-430; or

2. Only one distinct ACP product line subject to the requirements of 9VAC5-45-430, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that 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 a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multipurpose 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. Penetrant does not include multipurpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Personal fragrance product" means any product that is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. Personal fragrance product does not include: (i) deodorant; (ii) medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body; (iii) mouthwashes, breath fresheners and deodorizers; (iv) lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations; (v) products designed exclusively for use on human genitalia; (vi) soaps, shampoos, and products primarily used to clean the human body; and (vii) fragrance products designed to be used exclusively on nonhuman animals.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a 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 a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the board, based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"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. Pressurized gas duster does not include dusting aids.

"Principal display panel" means that part of a label that is 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 that best describes the product as listed in this section and in Table 45-4A in 9VAC5-45-430 A.

"Product form," for the purpose of complying with 9VAC5-45-510 (notification, records and reporting) only, means the applicable form that 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.

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

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

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

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9VAC5-45-440 B 1 g (10).

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

"Responsible ACP party" means the company, firm, or establishment that 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 that the ACP product was "manufactured for" or "distributed by," as noted on the label.

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

"Restricted materials" means pesticides established as restricted materials under Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

[~~"Retailer" means a person who sells, supplies, or offers consumer products for sale directly to consumers.~~]

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

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

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

"Rubber and vinyl protectant" means a product designed to protect, preserve, or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a 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.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound 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~~ compound] " means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking [~~compounds~~ compound] " means a compound that 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 that dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system, in the removal of facial or other bodily hair. Shaving cream does not include shaving gel.

"Shaving gel" means an aerosol product [~~which~~ that] 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. Shaving gel does not include shaving cream.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multipurpose lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multipurpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and that does not require that the product container be shaken before use.

"Small business" means any stationary source that is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances that, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for

Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

2. "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 5.0%, 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 "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21) or from product formulation data.

3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:

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

b. The touch-up, repair, or attachment of edgebonding 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 that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265°F and at pressures between 1,000 and 1,400 psi.

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275°F.

"Spot remover" means a product labeled to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, or multipurpose 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 an antiperspirant or a 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 the definition in the federal consumer products regulation, 40 CFR 59 Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9VAC5-45-440 F 3, surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

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

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

"Tire sealant and inflator" means a 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 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. Toilet/urinal care product does not include bathroom and tile cleaner or general purpose cleaner.

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

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

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

where:

Highest VOC content = the maximum VOC content that the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing [~~Data Days~~ data days] = (see definition in this section).

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

"Type A propellant" means a compressed gas such as CO_2, N_2, N_2O, or compressed air that 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 a halocarbon that is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how and in what quantity the product is to be used.

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

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9VAC5-45-490 B and C.

For charcoal lighter material products only,

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

where:

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9VAC5-10-20.

"Wasp and hornet insecticide" means an insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

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

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

"Web spray adhesive" means an aerosol adhesive that is not a mist spray or special purpose spray adhesive.

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

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9VAC5-45-430. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-410, 9VAC5-45-440 and 9VAC5-45-450, no owner or other person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after [~~January 1, 2009~~ August 1, 2010], or (ii) manufacture for sale a consumer product on or after [~~January~~

~~1, 2009~~ August 1, 2010], that contains volatile organic compounds in excess of the limits specified in Table 45-4A.

TABLE 45-4A

Product Category [~~:~~]	Percent VOC by Weight
Adhesive Removers	
Floor or wall covering adhesive remover	5%
Gasket or thread locking adhesive remover	50%
General purpose adhesive remover	20%
Specialty adhesive remover	70%
Adhesives	
Aerosol adhesives	
Mist spray adhesive:	65%
Web spray adhesive:	55%
Special purpose spray adhesives	
Automotive engine compartment adhesive:	70%
Automotive headliner adhesive:	65%
Flexible vinyl adhesive:	70%
Laminate repair or edgebanding adhesive:	60%
Mounting adhesive:	70%
Polystyrene foam adhesive:	65%
Polyolefin adhesive:	60%
Contact adhesives	
General purpose contact adhesive:	55%
Special purpose contact adhesive:	80%
Construction, panel, and floor covering adhesive:	15%
General purpose adhesive:	10%
Structural waterproof adhesive:	15%
Air fresheners	
Single-phase aerosol:	30%
Double-phase aerosol:	25%
Liquid/Pump spray:	18%
Solid/Semisolid:	3%
Antiperspirants	
Aerosol:	40% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Anti-static product, nonaerosol:	11%
Automotive brake cleaner:	45%
Automotive rubbing or polishing compound:	17%
Automotive wax, polish, sealant, or glaze	
Hard paste wax:	45%
Instant detailer:	3%
All other forms:	15%
Automotive windshield washer fluid:	35%
Bathroom and tile cleaners	
Aerosol:	7%
All other forms:	5%
Bug and tar remover:	40%
Carburetor or fuel-injection air intake cleaner:	45%
Carpet and upholstery cleaners	
Aerosol:	7%
Nonaerosol (dilutable):	0.1%
Nonaerosol (ready-to-use):	3.0%
Charcoal lighter material:	See subsection E of this section.
Cooking spray, aerosol:	18%
Deodorants	
Aerosol:	0% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Dusting aids	
Aerosol:	25%
All other forms:	7%
Electrical cleaner	45%
Electronic cleaner	75%

Engine degreasers	
Aerosol:	35%
Nonaerosol:	5%
Fabric protectant:	60%
Fabric refreshers	
Aerosol:	15%
Nonaerosol:	6%
Floor polishes/Waxes	
Products for flexible flooring materials:	7%
Products for nonresilient flooring:	10%
Wood floor wax:	90%
Floor wax stripper, nonaerosol:	See subsection G of this section.
Footwear or leather care products	
Aerosol:	75%
Solid:	55%
All other forms:	15%
Furniture maintenance products	
Aerosol:	17%
All other forms except solid or paste:	7%
General purpose cleaners	
Aerosol:	10%
Nonaerosol:	4%
General purpose degreasers	
Aerosol:	50%
Nonaerosol:	4%
Glass cleaners	
Aerosol:	12%
Nonaerosol:	4%
Graffiti removers	
Aerosol:	50%
Nonaerosol:	30%
Hair mousse:	6%
Hair shine:	55%

Hair spray:	55%
Hair styling products	
Aerosol and pump spray:	6%
All other forms:	2%
Heavy-duty hand cleaner or soap:	8%
Insecticides	
Crawling bug (aerosol):	15%
Crawling bug (all other forms):	20%
Flea and tick:	25%
Flying bug (aerosol):	25%
Flying bug (all other forms):	35%
Fogger:	45%
Lawn and garden (all other forms):	20%
Lawn and garden (nonaerosol):	3%
Wasp and hornet:	40%
Laundry prewash	
Aerosol/Solid:	22%
All other forms:	5%
Laundry starch product:	5%
Metal polish or cleanser:	30%
Multipurpose lubricant (excluding solid or semi-solid products):	50%
Nail polish remover:	75%
Nonselective terrestrial herbicide, nonaerosol:	3%
Oven cleaners	
Aerosol/Pump spray:	8%
Liquid:	5%
Paint remover or stripper:	50%
Penetrant:	50%
Rubber and vinyl protectants	
Nonaerosol:	3%
Aerosol:	10%
Sealant and caulking compound:	4%
Shaving cream:	5%
Shaving gel:	7%

Silicone-based multipurpose lubricant (excluding solid or semi-solid products):	60%
Spot removers	
Aerosol:	25%
Nonaerosol:	8%
Tire sealant and inflator:	20%
Toile/urinal care products	
Aerosol:	10%
Nonaerosol:	3%
Undercoating, aerosol:	40%
Wood cleaners	
Aerosol:	17%
Nonaerosol:	4%

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9VAC5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 45-4A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "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.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 45-4A shall apply to the product only after the maximum recommended dilution has taken place.

D. For those consumer products that are registered under FIFRA, the effective date of the VOC standards in Table 45-4A shall be [~~January 1, 2010~~ August 1, 2011]. Prior to that date, the standards of Table 45-3A in 9VAC5-45-430 A shall apply unless the product is exempt under the provisions of 9VAC5-45-410.

E. The following requirements shall apply to all charcoal lighter material products:

1. Effective as of the applicable compliance date specified in 9VAC5-45-480, no owner or other person shall (i) sell, supply, or offer for sale a charcoal lighter material product manufactured on or after [~~January 1, 2009~~ August 1, 2010], or (ii) manufacture for sale a charcoal lighter material product on or after [~~January 1, 2009~~ August 1, 2010], unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that [~~they have~~ it has] been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9VAC5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the executive order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21). The provisions relating to LVP-VOC in 9VAC5-45-410 F and 9VAC5-45-420 C shall not apply to a charcoal lighter material subject to the requirements of 9VAC5-45-430 A and this subsection.

b. The board may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality

Management District Rule 1174 Testing Protocol (see 9VAC5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material that meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection that may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal that are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start. [~~Modifications and revocations of certifications are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

F. Requirements for aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9VAC5-45-410 and 9VAC5-45-450, no owner or other person shall (i) sell, supply, offer for sale, or use an aerosol adhesive manufactured on or after [~~January 1, 2009~~ August 1, 2010], or (ii) manufacture for sale an aerosol adhesive after [~~January 1, 2009~~ August 1, 2010], that contains VOCs in excess of the specified standard.

2. a. 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 9VAC5-45-420 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9VAC5-45-420 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9VAC5-45-420 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9VAC5-45-430 A.

3. No person shall (i) sell, supply, or offer for sale an aerosol adhesive manufactured on or after [~~January 1, 2009~~ August 1, 2010], or (ii) manufacture for sale on or after [~~January 1, 2009~~ August 1, 2010], an aerosol adhesive, that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9VAC5-45-460 D.

G. Effective as of the applicable compliance date specified in 9VAC5-45-480, no owner or other person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium [~~build-up"~~ build-up,"] or "heavy build-up" are not specifically required as long as comparable terminology is used.

H. For a consumer product for which standards are specified under subsection A of this section, no owner or other person shall sell, supply, offer for sale, or manufacture for sale a consumer product that contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);

1,1,1-trichloroethane; or

carbon tetrachloride.

I. The requirements of subsection H of this section shall not apply to an existing product formulation that complies with Table 45-4A or an existing product formulation that is reformulated to meet Table 45-4A, provided the ozone-depleting compound content of the reformulated product does not increase.

J. The requirements of subsection H of this section shall not apply to 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.

9VAC5-45-440. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement [~~:~~.]

b. A statement of whether the responsible ACP party is a small business or a one-product business [~~:~~.]

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP [~~;~~ ~~and~~.]

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales [~~, which~~ that] is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales [~~which~~ that] are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product; [and]

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency [~~;~~]

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection [~~;~~]

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP [~~;~~]

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect [~~;~~]

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-420 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period [~~;~~]

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article [~~;~~]

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging [~~;~~]

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP [~~; and~~ .]

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely

reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in [~~9VAC 5-45-430~~ 9VAC5-45-430] A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; [and]

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will [normally] act to approve or disapprove a complete application within 90 working days after the application is deemed complete. [The board may extend this time period if additional information is needed.]

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP [~~Agreement~~ agreement] approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period [~~.~~]

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows:

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-420 C [~~.~~]

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period [~~.~~]

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection [~~.~~]

(4) The board will calculate the ACP limit for the entire compliance period using the ACP [~~Standards~~ standards] applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero [~~.~~]

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the

calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-430 A may not be used to generate surplus reductions [~~.~~]

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP [~~.~~]

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section [~~.~~]

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated [~~.~~]

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

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

(1) The date the transfer is to become effective;

(2) The date the surplus reductions being traded are due to expire;

(3) The amount (in pounds of VOCs) of surplus reductions that are being transferred;

(4) The total purchase price paid by the buyer for the surplus reductions;

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions; [and]

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-430 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; [and]

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = Enforceable\ Sales \times \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

$VOC\ content_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-430 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

$VOC\ content_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and [~~shall~~ may] not be used for another purpose;

(2) Limited use surplus reduction credits [~~shall~~ may] not be transferred to, or used by, another responsible ACP party; [and]

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a

shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit. [~~Modifications of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

2. If any applicable VOC standards specified in 9VAC5-45-430 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-430 A is modified by the board in a future rule-making, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; [or]

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship;

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more);

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection [~~.~~ ; or]

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in [~~9VAC5-170- and~~ 9VAC5-170-40 A 2 and applicable provisions of] Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-430 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. [~~All other~~ Other] information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

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

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has 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 (see 9VAC5-20-21) may be exempt from Table 45-4A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-4A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-400 B.

9VAC5-45-450. Innovative products.

A. Manufacturers of consumer products may seek an innovative products exemption in accordance with the following criteria:

1. The board will exempt a consumer product from the VOC limits specified in 9VAC5-45-430 A if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

a. The VOC emissions from a representative consumer product that complies with the VOC limits specified in 9VAC5-45-430 A, or

b. The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in 9VAC5-45-430 A. VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

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 limit specified in Table 45-4A.

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

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method [~~which~~ that] accurately calculates emissions may be used upon approval of the board.

2. For the purposes of this subsection, "representative consumer product" means a consumer product that meets all of the following criteria:

a. The representative product shall be subject to the same VOC limit in 9VAC5-45-430 A as the innovative product;

b. The representative product shall be of the same product form as the innovative product unless the innovative product uses a new form that does not exist in the product category at the time the application is made; and

c. The representative product shall have at least a similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

3. A manufacturer shall apply in writing to the board for an exemption claimed under subdivision A 1 of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide the information necessary to enable the board to establish enforceable conditions for granting the exemption, including the VOC content for the innovative product and test methods for determining the VOC content. [~~All information~~ Information] submitted to the board pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

4. Within 30 days of receipt of the exemption application, the board will determine whether an application is complete.

5. Within 90 days after an application has been deemed complete, the board will determine whether, under what conditions, and to what extent an exemption from the requirements of 9VAC5-45-430 A will be permitted. [~~The applicant and the board may mutually agree to a longer time period for reaching a decision.~~ The board may extend this time period if additional time is needed to reach a decision,] and additional supporting documentation may be submitted by the applicant before a decision has been reached. The board will notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in subdivision 1 of this subsection, and that such emissions reductions can be enforced.

6. In granting an exemption for a product, the board will establish enforceable conditions. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates, and other parameters determined by the board to be necessary. The board will also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.

7. For a product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the board in writing within 30 days of a change in the product formulation or recommended product usage directions and shall also notify the board within 30 days if the manufacturer learns of information that would alter the emissions estimates submitted to the board in support of the exemption application.

8. If the VOC limits specified in 9VAC5-45-430 A are lowered for a product category through a subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subdivision, shall have no force and effect as of the effective date of the modified VOC standard. This subdivision shall not apply to those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the board at least 60 days before the effective date of such limits.

9. If the board believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subdivision 1 of this subsection, the board may modify or revoke the exemption as necessary to assure that the product will meet these criteria. [~~Modifications and revocations of exemptions are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.~~]

B. In granting an exemption under this section, the board will take into consideration whether the applicant has been granted an innovative product exemption by CARB. A manufacturer of consumer products that has 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 (see 9VAC5-20-21) may be exempt from Table 45-4A 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 Table 45-4A. A manufacturer claiming such an exemption on this basis must submit to the board a copy of the innovative product exemption decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB innovative product exemption decision for those products in the areas specified in 9VAC5-45-400 B.

9VAC5-45-460. Administrative requirements.

A. Provisions follow concerning product dating.

1. Each manufacturer of a consumer product subject to 9VAC5-45-430 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.

2. A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of subdivision B 1 of this section, 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"~~ YY] = two digits representing the year in which the product was manufactured, and

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

3. The date or date code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by simply removing the cap or cover) without irreversibly disassembling a part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

4. This date or date code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in 9VAC5-45-430 A.

5. The requirements of this section shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. Additional provisions follow concerning product dating.

1. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9VAC5-45-430, an explanation of the date portion of the code must be filed with the board upon request by the board.

2. If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to 9VAC5-45-430 and the board has requested an explanation of any previous product dating code for that consumer product, then an explanation of the modified code shall be submitted to the board before any products displaying the modified code are sold, supplied, or offered for sale within the areas designated in 9VAC5-45-400 B.

3. 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.

4. Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

C. Additional provisions follow concerning the most restrictive limit that applies to a product.

1. For FIFRA-registered insecticides manufactured before [~~January 1, 2010~~ August 1, 2011], notwithstanding the definition of "product category" in 9VAC5-45-420 C, if anywhere on the principal display panel, a 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 9VAC5-45-430 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

2. For consumer products manufactured on or after [~~January 1, 2009~~ August 1, 2010], and FIFRA-registered insecticides manufactured on or after [~~January 1, 2010~~ August 1, 2011], notwithstanding the definition of "product category" in 9VAC5-45-420 C, if anywhere on the container or packaging, 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 9VAC5-45-430 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

D. Provisions follow concerning additional labeling requirements for aerosol adhesives, adhesive removers, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9VAC5-45-510, 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 article shall ensure that all products clearly display the following information on each product container that is manufactured on or after the effective date for the product category specified in Table 45-4A.

a. The product category as specified in 9VAC5-45-430 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9VAC5-45-430 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 board, as provided in 9VAC5-45-440, and the product exceeds the applicable VOC standard;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9VAC5-45-430 A, the product shall be labeled with the term "ACP" or "ACP product";

c. If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

d. If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision 1 of this subsection shall be displayed on the product container such that it is readily observable without removing or disassembling a 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 product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9VAC5-45-470. Compliance.

The provisions of 9VAC5-45-20 (Compliance) apply.

9VAC5-45-480. Compliance [~~schedules~~ schedule].

Affected owners or other persons shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~January 1, 2009~~ August 1, 2010].

9VAC5-45-490. Test methods and procedures.

A. The provisions of 9VAC5-45-30 (Emission testing) apply.

B. 1. Testing to determine compliance with the requirements of this article shall be performed using CARB Method 310 (see 9VAC5-20-21). Alternative methods that can accurately determine the concentration of VOCs in a subject product or its emissions may be used consistent with the approval requirements of 9VAC5-45-30 A.

2. In sections 3.5, 3.6, and 3.7 of CARB Method 310 (see 9VAC5-20-21), a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content." Information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

C. For VOC content determinations using product formulation and records, testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

2. For the purposes of this subsection, the VOC content shall be calculated according to the following equation:

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

where:

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

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit as specified in 9VAC5-45-410.

3. If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310 (see 9VAC5-20-21), 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 article.

D. Testing to determine whether a product is a liquid or solid shall be performed using ASTM "Standard Test Method

for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

E. 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 (see 9VAC5-20-21).

F. Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (see 9VAC5-20-21).

G. 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 other tests, processes, or records used in connection with product manufacture.

9VAC5-45-500. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) apply.

9VAC5-45-510. Notification, records and reporting.

A. The provisions of 9VAC5-45-50 (Notification, records and reporting) apply.

B. Upon 90 days written notice, the board may require a responsible party to register and report information for a consumer product the board may specify, including, but not limited to, all or part of the information specified in subdivisions 1 through 12 of this subsection. If the responsible party does not have or does not provide the information requested by the board, the board may require the reporting of this information by another owner or other person that has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

1. The company name of the responsible party and the party's address, telephone number, and designated contact person [;]

2. A showing satisfactory to the board under 9VAC5-170-60 B and C that supports any claim of confidentiality made pursuant to 9VAC5-170-60 [~~B and C~~] , §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law, and other applicable state confidentiality requirements [;]

3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label [;]

4. The product category to which the consumer product belongs [;]

5. The applicable product forms listed separately [;]

6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both [;]

7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form [;]

8. For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in this subsection [;]

9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):

a. Total exempt compounds [;]

b. Total LVP-VOCs that are not fragrances [;]

c. Total all other carbon-containing compounds that are not fragrances [;]

d. Total all noncarbon-containing compounds [;]

e. Total fragrance [;]

f. For products containing greater than 2.0% by weight fragrance:

(1) The percent of fragrances that are LVP-VOCs [~~, and~~; and]

(2) The percent of fragrances that are all other carbon-containing compounds [;]

g. Total paradichlorobenzene [;]

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

a. Each exempt compound; and

b. Each LVP-VOC that is not a fragrance [;]

11. If applicable, the weight percent composed of propellant for each product [;]

12. If applicable, an identification of the type of propellant [;]

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percentage by weight of each ozone-depleting compound that is:

1. Listed in 9VAC5-45-430 H; and

2. Contained in a product subject to registration under subsection B of this section in an amount greater than 1.0% by weight.

D. [~~All information~~ Information] submitted [~~to the board~~] by responsible parties pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

E. Provisions follow concerning special recordkeeping and reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9VAC5-45-430 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall keep records of the following information for products sold during each calendar year, beginning with the year of the applicable compliance date specified in 9VAC5-45-480, and ending with the year 2010:

a. The product brand name and a copy of the product label with legible usage instructions;

b. The product category to which the consumer product belongs;

c. The applicable product form, listed separately;

d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;

e. The weight percentage, to the nearest 0.10% of perchloroethylene and methylene chloride in the consumer product;

3. Upon 90 days written notice, the board may require a responsible party to report the information specified in subdivision 2 of this subsection.

4. Records required by subdivision 2 of this subsection shall be maintained by the responsible party for [~~five~~ three] calendar years from the date such records were created.

5. Alternative control plan notifications, records, and reporting shall be made as required by 9VAC5-45-440 and as required in the ACP agreement.

6. Innovative product notifications, records, and reporting shall be made as required by 9VAC5-45-450 and as required in the [~~Innovative Products~~ innovative products] exemption notification letter.

Article 5
Emission Standards for Architectural and Industrial Maintenance Coatings

9VAC5-45-520. Applicability.

A. Except as provided in 9VAC5-45-530, the provisions of this article apply to any owner or other person who supplies, sells, offers for sale, or manufactures any architectural coating for use, as well as any owner or other person who applies or solicits the application of any architectural coating.

B. The provisions of this article apply only to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-530. Exemptions.

A. The provisions of this article do not apply to:

1. Any architectural coating that is sold or manufactured for use exclusively outside of the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas or for shipment to other manufacturers for reformulation or repackaging.

2. Any aerosol coating product.

3. Any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

B. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-540. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10 [(General Definitions)] unless otherwise required by context.

C. Terms defined.

"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/marking 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 shall be registered with both the U.S. EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) and with the Pesticide Control Board under the provisions of Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

"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 nonstationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this article.

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

"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 of asphalt or as residues from the distillation of crude petroleum or coal.

"Bituminous roof coating" means a coating that incorporates bitumens that is labeled and formulated exclusively for roofing.

"Bituminous roof primer" means a primer that consists of a coating or mastic formulated and recommended for roofing, pavement sealing, or waterproofing that incorporates bitumens.

"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.

"Calcimine recoater" means a flat solvent borne coating formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-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 that are labeled as specified in subdivision 5 of 9VAC5-45-560.

"Clear wood coatings" means clear and semitransparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.

"Coating" means 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 a concentrated pigment dispersion in water, solvent, or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

"Concrete curing compound" means 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. The film formation is the result of an acid-catalyzed condensation reaction, effecting a transetherification 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 Compound (VOC) in 9VAC5-10-20. Exempt compounds content of a coating shall be determined by Reference Method 24 or South Coast Air Quality Management District (SCAQMD) Method for Determination of Exempt Compounds [~~(see 9VAC5-20-21)]~~ (see 9VAC5-20-21)].

"Extreme durability coating" means an air-dried coating, including fluoropolymer-based coating, that is formulated and recommended for application to exterior metal surfaces and touch-up, repair, and overcoating of precoated metal surfaces, and that meets the weathering requirements of American Architectural Manufacturers Association Voluntary Specification - Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels (see 9VAC5-20-21).

"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 shall be tested in accordance with [~~American Society for Testing and Materials (ASTM)~~ ASTM] Standard Test Method for Fire Tests of Building Construction Materials (see 9VAC5-20-21).

"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 and 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 shall be tested in accordance with ASTM Standard Test Method for Surface Burning Characteristics of Building Construction Materials (see 9VAC5-20-21).

"Flat coating" means a coating that is not defined under any other definition in this article and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"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, that 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 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 caused 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, and labeled as specified in subdivision 4 of 9VAC5-45-560:

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

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

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

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

5. Exterior exposure of metal structures and structural components.

"Lacquer" means 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, mica particles or any combination of metallic pigment or mica particles per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with South Coast Air Quality Air Management District (SCAQMD) Method for Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction (see 9VAC5-20-21).

"Multicolor coating" means a coating that is packaged in a single container and that exhibits more than one color when applied in a single coat.

"Nonflat coating" means a coating that is not defined under any other definition in this article and that registers a gloss of 15 or greater on an 85-degree meter and 5 or greater on a 60-degree meter according to ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"Nonflat high-gloss coating" means a nonflat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"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; and 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 as determined by ASTM Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants (see 9VAC5-20-21), relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed as determined by ASTM Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants (see 9VAC5-20-21).

"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.

"Pretreatment wash primer" means a primer that contains a minimum of [~~0.5~~ 0.5%] acid, by weight, when tested in accordance with ASTM Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products (see 9VAC5-20-21), 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 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 nonflat coating that is labeled as specified in subdivision 8 of 9VAC5-45-560 and that is formulated to have the following characteristics:

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

2. When tested in accordance with ASTM Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature (see 9VAC5-20-21), 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

3. 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 Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature (see 9VAC5-20-21).

"Recycled coating" means an architectural coating formulated such that not less than 50% of the total weight consists of secondary and post-consumer coating, with not less than 10% 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 subdivision 6 of 9VAC5-45-560.

"Sanding sealer" means a clear or semitransparent 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 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 (Laciffer 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 subdivision 7 of 9VAC5-45-560 and that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; 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 Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films (see 9VAC5-20-21).

"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.

"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 mastic" means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40% 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 control the fetal sheen or gloss of the finish.

"VOC content" means the weight of VOC per volume of coating, calculated according to the procedures specified in 9VAC5-45-590 B.

"Waterproofing concrete/masonry sealer" means a clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, and 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 U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.) and with the Pesticide Control Board under the provisions of Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

9VAC5-45-550. Standard for volatile organic compounds.

A. Except as provided in this section, no owner or other person shall (i) manufacture, blend, or repackage for sale, (ii) supply, sell, or offer for sale, or (iii) solicit for application or apply any architectural coating with a VOC content in excess of the corresponding limit specified in Table 45-5A.

B. 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 any person acting on behalf of a manufacturer, 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 Table 45-5A, then the most

restrictive VOC content limit shall apply. This provision does not apply to the following coating categories:

Lacquer coatings (including lacquer sanding sealers);

Metallic pigmented coatings;

Shellacs;

Fire-retardant coatings;

Pretreatment wash primers;

Industrial maintenance coatings;

Low-solids coatings;

Wood preservatives;

High-temperature coatings;

Temperature-indicator safety coatings;

Antenna coatings;

Antifouling coatings;

Flow coatings;

Bituminous roof primers;

Calcimine recoaters;

Impacted immersion coatings;

Nuclear coatings;

Thermoplastic rubber coating and mastic; and

Specialty primers, sealers, and undercoaters.

Table 45-5A
VOC Content Limits for Architectural Coatings

Limits are expressed in grams of VOC per liter[1] 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.

Coating Category	VOC Content Limit
Flat Coatings	100
Nonflat Coatings	150
Nonflat High Gloss Coatings	250
Specialty Coatings:	
Antenna Coatings	530
Antifouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
Calcimine Recoater	475
Clear Wood Coatings:	
Clear Brushing Lacquers	680
Lacquers (including lacquer sanding sealers)	550
Sanding Sealers (other than lacquer sanding sealers)	350
Conversion Varnishes	725
Varnishes (other than conversion varnishes)	350
Concrete Curing Compounds	350
Concrete Surface Retarder	780
Dry Fog Coatings	400
Extreme durability coating	400
Faux Finishing Coatings	350
Fire-Resistive Coatings	350
Fire-Retardant Coatings:	
Clear	650
Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-Release Compounds	250
Graphic Arts Coatings (Sign Paints)	500
High-Temperature Coatings	420
Impacted Immersion Coating	780
Industrial Maintenance Coatings	340
Low-Solids Coatings	120
Magnesite Cement Coatings	450
Mastic Texture Coatings	300
Metallic Pigmented Coatings	500
Multi-Color Coatings	250
Nuclear Coatings	450

Pretreatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-Dry Enamels	250
Quick-Dry Primers, Sealers and Undercoaters	200
Recycled Coatings	250
Roof Coatings	250
Rust Preventative Coatings	400
Shellacs:	
Clear	730
Opaque	550
Specialty Primers, Sealers, and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-Indicator Safety Coatings	550
Thermoplastic Rubber Coating and Mastic	550
Traffic Marking Coatings	150
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	350

[1] Conversion factor: one pound of VOC per gallon (U.S.) = 119.95 grams per liter.

C. A coating manufactured prior to the applicable compliance date specified in 9VAC5-45-580, may be sold, supplied, or offered for sale for two years following the applicable compliance date. In addition, a coating manufactured before the applicable compliance date specified in 9VAC5-45-580, may be applied at any time, both before and after the applicable compliance date, so long as the coating complied with the standards in effect at the time the coating was manufactured. This subsection does not apply to any coating that does not display the date or date code required by subdivision 1 of 9VAC5-45-560.

D. 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 VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

E. No owner or other person who applies or solicits the application of any architectural coating shall apply a coating that contains any thinning material that would cause the coating to exceed the applicable VOC limit specified in Table 45-5A.

F. No owner or other 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 VOC limit specified in Table 45-5A.

G. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 45-5A, the VOC content limit shall be determined by classifying the coating as a flat coating or a nonflat coating, based on its gloss, as defined in 9VAC5-45-540 C, and the corresponding flat or nonflat coating limit shall apply.

H. Notwithstanding the provisions of subsection A of this section, up to 10% by volume of VOC may be added to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70% and temperature below 65°F, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

9VAC5-45-560. Administrative requirements.

Each manufacturer of any architectural coatings subject to this article shall display the information listed in subdivisions 1 through 8 of this section on the coating container (or label) in which the coating is sold or distributed.

1. 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 board.

2. 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 shall specify that the coating is to be applied without thinning.

3. Each container of any coating subject to this article shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC

content displayed shall be calculated using product formulation data, or shall be determined using the test methods in 9VAC5-45-590 C. The equations in 9VAC5-45-590 B shall be used to calculate VOC content.

4. In addition to the information specified in subdivisions 1, 2, and 3 of this section, each manufacturer of any industrial maintenance coating subject to this article 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 this subdivision.

a. "For industrial use only."

b. "For professional use only."

c. "Not for residential use" or "Not intended for residential use."

5. The labels of all clear brushing lacquers shall prominently display the statements "For brush application only," and "This product shall not be thinned or sprayed."

6. The labels of all rust preventive coatings shall prominently display the statement "For Metal Substrates Only."

7. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed in this subdivision.

a. For blocking stains.

b. For fire-damaged substrates.

c. For smoke-damaged substrates.

d. For water-damaged substrates.

e. For excessively chalky substrates.

8. The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.

9. The labels of all nonflat high-gloss coatings shall prominently display the words "High Gloss."

9VAC5-45-570. Compliance.

The provisions of subsections B, D, F, and G of 9VAC5-45-20 (Compliance) apply. The other provisions of 9VAC5-45-20 do not apply.

9VAC5-45-580. Compliance schedules.

Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; or

2. January 1, 2008, in the Fredericksburg VOC Emissions Control Area.

9VAC5-45-590. Test methods and procedures.

A. The provisions of subsection G of 9VAC5-45-30 (Emission testing) apply. The other provisions of 9VAC5-45-30 do not apply.

B. For the purpose of determining compliance with the VOC content limits in Table 45-5A, the VOC content of a coating shall be determined by using the procedures described in subdivision 1 or 2 of this subsection, as appropriate. The VOC 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 VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOC content using the following equation:

$$VOC\ \ Content\ \ = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})}$$

where:

VOC content = grams of VOC per liter of coating

Ws = weight of volatiles, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

Vw = volume of water, in liters

Vec = volume of exempt compounds, in liters

2. For low solids coatings, determine the VOC content in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using the following equation:

$$VOC\ \ Content\ \ (ls) = \frac{(W_s - W_w - W_{ec})}{(V_m)}$$

where:

VOC Content (ls) = the VOC content of a low solids coating in grams per liter of coating

Ws = weight of volatiles, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

C. To determine the physical properties of a coating in order to perform the calculations in subsection B, the reference

method for VOC content is Reference Method 24 (see 9VAC5-20-21). The exempt compounds content shall be determined by SCAQMD Method for Determination of Exempt Compounds (see 9VAC5-20-21). To determine the VOC content of a coating, the manufacturer may use Reference Method 24, 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 Reference Method 24 test and any other means for determining VOC content, the Reference Method 24 results will govern. The board may require the manufacturer to conduct a Reference Method 24 analysis.

D. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes shall be analyzed as exempt compounds by Bay Area Quality Management District (BAAQMD) Method for Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials (see 9VAC5-20-21).

E. The exempt compound parachlorobenzotrifluoride shall be analyzed as an exempt compound by BAAQMD Method for Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride (see 9VAC5-20-21).

F. The content of compounds exempt under Reference Method 24 shall be determined by SCAQMD Method for Determination of Exempt Compounds, Laboratory Methods of Analysis for Enforcement Samples (see 9VAC5-20-21).

G. The VOC content of a coating shall be determined by Reference Method 24 (see 9VAC5-20-21).

H. The VOC content of coatings may be determined by either Reference Method 24 or SCAQMD Method for Determination of Exempt Compounds, Laboratory Methods of Analysis for Enforcement Samples (see 9VAC5-20-21).

I. Other test methods may be used for purposes of determining compliance with this article consistent with the approval requirements of 9VAC5-45-20 A 2.

J. Analysis of methacrylate multicomponents used as traffic marking coatings shall be conducted according to a modification of Reference Method 24 (40 CFR 59, Subpart D, Appendix A; see 9VAC5-20-21). This method has not been approved for methacrylate multicomponent coatings used for other purposes than as traffic marking coatings or for other classes of multicomponent coatings.

9VAC5-45-600. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) do not apply.

9VAC5-45-610. Notification, records and reporting.

A. The provisions of subsections E, F, and H of 9VAC5-45-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-45-50 do not apply.

B. For each architectural coating that contains perchloroethylene or methylene chloride, the manufacturer shall keep records of the following information for products sold during the preceding year:

1. The product brand name and a copy of the product label with the legible usage instructions;

2. The product category listed in Table 45-5A to which the coating belongs;

3. The total sales during the calendar year to the nearest gallon;

4. The volume percentage to the nearest 0.10% of perchloroethylene and methylene chloride in the coating.

C. Upon 90 days written notice, the board may require a responsible party to report the information specified in subsection B of this section.

D. Records required by subsection B of this section shall be maintained by the responsible party for [~~five~~ three] calendar years from the date such records were created.

Article 6
Emission Standards for Adhesives and Sealants

9VAC5-45-620. Applicability.

A. Except as provided in 9VAC5-45-630, the provisions of this article apply to any owner or other person who supplies, sells, offers for sale, or manufactures for sale any adhesive, sealant, adhesive primer or sealant primer that contains volatile organic compounds (VOC).

B. Except as provided in 9VAC5-45-630, the provisions of this article apply to any owner or other person who uses, applies for compensation, solicits the use of, requires the use of, or specifies the application of, any adhesive, sealant, adhesive primer or sealant primer that contains volatile organic compounds.

C. The provisions of this article apply only to owners or other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-630. Exemptions.

A. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale an adhesive, sealant, adhesive primer or sealant primer that does not comply with the VOC standards specified in 9VAC5-45-650 A provided that such manufacturer or distributor makes and keeps records demonstrating (i) that the adhesive, sealant, adhesive primer or sealant primer is intended for shipment and use outside of the volatile organic compound emissions control areas designated in 9VAC5-45-620 C, and (ii) that the manufacturer or distributor has taken reasonable prudent precautions to assure that the adhesive, sealant, adhesive primer or sealant primer is not distributed to

or within those applicable volatile organic compound emissions control areas. This exemption does not apply to any adhesive, sealant, adhesive primer or sealant primer that is sold, supplied, or offered for sale by any owner or other person to a retail outlet in those applicable volatile organic compound emissions control areas.

B. The provisions of this article do not apply to the sale or use of the following compounds:

1. Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory, provided records are maintained as required in 9VAC5-45-730 of this article;

2. Adhesives, sealants, adhesive primers and sealant primers that are subject to standards for volatile organic compounds pursuant to Article 3 (9VAC5-45-280 et seq.), Article 4 (9VAC5-45-400 et seq.) or Article 5 (9VAC5-45-520 et seq.) of this part;

3. Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied;

4. Cyanoacrylate adhesives;

5. Adhesives, sealants, adhesive primers or sealant primers (except for plastic cement welding adhesives and contact adhesives) that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of one pound or less; and

6. Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less.

C. The provisions of this article do not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents as follows:

1. Tire repair operations, provided the label of the adhesive states "For tire repair only";

2. Assembly, repair and manufacturing operations for aerospace or undersea-based weapon systems;

3. Medical equipment manufacturing operations; and

4. Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992. Any owner or other person claiming exemption pursuant to this subdivision shall record and maintain monthly operational records sufficient to demonstrate compliance with this exemption in accordance with 9VAC5-45-730 of this article.

D. Except for the requirements listed in subdivisions 1 and 2 of this subsection, the provisions of this article do not apply if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the stationary source are less than 200 pounds per calendar year, or an equivalent volume.

1. The following requirements still apply:

a. 9VAC5-45-620 (Applicability);

b. 9VAC5-45-620 A (concerning prohibition from selling, supplying, offering for sale, or manufacturing for sale, noncompliant adhesives, sealants, adhesive primers or sealant primers);

c. 9VAC5-45-690 (Compliance); and

d. 9VAC5-45-700 (Compliance schedule).

2. Any owner or other person claiming exemption pursuant to this subsection shall record and maintain monthly operational records sufficient to demonstrate compliance and in accordance with 9VAC5-45-730 of this article.

E. The provisions of 9VAC5-45-650 B and 9VAC5-45-650 D do not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents, provided that the total volume of noncompliant adhesives, sealants, primers, cleanup and surface preparation solvents applied facility-wide does not exceed 55 gallons per calendar year. Any owner or other person claiming exemption pursuant to this subsection shall record and maintain monthly operational records sufficient to demonstrate compliance with this exemption in accordance with 9VAC5-45-730.

F. The provisions of 9VAC5-45-650 A do not apply to the sale of any adhesive, sealant, adhesive primer or sealant primer to an owner or other person using add-on air pollution control equipment pursuant to the provisions of 9VAC5-45-660 to comply with the requirements of this article, provided that the seller makes and keeps records in accordance with 9VAC5-45-730 E.

9VAC5-45-640. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10 [(General Definitions)], unless otherwise required by context.

C. Terms Defined.

"Acrylonitrile-butadiene-styrene or ABS welding adhesive" means any adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

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

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerosol adhesive" means an adhesive packaged as an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for handheld application without the need for ancillary hoses or spray equipment.

"Aerospace component" means for the purposes of this article, the fabricated part, assembly of parts or completed unit of any aircraft, helicopter, missile, or space vehicle, including passenger safety equipment.

"Architectural sealant or primer" means any sealant or sealant primer intended by the manufacturer to be applied to stationary structures, including mobile homes, and their appurtenances. Appurtenances to an architectural structure include, but are not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

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

"Automotive glass adhesive primer" means an adhesive primer labeled by the manufacturer to be applied to automotive glass prior to installation of the glass using an adhesive/sealant. This primer improves the adhesion to pinch weld and blocks ultraviolet light.

"CARB" means the California Air Resources Board.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic" or "CPVC plastic" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a CPVC marking.

"Chlorinated polyvinyl chloride welding adhesive" or "CPVC welding adhesive" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleanup solvent" means a VOC-containing material used to remove a loosely held uncured (i.e., not dry to the touch) adhesive or sealant from a substrate, or clean equipment used in applying a material.

"Computer diskette jacket manufacturing adhesive" means any adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

"Contact bond adhesive" means an adhesive that: (i) is designed for application to both surfaces to be bonded together, (ii) is allowed to dry before the two surfaces are placed in contact with each other, (iii) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and (iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. Contact bond adhesive does not include rubber cements that are primarily intended for use on paper substrates. Contact bond adhesive also does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Dry wall installation" means the installation of gypsum dry wall to studs or solid surfaces using an adhesive formulated for that purpose.

"Fiberglass" means a material consisting of extremely fine glass fibers.

"Flexible vinyl" means nonrigid polyvinyl chloride plastic with at least 5.0% by weight plasticizer content.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a nonporous substrate, such as flexible vinyl, are excluded from this category.

"Laminate" means a product made by bonding together two or more layers of material.

"Low-solids adhesive, sealant or primer" means any product that contains 120 grams or less of solids per liter of material.

"Marine deck sealant" or "marine deck sealant primer" means any sealant or sealant primer labeled for application to wooden marine decks.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to, drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.

"Nonmembrane roof installation/repair adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of nonmembrane roofs and that is not intended for the installation of prefabricated single-ply flexible roofing membrane, including, but not limited to, plastic or asphalt roof cement, asphalt roof coating, and cold application cement.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

["Ozone season" means the period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.]

"Panel installation" means the installation of plywood, predecorated hardboard (or tileboard), fiberglass reinforced plastic, and similar predecorated or nondecorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic cement welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic cement welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Plastic foam" means foam constructed of plastics.

"Plasticizer" means a material, such as a high boiling point organic solvent, that is incorporated into a vinyl to increase its flexibility, workability, or distensibility.

"Plastics" means synthetic materials chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, and/or reinforcers and are capable of being molded, extruded, cast into various shapes and films or drawn into filaments.

"Polyvinyl chloride plastic" or "PVC plastic" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, wood, paper, and corrugated paperboard.

"Propellant" means a fluid under pressure that expels the contents of a container when a valve is opened.

"Reactive diluent" means a liquid that is a reactive organic compound during application and one in that, through chemical and/or physical reactions, such as polymerization, 20% or more of the reactive organic compound becomes an integral part of a finished material.

"Roadway sealant" means any sealant intended by the manufacturer for application to public streets, highways and other surfaces including, but not limited to, curbs, berms, driveways, and parking lots.

"Rubber" means any natural or manmade rubber substrate, including but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene and ethylene propylene diene terpolymer.

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

"Sealant" means any material with adhesive properties that is formulated primarily to fill, seal, waterproof or weatherproof gaps or joints between two surfaces. Sealants include sealant primers and caulks.

"Sealant primer" means any product intended by the manufacturer for application to a substrate, prior to the application of a sealant, to enhance the bonding surface.

"Sheet-applied rubber installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally [~~ethylene propylenediene~~ ethylene propylene diene] terpolymer, that is field applied to a building roof using one layer of membrane material.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes or ducts installed through the membrane.

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane sealant" means any sealant labeled for application to single-ply roof membrane.

"Solvent" means organic compounds that are used as diluents, thinners, dissolvers, viscosity reducers, cleaning agents or other related uses.

"Structural glazing adhesive" means any adhesive intended by the manufacturer to apply glass, ceramic, metal, stone or composite panels to exterior building frames.

"Subfloor installation" means the installation of subflooring material over floor joists, including the construction of any load bearing joists. Subflooring is covered by a finish surface material.

"Surface preparation solvent" means a solvent used to remove dirt, oil and other contaminants from a substrate prior to the application of a primer, adhesive or sealant.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond [~~line(s)~~ line] is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

"Tire tread adhesive" means any adhesive intended by the manufacturer for application to the back of precure tread rubber and to the casing and cushion rubber. Tire tread adhesive may also be used to seal buffed tire casings to prevent oxidation while the tire is being prepared for a new tread.

"Traffic marking tape" means preformed reflective film intended by the manufacturer for application to public streets, highways and other surfaces, including but not limited to curbs, berms, driveways, and parking lots.

"Traffic marking tape adhesive primer" means any primer intended by the manufacturer for application to surfaces prior to installation of traffic marking tape.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9VAC5-10-20.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

9VAC5-45-650. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-630 [and subsection H of this section], no owner or other person shall (i) sell, supply or offer for sale any adhesive, sealant, adhesive primer or sealant primer manufactured on or after the applicable compliance date specified in 9VAC5-45-700, or (ii) manufacture for sale any adhesive, sealant, adhesive primer, or sealant primer on or after the date specified in 9VAC5-45-700, which contains volatile organic compounds in excess of the limits specified in Table 45-6A.

Table 45-6A

VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives Applied to Particular Substrates

Adhesive, sealant, adhesive primer or sealant primer category	VOC content limit (grams VOC per liter*)
Adhesives	
ABS welding	400
Ceramic tile installation	130
Computer diskette jacket manufacturing	850
Contact bond	250
Cove base installation	150
CPVC welding	490
Indoor floor covering installation	150
Metal to urethane/rubber molding or casting	850
Multipurpose construction	200
Nonmembrane roof installation/repair	300
Other plastic cement welding	510
Outdoor floor covering installation	250

PVC welding	510
Single-ply roof membrane installation/repair	250
Structural glazing	100
Thin metal laminating	780
Tire retread	100
Perimeter bonded sheet vinyl flooring installation	660
Waterproof resorcinol glue	170
Sheet-applied rubber installation	850
Sealants	
Architectural	250
Marine deck	760
Nonmembrane roof installation/repair	300
Roadway	250
Single-ply roof membrane	450
Other	420
Adhesive Primers	
Automotive glass	700
Plastic cement welding	650
Single-ply roof membrane	250
Traffic marking tape	150
Other	250
Sealant Primers	
Non-porous architectural	250
Porous architectural	775
Marine deck	760
Other	750
Adhesives Applied to the Listed Substrate	
Flexible vinyl	250
Fiberglass	200
Metal	30
Porous material	120
Rubber	250
Other substrates	250

*The VOC content is determined using the weight of volatile compounds, less water and exempt compounds, as specified in 9VAC5-45-710 of this article.

B. Except as provided in 9VAC5-45-630 B through E [, in subsection G of this section,] and in 9VAC5-45-660, no person shall use, or apply for compensation, any adhesive, sealant, adhesive primer or sealant primer in excess of the applicable VOC content limits specified in Table 45-6A.

C. The VOC content limits in Table 45-6A for adhesives applied to particular substrates shall apply as follows.

1. If an owner or other person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 45-6A, such specific limit is applicable rather than an adhesive-to-substrate limit.

2. If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

D. No owner or other person shall use a surface preparation or cleanup solvent containing VOC unless:

1. The VOC content of the surface preparation solvent is less than 70 grams per liter, except as provided for single-ply roofing in subdivision 2 of this subsection;

2. The composite vapor pressure, excluding water and exempt compounds, of the surface preparation solvent used for applying single-ply roofing does not exceed 45 mm Hg at 20°C;

3. The composite vapor pressure of the solvent used for the removal of adhesives, sealants, or adhesive or sealant primers from surfaces other than spray application equipment is less than 45 mm Hg at 20°C, except as provided in subdivision 4 of this subsection; and

4. For the removal of adhesives, sealants, adhesive primers or sealant primers from parts of spray application equipment, the removal is performed as follows:

a. In an enclosed cleaning system, or equivalent cleaning system as determined by the test method identified in 9VAC5-45-710 I;

b. Using a solvent with a VOC content less than or equal to 70 grams of VOC per liter of material; or

c. Parts containing dried adhesive may be soaked in a solvent if (i) the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm Hg at 20°C, and (ii) the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

E. Any owner or other person using adhesives, sealants, adhesive primers, sealant primers, surface preparation or clean-up solvents subject to the provisions of this article shall store or dispose of all absorbent materials, such as cloth or paper, that are moistened with adhesives, sealants, primers or solvents subject to the provisions of this article, in nonabsorbent containers that shall be closed except when placing materials in or removing materials from the container.

F. No owner or other person shall solicit the use, require the use or specify the application of any adhesive, sealant, adhesive primer, sealant primer, surface preparation or clean-up solvent if such use or application results in a violation of the provisions of this article. This prohibition shall apply to all written or oral contracts under which any adhesive, sealant, adhesive primer, sealant primer, surface preparation or clean-up solvent subject to this article is to be used at any location within the areas designated in 9VAC5-45-620 C.

[G. The standards for single-ply roof membrane installation and repair adhesive, single-ply roof membrane sealant, and single-ply roof membrane adhesive primer in Table 45-6A shall only apply as follows:

1. During the ozone seasons, or portions thereof, between August 1, 2010, and September 30, 2011, inclusive; and

2. On and after January 1, 2012.

H. The provisions of subsection A of this section and the provisions of 9VAC5-45-730 E do not apply to the sale, supply, offer for sale, or manufacture for sale of single-ply roof membrane installation and repair adhesive, single-ply roof membrane sealant, and single-ply roof membrane adhesive primer prior to January 1, 2012.]

9VAC5-45-660. Control technology guidelines.

Any owner or other person using an adhesive, sealant, adhesive primer or sealant primer subject to this article may comply with the provisions of 9VAC5-45-650 B and D using add-on air pollution control equipment if such equipment meets the following requirements:

1. The VOC emissions from the use of all adhesives, sealants, adhesive primers, or sealant primers subject to this article are reduced by an overall capture and control efficiency of at least 85% by weight;

2. The combustion temperature is monitored continuously if a thermal incinerator is operated;

3. Inlet and exhaust gas temperatures are monitored continuously if a catalytic incinerator is operated;

4. Control device efficiency is monitored continuously if a carbon absorber or control device other than a thermal or catalytic incinerator is operated; and

5. Operation records sufficient to demonstrate compliance with the requirements of this section are maintained as required in 9VAC5-45-730 of this article.

9VAC5-45-670. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5-40 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-45-680. Administrative requirements.

Each manufacturer of an adhesive, sealant, adhesive primer, or sealant primer subject to the provisions of this article shall display the following information on the product container or label:

1. A statement of the manufacturer's recommendation regarding thinning, reducing, or mixing of the product, except that:

a. This requirement does not apply to the thinning of a product with water; and

b. If thinning of the product prior to use is not necessary, the recommendation must specify that the product is to be applied without thinning.

2. The maximum or the actual VOC content of the product as supplied, determined in accordance with 9VAC5-45-710, displayed in grams of VOC per liter of product.

3. The maximum or the actual VOC content of the product as applied (which includes the manufacturer's maximum recommendation for thinning), determined in accordance with 9VAC5-45-710, displayed in grams of VOC per liter of product.

9VAC5-45-690. Compliance.

The provisions of 9VAC5-45-20 (Compliance) apply.

9VAC5-45-700. Compliance [~~schedules~~ schedule].

Affected owners or other persons shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~January 1, 2009~~ August 1, 2010].

9VAC5-45-710. Test methods and procedures.

A. The provisions of 9VAC5-45-30 (Emission testing) apply.

B. Except as provided in subsections D, E and F of this section, the VOC and solids content of all nonaerosol adhesives, adhesive primers and cleanup solvents shall be determined using either Reference Method 24 or SCAQMD "Determination of Volatile Organic Compounds (VOC) In Various Materials" (see 9VAC5-20-21).

C. The organic content of exempt organic compounds shall be determined using ASTM "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane

in Paints and Coatings by Direct Injection into a Gas Chromatograph" (see 9VAC5-20-21), as applicable.

D. The VOC content of any plastic welding cement adhesive or primer shall be determined using SCAQMD "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" (see 9VAC5-20-21).

E. To determine if a diluent is a reactive diluent, the percentage of the reactive organic compound that becomes an integral part of the finished materials shall be determined using SCAQMD "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" (see 9VAC5-20-21).

F. The composite vapor pressure of organic compounds in cleaning materials shall be determined by quantifying the amount of each compound in the blend using [~~gas chromatographic analysis (~~] ASTM "Standard Practice for Packed Column Gas Chromatography" [~~)~~] for organics and ASTM "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph" for water content (see 9VAC5-20-21), as applicable, and the following equation:

$$Pp_c = \frac{\sum_{i=1}^{n} (W_i)(VP_i) / Mw_i}{W_w / Mw_w + \sum_{i=1}^{n} W_e / Mw_e + \sum_{i=1}^{n} W_i / Mw_i}$$

where:

Pp_c = VOC composite partial pressure at 20ºC, in mm Hg.

W_i = Weight of the "i"th VOC compound, in grams, as determined by ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

W_w = Weight of water, in grams as determined by ASTM "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph" (see 9VAC5-20-21).

W_e = Weight of the "i"th exempt compound, in grams, as determined by ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

Mw_i = Molecular weight of the "i"th VOC compound, in grams per g-mole, as given in chemical reference literature.

Mw_w = Molecular weight of water, 18 grams per g-mole.

Mw_e = Molecular weight of the "i"th exempt compound, in grams per g-mole, as given in chemical reference literature.

Vp_i = Vapor pressure of the "i"th VOC compound at 20ºC, in mm Hg, as determined by subsection G of this section.

G. The vapor pressure of each single component compound may be determined from ASTM "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope [~~,~~ "" (see 9VAC5-20-21),] from chemical reference literature or from additional sources acceptable to the board.

H. If air pollution control equipment is used to meet the requirements of 9VAC5-45-650, the owner or operator shall make the following determinations:

1. The measurement of capture efficiency shall be conducted and reported in accordance with the EPA Technical Document "Guidelines for Determining Capture Efficiency" (see 9VAC5-20-21).

2. The control efficiency shall be determined in accordance with Reference Methods 25, 25A, 25B or CARB Method 100 (see 9VAC5-20-21), as appropriate.

I. The active and passive solvent losses from spray gun cleaning systems shall be determined using SCAQMD's "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems" (see 9VAC5-20-21). The test solvent for this determination shall be any lacquer thinner with a minimum vapor pressure of 105 mm of Hg at 20ºC, and the minimum test temperature shall be 15ºC.

J. For adhesives that do not contain reactive diluents, the VOC content of adhesive in grams per liter, less water and exempt compounds, shall be calculated according to the following equation:

$$VOC = \frac{Ws - Ww - We}{Vm - Vw - Ve}$$

where:

VOC = VOC content of adhesive, in grams per liter [.]

Ws = weight of volatile compounds, in grams.

Ww = weight of water, in grams.

We = weight of exempt compounds, in grams.

Vm = volume of material, in liters.

Vw = volume of water, in liters.

Ve = volume of exempt compounds, in liters.

K. For adhesives that contain reactive diluents, the VOC content of the adhesive is determined after curing. The VOC content of adhesive in grams per liter, less water and exempt compounds, shall be calculated according to the following equation:

$$VOC = \frac{Wrs - Wrw - Wre}{Vrm - Vrw - Vre}$$

where:

VOC = VOC content of adhesive, in grams per liter [.]

Wrs = weight of volatile compounds not consumed during curing, in grams.

Wrw = weight of water not consumed during curing, in grams.

Wre = weight of exempt compounds not consumed during curing, in grams.

Vrm = volume of material not consumed during curing, in liters.

Vrw = volume of water not consumed during curing, in liters.

Vre = volume of exempt compounds not consumed during curing, in liters.

L. The VOC content of materials, in grams per liter, shall be calculated according to the following equation:

$$VOC = \frac{Ws - Ww - We}{Vm}$$

where:

VOC = VOC content of materials, in grams per liter [.]

Ws = weight of volatile compounds, in grams.

Ww = weight of water, in grams.

We = weight of exempt compounds, in grams.

Vm = volume of material, in liters.

M. Percent VOC by weight shall be calculated according to the following equation:

$$\%\ VOC\ by\ weight = \frac{Wv}{W} \times 100$$

where:

Wv = weight of VOC in grams.

W = weight of material in grams.

9VAC5-45-720. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) apply.

9VAC5-45-730. Notification, records and reporting.

A. The provisions of 9VAC5-45-50 (Notification, records and reporting) apply.

B. Each owner or other person subject to this article shall maintain records demonstrating compliance with this article, including, but not limited to, the following information:

1. A list of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent in use or in storage;

2. A data sheet or material list that provides the material name, manufacturer identification, and material application for each product on the list;

3. Catalysts, reducers or other components used in each product on the list and the mix ratio;

4. The VOC content of each product on the list, as supplied;

5. The final VOC content or vapor pressure of each product on the list, as applied; and

6. The monthly volume of each adhesive, sealant, adhesive primer, sealant primer, cleanup or surface preparation solvent used.

C. Any owner or other person who complies with the provisions of 9VAC5-45-650 B through the use of add-on air pollution control equipment shall record the key operating parameters for the control equipment, including, but not limited to, the following information:

1. The volume used per day of each adhesive, sealant, adhesive primer, sealant primer, or solvent that is subject to a VOC content limit in Table 45-6A and that exceeds such limit;

2. On a daily basis, the combustion temperature, inlet and exhaust gas temperatures or control device efficiency, as appropriate, pursuant to 9VAC5-45-660;

3. Daily hours of operation; and

4. All maintenance performed including the date and type of maintenance.

D. For adhesives, sealants, adhesive primers and sealant primers subject to the laboratory testing exemption pursuant to 9VAC5-45-630 B 1 of this article, the person conducting the testing shall make and maintain records of all such materials used, including, but not limited to (i) the product name, (ii) the product category of the material or type of application, and (iii) the VOC content of each material.

E. Any owner or other person that is subject to the provisions of this article and who sells an adhesive, sealant, adhesive primer or sealant primer that is subject to the provisions of this article but does not comply with the VOC content limits in Table 45-6A, shall make and keep records as follows:

1. The name of, and contact information for, each owner or other person to whom such noncompliant product is sold, and

2. The amount of each such noncompliant product that is sold to that owner or other person per calendar year.

F. Any owner of other person claiming an exemption for plaque laminating equipment pursuant to 9VAC5-45-630 C 4 shall keep records sufficient to demonstrate that the

exemption applies. Such records shall include, but are not limited to, (i) the installation date of the plaque laminating equipment, (ii) monthly records of the types of laminate and substrate used and the VOC content of each adhesive used by the equipment during the month, and (iii) certification by a responsible official of the company that there is no compliant adhesive available for this purpose.

G. All records made to determine compliance with the provisions of this article shall be maintained for [~~five~~ three] years from the date such record is created and shall be made available to the board within 90 days of a request.

9VAC5-45-740. Registration.

The provisions of 9VAC5-20-160 (Registration) apply, except that the following provisions also apply:

1. Any owner or other person subject to the provisions of this article who complies with the provisions of 9VAC5-45-650 B through the use of add-on air pollution control equipment shall register such operations with the board and update such registration information.

2. The information required for registration shall be determined by the board and shall be provided in the manner specified by the board. Registration information shall include, but is not limited to, (i) contact information for the owner or other person (name, mailing address and phone number) and (ii) the type of add-on control equipment used to comply with the provisions of 9VAC5-45-650 B. All registration information and updates to such registration information submitted to the board are subject to the provisions of 9VAC5-20-230 (Certification of documents).

9VAC5-45-750. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

Article 7
Emission Standards For Asphalt Paving Operations

9VAC5-45-760. Applicability.

A. The provisions of this article apply to any owner or other person who manufactures, mixes, stores, uses, or applies any liquefied asphalt for paving operations.

B. The provisions of this article apply only to owners and other persons in volatile organic compound emissions control areas designated in 9VAC5-20-206.

9VAC5-45-770. Definitions.

A. For the purpose of applying this article in the context of Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the [~~meaning~~ meanings] given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the [~~meaning~~ meanings] given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Asphalt" means a dark-brown to black cementitious material (solid, semisolid, or liquid in consistency) in which the predominating constituents are bitumens [~~which~~ that] occur in nature as such or that are obtained as residue in refining petroleum.

"Cutback asphalt" means asphalt cement that has been liquefied by blending with petroleum solvents (diluents). Upon exposure to atmospheric conditions the diluents evaporate, leaving the asphalt cement to perform its function.

"Emulsified asphalt" means an emulsion of asphalt cement and water that contains a small amount of an emulsifying agent; a heterogeneous system containing two normally immiscible phases (asphalt and water) in which the water forms the continuous phase of the emulsion, and minute globules of asphalt form the discontinuous phase.

"Paving operation" means the process of covering an area with stone, concrete, asphalt or other material in order to construct or maintain a firm, level surface for travel, access [,] or parking. Paving operations do not include the use of coatings to seal residential driveways.

"Penetrating prime coat" means an application of low-viscosity liquid asphalt to an absorbent surface. It is used to prepare an untreated base for an asphalt surface. The prime penetrates the base and fills the surface voids, hardens the top, and helps bind it to the overlying asphalt course. It also reduces the necessity of maintaining an untreated base course prior to placing the asphalt pavement.

9VAC5-45-780. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit the manufacture, mixing, storage, use, or application of liquefied asphalt for paving operations unless such asphalt is of the emulsified asphalt type.

B. Regardless of the provisions of subsection A of this section, the manufacture, mixing, storage, use, or application of cutback asphalt is permitted under any of the following circumstances:

1. When stockpile storage greater than one month is necessary;

2. When use or application during the months of November through March is necessary;

3. When use or application as a penetrating prime coat or tack coat is necessary; or

4. When the user can demonstrate that there are no volatile organic compound emissions from the asphalt under conditions of normal use.

C. The provisions of subsection A of this section do not preclude the manufacture, mixing, storage, use, or application of heated asphalt cement as a component in asphaltic concrete mixing or for priming in surface treatment.

D. Notwithstanding the provisions of subsection A of this section, the manufacture, mixing, storage, use, or application of emulsified asphalt containing volatile organic compounds is permitted provided the annual average of volatile organic compound content for all emulsified asphalts used does not exceed 6.0% of volatile organic compounds by volume.

9VAC5-45-790. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-45-800. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-45-810. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-45-820. Compliance.

The provisions of 9VAC5-45-20 (Compliance) apply.

9VAC5-45-830. Test methods and procedures.

The provisions of 9VAC5-45-30 (Emission [~~Testing~~ testing]) apply.

9VAC5-45-840. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) do not apply.

9VAC5-45-850. Notification, records and reporting.

The provisions of 9VAC5-45-50 (Notification, [~~Records and Reporting~~ records and reporting]) apply.

VA.R. Doc. No. R07-264; Filed January 25, 2010, 4:52 p.m.

STATE WATER CONTROL BOARD

Notice of Effective Date

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-10, 9VAC25-260-20, 9VAC25-260-30, 9VAC25-260-50, 9VAC25-260-90, 9VAC25-260-140, 9VAC25-260-160, 9VAC25-260-170, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-350, 9VAC25-260-360, 9VAC25-260-380, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-420, 9VAC25-260-430, 9VAC25-260-440, 9VAC25-260-450, 9VAC25-260-460, 9VAC25-260-470, 9VAC25-260-480, 9VAC25-260-490, 9VAC25-260-500, 9VAC25-260-510, 9VAC25-260-520, 9VAC25-260-530, 9VAC25-260-540; repealing 9VAC25-260-55, 9VAC25-260-290, 9VAC25-260-320).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq. of the federal Clean Water Act; 40 CFR Part 131.

Effective Date: February 1, 2010.

On October 17, 2008, the State Water Control Board adopted revisions to the Water Quality Standards in 9VAC25-260-10, 9VAC25-260-20, 9VAC25-260-30, 9VAC25-260-50, 9VAC25-260-90, 9VAC25-260-140, 9VAC25-260-160, 9VAC25-260-170, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-350, 9VAC25-260-360, 9VAC25-260-380, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-420, 9VAC25-260-430, 9VAC25-260-440, 9VAC25-260-450, 9VAC25-260-460, 9VAC25-260-470, 9VAC25-260-480, 9VAC25-260-490, 9VAC25-260-500, 9VAC25-260-510, 9VAC25-260-520, 9VAC25-260-530, and 9VAC25-260-540; and repealed 9VAC25-260-55, 9VAC25-260-290, and 9VAC25-260-320. These revisions relate to water quality criteria, use designations, antidegradation, and other policies related to water quality. The amendments were published in final form on February 16, 2009, Volume 25, Issue 12 of the Virginia Register to be effective upon filing notice of U.S. EPA approval with the Registrar of Regulations. The State Water Control Board has received a letter from Shawn M. Garvin, EPA Region III Regional Administrator, dated December 29, 2009, approving all of the amendments except for:

1. 9VAC25-260-310 ee, which established a special pH standard for Lake Curtis in Stafford County (also removes the ee designation in the river basin section at 9VAC25-260-390).

2. 9VAC25-260-310 ff, which established a special standard for dissolved manganese in John H. Kerr Reservoir at the Clarksville water supply intake 9 (also removes the ff designation in the river basin section at 9VAC25-260-450).

3. 9VAC25-260-310 hh, which established a special standard for maximum temperature for certain stockable trout waters, as it applies to three stream segments in the Roanoke River Basin at 9VAC25-260-450.

The effective date of the approved amendments is February 1, 2010. Copies are available online at http://www.deq.state.va.us/wqs; by calling toll free at 1-800-592-5482, ext. 4121, or local at 804-698-4121; by written request to David Whitehurst, P.O. Box 1105, Richmond, VA 23218; or by email request to david.whitehurst@deq.virginia.gov.

EDITOR'S NOTE: Based on EPA's letter the noted changes from the final published in 25:12 VA.R. 2133-2247 February 16, 2009, are as follows:

9VAC25-260-310, page 2172, column 2, change subsections "ee" and "ff," respectively, to read:

"ee. [~~Lake Curtis in Stafford County has a pH standard of 5.5-9.6, which is protective of the aquatic life in this reservoir and is a result of the fertilization techniques used to manage the fishery~~ Reserved].

ff. [~~John H. Kerr Reservoir at the Clarksville water supply intake has a dissolved manganese criterion of 50 µg/l to protect the acceptable taste, odor or aesthetic quality of the drinking water~~ Reserved]."

9VAC25-260-390, page 2175, SEC. 1a, CLASS III, SP. STDS., strike "ee"

9VAC25-260-450, page 2213, SEC. 1, CLASS III, SP. STDS., after "PWS" strike ", ff"

9VAC25-260-450, page 2219, SEC. 6d, CLASS vii, SP. STDS., strike "hh"

9VAC25-260-450, page 2219, SEC. 7, CLASS ***, after "pH-6.5-9.5" strike ", hh"

9VAC25-260-450, page 2220, SEC. 7a, CLASS ***, after "pH-6.5-9.5" strike ", hh"

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R06-344; Filed January 26, 2010, 1:56 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-520. Regulations Governing the Dental Scholarship and Loan Repayment Programs (amending 12VAC5-520-10, 12VAC5-520-130, 12VAC5-520-150, 12VAC5-520-160, 12VAC5-520-180, 12VAC5-520-190, 12VAC5-520-200, 12VAC5-520-210; repealing 12VAC5-520-30).**

Statutory Authority: §§ 32.1-122.9 and 32.1-122.9:1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 16, 2010.

Agency Contact: Elizabeth Barrett, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7824, or email elizabeth.barrett@vdh.virginia.gov.

Basis: The State Board of Health (board) is authorized to make, adopt, promulgate, and enforce regulations by § 32.1-12 of the Code of Virginia.

Section 32.1-122.9 of the Code of Virginia requires the board to establish annual dental scholarships for students in good standing at Virginia Commonwealth University and to promulgate regulations to administer this scholarship program.

Chapter 174 of the 2000 Acts of Assembly created the Dental Loan Repayment Program in § 32.1-122.9:1 of the Code of Virginia, authorizing the board to establish "a dentist loan repayment program for graduates of accredited dental schools …who agree to perform a period of dental service in the Commonwealth in an underserved area as defined in § 32.1-122.5 of the dental scholarship program or a dental health professional shortage area designated in accordance with the criteria established in 42 CFR Part 5."

Purpose: The dental scholarship and loan repayment programs help protect and improve the public's health and welfare by improving the distribution of dentists to ensure that dental health services are available in the underserved areas of Virginia. The Code of Virginia requires that regulations be adopted for the administration of the programs. The goals of this proposal are to address comments received from the periodic review as well as to make the existing regulations clearer and more efficient, thus making the programs easier and more cost effective to administer.

Substance: The following substantive changes to the dental scholarship and loan repayment regulations are proposed to resolve ambiguities in language and to improve the ease of administration of the program:

1. Amend 12VAC5-520-10 to more clearly define certain terms used in the regulation.

2. Amend 12VAC5-520-130 to expand the time limit for application to the loan repayment program by dental specialists such as oral surgeons.

3. Amend 12VAC5-520-150 to clarify the scholarship application process and eligibility and to remove the criteria that scholarships be awarded prior to loan repayment.

4. Amend 12VAC5-520-160 to decrease the timeframe for reimbursement of moneys paid to dentists who default on their scholarship contract and later fulfill their obligation.

Issues: The proposed regulatory action will make the program more cost effective to administer, an indirect cost-savings benefit to individual citizens. Further, the actions are necessary to improve the access to dental specialty and general oral health services and to ensure adequate

availability of dental services in areas of Virginia where there are presently insufficient dental services. Certain dental specialists also will benefit from the amendments to the dental scholarship and loan repayment programs, as these proposed changes will enable them to be eligible for a loan repayment award. Making the administration of programs more efficient and increasing cost-saving is a benefit to the agency.

The regulatory action poses no disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes the following changes to the Regulations Governing the Dental Scholarship and Loan Repayment Programs: 1) substantial amendments to the definitions of "Loan repayment award" and "Interest at the prevailing bank rate for similar amounts of unsecured debt," 2) an extension of the application time limit for specialists, allowing them to apply up to five years after completion of residency training, 3) limiting scholarship awards eligibility to junior and senior dental students, except in cases of extreme need in underclassmen, 4) elimination of the criteria that loan repayment awards be based on financial need, and 5) clarifications and some additional minor changes.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The current regulations define "Dentist loan repayment award" as "an amount repaid to a dentist for dental school loans in an amount equivalent to one year in-state tuition at Virginia Commonwealth University School of Dentistry for the year in which the loan was acquired and for which the dentist is under a contractual obligation to repay through practice in an underserved area or designated state facility." The board proposes to redefine the amount of the "loan repayment award" to be "an amount equivalent to the current in-state tuition and mandatory fees at Virginia Commonwealth University School of Dentistry … This amount may be capped at the discretion of the commissioner." The proposed change makes the amount awarded consistent between recipients and makes planning much easier. The proposed ability to cap the amount awarded per recipient is a useful tool particularly when the available funds are low and it is deemed to make sense to grant awards to a somewhat larger number of qualified recipients than to limit the number of qualified recipients who receive awards.

The current regulations define "Interest at the prevailing bank rate for similar amounts of unsecured debt" as "the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points." The board proposes to change the definition to refer to the first day of the month rather than the last day of the month. This is beneficial in that it will allow the Board and Department of Health staff to take action sooner.

Under the current regulations all applicants for the Virginia Dentist Loan Repayment Program must be within five years of graduation from an accredited undergraduate dental program in order to be eligible. The board proposes to extend the application time limit for specialists, allowing them to apply up to five years after completion of residency training. The current regulations in practice leave very little time for specialists to apply for the program after the completion of their studies. The proposal is beneficial in that it increases the likelihood that specialists will be encouraged by the program to serve underserved areas.

According to the Department of Health, the default rate for scholarship recipients is an ongoing problem and was particularly high in fiscal year 2008. After consultation with Virginia Commonwealth University School of Dentistry staff, the Board believes that if scholarship awards were to be essentially limited to upper classmen, students would be selected who were most likely to fulfill the terms of their obligation upon graduation. Consequently, the Board proposes to add the following text to the regulations: "Scholarship awards will be made annually by October 30 to third and fourth year dental students. First and second year students will be considered for an award only in the event of extreme financial need."

Scholarship award recipients are considered in default if they fail to fulfill their contractual obligations, which include: 1) pursuing the dental course of Virginia Commonwealth University until graduation and 2) upon graduation or upon graduation from an accredited residency program that does not exceed four years, continuously engage in full-time dental practice in a dental underserved area of Virginia or in a designated state facility for a period of years equal to the number of annual scholarships received.

The Board proposes to eliminate the current criteria that loan repayment awards be based on financial need. If the primary goal of the loan repayment program is to encourage dentists to serve underserved areas, then this proposed change can potentially aid in achieving that goal. Dentists who are not in financial need can potentially be encouraged to serve underserved areas with the help of financial incentives such as the loan repayment program. Also, eliminating this criterion will reduce administrative costs for the Department of Health.

Businesses and Entities Affected. Annually, approximately 15-17 dentists receive direct benefit from a scholarship or loan repayment award.[1] All dental practices would likely qualify as small businesses.

Localities Particularly Affected. These regulations particularly affect localities which have been determined to be underserved by dentists. According to Department of Health calculations, all localities except the following are at least partially underserved: Albemarle/Charlottesville, Alexandria, Arlington, Chesapeake, Chesterfield/Colonial Heights, Essex, Fairfax County/Fairfax City/Falls Church, Grayson/Galax, Hanover, Henrico, James City/Williamsburg, Lancaster, Loudoun, Lynchburg, Middlesex, Nottoway, Petersburg, Richmond City, Roanoke County/Roanoke City/Salem, Stafford/Fredericksburg, and Virginia Beach.

Projected Impact on Employment. The proposed amendments do not significantly affect the quantity of employment.

Effects on the Use and Value of Private Property. The proposal to extend the application time limit for specialists, allowing them to apply up to five years after completion of residency training, may moderately increase the likelihood that specialists set up practices in underserved areas.

Small Businesses: Costs and Other Effects. The proposal to extend the application time limit for specialists, allowing them to apply up to five years after completion of residency training, can reduce the net costs of specialists serving in underserved areas. Thus their practices, which would be small businesses, would have reduced net costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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[1] Source: Virginia Department of Health

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs substantially with the economic impact analysis submitted by the Department of Planning and Budget.

Summary:

The proposed amendments (i) substantially amend the definitions of "loan repayment award" and "interest at the prevailing bank rate for similar amounts of unsecured debt;" (ii) extend the application time limit for specialists, allowing them to apply up to five years after completion of residency training; (iii) limit scholarship awards eligibility to junior and senior dental students, except in cases of extreme need in underclassmen; and (iv) eliminate the criteria that loan repayment awards be based on financial need.

Part I
Definitions

12VAC5-520-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accredited dental school" means any dental school in the United States receiving accreditation from the Commission on Dental Accreditation.

"Accredited residency" means an advanced dental education program in general or specialty dentistry accredited by the Commission on Dental Accreditation and approved by the American Dental Association.

"Board" or "Board of Health" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Dental practice" means the practice of dentistry by a recipient in general or specialty dentistry in a geographic area determined to be fulfillment of the recipient's scholarship or loan repayment obligation or practice as a dentist ~~with~~ within a designated state facility.

"Dental underserved area" means a geographic area in Virginia designated by the State Board of Health as a county or city in which the ratio of practitioners of dentistry to population is less than that for the Commonwealth as a whole as determined by the commissioner or a dental health

professions shortage area using criteria described in Part II (12VAC5-520-80 et seq.) of this chapter.

~~"Dentist loan repayment award" means an amount repaid to a dentist for dental school loans in an amount equivalent to one year in-state tuition at Virginia Commonwealth University School of Dentistry for the year in which the loan was acquired, and for which the dentist is under a contractual obligation to repay through practice in an underserved area or designated state facility.~~

"Dentist loan repayment program" means the program established by § 32.1-122.9:1 of the Code of Virginia that allocates funds appropriated in conjunction with the dental scholarship program to increase the number of dentists in underserved areas of Virginia.

"Designated state facility" means practice as a dentist in a facility operated by the Virginia Department of Health, ~~or~~ Virginia Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, Virginia Department of Juvenile Justice, or the Virginia Department of Corrections.

"Full-time dental practice" means the practice of dentistry for an average of a minimum of 32 hours per week excluding those exceptions enumerated in Part III ~~(12VAC5-520-130 et seq.)~~ (12VAC5-520-160 et seq.) of this chapter.

~~"Governing Board of Virginia Commonwealth University" means the official governing body of the university or their designee.~~

"Interest at the prevailing bank rate for similar amounts of unsecured debt" means the prime lending rate plus 2.0% as published in the Wall Street Journal on the ~~last~~ first day of the month in which the decision to repay is communicated to the commissioner by the recipient~~, plus two percentage points~~ or on the first day of the month that the commissioner determines the recipient to be in default.

~~"Internship or residency at an approved institution or facility" means an advanced dental education program in general dentistry or dental specialty accredited by the Commission on Dental Accreditation and approved by the American Dental Association.~~

"Loan repayment award" means an award paid to a dentist for dental school loans in an amount equivalent to the current in-state tuition and mandatory fees at Virginia Commonwealth University School of Dentistry, and for which the dentist is under a contractual obligation to repay through practice in an underserved area or designated state facility. This amount may be capped at the discretion of the commissioner.

~~"Participating dental school" means Virginia Commonwealth University School of Dentistry.~~

~~"Penalty" means an amount of money equal to three times the amount of all monetary scholarship or loan repayment awards paid to the recipient.~~

~~"Period of dental service" means one year of service in a dental underserved area in return for one year of scholarship or loan repayment as defined in Part III (12VAC5-520-130 et seq.) of this chapter.~~

"Practice of general or specialty dentistry" means the evaluation, diagnosis, prevention and treatment (nonsurgical, surgical or related procedures) of diseases, disorders and conditions of the oral cavity, maxillofacial and adjacent and associated structures and their impact on the human body.

~~"Primary dental health care" means the practice of general or specialty dentistry.~~

~~"Public health service" means employment with the United States Public Health Service.~~

"Restitution" means ~~the amount of monetary reimbursement, including repayment of all pertinent scholarship or loan repayment awards~~ three times the award amount received plus ~~penalty and applicable~~ interest at the prevailing bank rate for similar amounts of unsecured debt as set forth in this regulation, owed to the Commonwealth of Virginia by a scholarship or loan repayment recipient who is in default of his contractual obligation as provided for in this chapter.

"Scholarship award" means an amount equivalent to one year of in-state tuition and mandatory fees at Virginia Commonwealth University School of Dentistry for the academic year a student is enrolled and for which the dental student entered a contractual obligation to repay through practice in an underserved area or designated state facility. This amount may be capped at the discretion of the commissioner.

"Scholarship recipient" means an eligible dental student who enters into a contract with the commissioner and receives one or more scholarship awards from the Virginia Dental Scholarship Program.

"Specialty ~~dental practice"~~ dentistry" means the advanced practice of dentistry in any specialty approved by the American Dental Association and accredited by the Commission on Dental Accreditation.

~~"Virginia dental scholarship" means an award of an amount equivalent to one year of in-state tuition at Virginia Commonwealth University School of Dentistry for the academic year a student is enrolled in a participating dental school and for which the dental student entered a contractual obligation to repay through practice in an underserved area or designated state facility.~~

12VAC5-520-30. ~~Applicability.~~ (Repealed.)

~~These definitions shall apply to all recipients who begin practice in an underserved area as fulfillment of their~~

~~scholarship or loan repayment obligation on July 1, 2001, or later, provided that approval given by the commissioner prior to May 8, 2002, shall remain in full force and effect.~~

Part III
Scholarship and Loan Repayment Awards

12VAC5-520-130. Eligible applicants.

A. Any currently enrolled dental student in good standing and full-time attendance at Virginia Commonwealth University School of Dentistry who has not entered the first year of an accredited residency shall be eligible for the Virginia Dental Scholarship Program. Preference for the scholarship award shall be given to residents of the Commonwealth, students who are residents of a dental underserved area, and students from economically disadvantaged backgrounds.

B. Any graduate of an accredited dental school in the United States who is establishing a practice in general or specialty dentistry in an underserved area or practicing dentistry in a designated state facility shall be eligible to apply for the Virginia Dentist Loan Repayment Program. ~~Eligible applicants~~ General practice dentists will be within five years of graduation from an accredited undergraduate dental program and have existing loans accumulated as a result of their ~~first professional education~~ undergraduate dental program. ~~Dentists who have received dental scholarship program awards and dentists who have accepted Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) scholarships are not eligible for the Dentist Loan Repayment Program.~~ Specialty practice dentists will be within five years of completion of their specialty training and have existing loans accumulated as a result of their undergraduate dental program. Dentists who received Virginia scholarship awards or other scholarships that paid their full tuition and fees are not eligible for the Dentist Loan Repayment Program for the years they received those awards.

12VAC5-520-150. Distribution of scholarships and loan repayment awards.

The Virginia General Assembly establishes the total combined appropriation for the dental scholarship and dentist loan repayment programs. Funds shall be awarded for these programs based on the following criteria:

1. Virginia Commonwealth University School of Dentistry shall ~~establish an~~ use the application procedure established by the commissioner and annually submit the names of qualified students to receive scholarships in accordance with the criteria for preference enumerated in ~~this section~~ 12VAC5-520-130. ~~Dental scholarships will be awarded on or before October 30 of each fiscal year with remaining funds disbursed through the Dentist Loan Repayment Program.~~ The total ~~annual~~ number of scholarship awards will be based on availability of funds. Scholarship awards will be made annually by October 30 to third-year and fourth-year dental students. First-year and second-year students will be considered for an award only in the event of extreme financial need. Individual scholarship recipients may receive a maximum of five scholarship awards.

2. The application period for the Dentist Loan Repayment Program will ~~follow that for the Dental Scholarship Program,~~ begin in October with awards made by ~~January 30~~ the end of each fiscal year. Preference for loan repayment awards will be given to ~~dental students graduating from~~ graduates of Virginia Commonwealth University School of Dentistry ~~and those with established financial need~~. Individual loan repayment recipients may receive a maximum of ~~three~~ four awards upon graduation from dental school. All awards will be competitive ~~based on the criteria enumerated in this section~~ and will be based on availability of ~~loan repayment~~ funds ~~once scholarship funds are disbursed~~.

12VAC5-520-160. Contractual practice obligation.

Prior to the payment of money to a scholarship or loan repayment ~~awardee~~ recipient, the commissioner shall prepare and enter into a contract with the recipient. The contract shall:

1. Provide that the recipient of the ~~dental~~ scholarship award shall pursue the dental course of Virginia Commonwealth University until graduation and upon graduation or upon graduation from an accredited residency program that does not exceed four years, shall notify the commissioner in writing of his proposed practice location or intent to enter a residency not more than 30 days after graduation and begin his approved practice within 90 days after completing dental school or residency, and thereafter continuously engage in full-time dental practice in a dental underserved area of Virginia or in a designated state facility for a period of years equal to the number of annual scholarships received.

2. Provide that upon graduation from an accredited dental school and receiving notification of the dentist loan repayment award, the dentist shall begin his approved practice within 90 days and thereafter continuously engage in full-time dental practice in an underserved area of Virginia or in a designated state facility for a period of years equal to the number of loan repayment awards received.

3. Provide that at any time prior to entering practice, the scholarship or loan repayment recipient shall be allowed to select a future practice location from the listing of dental underserved areas maintained by the board.

4. Provide that the recipient may request approval of a change of practice location. The commissioner in his discretion may approve such a request, but only if the change is to a practice location in a dental underserved area or a state facility designated by the Board of Health.

5. Provide that the recipient shall repay the scholarship or loan repayment obligation by practicing dentistry on a full-time basis in a dental underserved area, shall maintain office hours convenient for the population of the area to have access to the recipient's services and shall participate in all government-sponsored insurance programs designed to ensure access to dental services of recipients of public assistance. The recipient shall not selectively place limits on the numbers of such patients admitted to the practice.

6. Provide that the recipient shall not voluntarily obligate himself for more than the minimum period of military service required of dentists by the laws of the United States and that upon completion of the minimum period of military service, the recipient shall promptly begin and thereafter continuously engage in full-time dental practice in a dental underserved area of Virginia or in a designated state facility for the period of years equal to the number of scholarships received. Dental practice in federal agencies, military service or the U.S. Public Health Service may not be substituted for scholarship obligation.

7. Provide that the recipient shall receive credit toward fulfillment of his contractual obligation at the rate of 12 months of dental practice for each scholarship or loan repayment award paid to the recipient. The recipient may be absent from the place of approved practice for a total of ~~seven~~ four weeks in each 12-month period for personal reasons. Absence for a period in excess of ~~seven~~ four weeks without the written permission of the commissioner shall result in proportional reduction of the period of credit toward fulfillment of the contractual obligation.

8. Provide that should the scholarship recipient pay restitution by not serving his scholarship obligation in an underserved area, and ~~later~~ within five years of paying restitution fulfills the terms of his contract through dental practice as outlined in this section, that the recipient will be reimbursed for all or part of any scholarship ~~amount~~ award paid based on the fulfillment of the scholarship and availability of funds.

Part V
Special Circumstances

12VAC5-520-180. Fractional need.

The Board of Health recognizes that instances will occur when the ratio of dental practitioners to population reflects a fractional share of need. In such instances and in recognition of the advantages that accrue to the dentist and the community from two or more dentists working ~~on~~ in an associated or cooperative basis, the commissioner may in his discretion favorably consider the approval of an additional dentist in order to facilitate such an arrangement.

Part VI
Default

12VAC5-520-190. Default.

A. With respect to default, the contract shall provide that a scholarship or loan repayment recipient who fails to fulfill his obligation to practice dentistry as described in 12VAC5-520-160 shall be deemed in default under the following circumstances and shall forfeit all monetary scholarship or loan repayment awards made to him and shall ~~make repayment of those funds plus interest plus penalty, where applicable to~~ repay the Commonwealth of Virginia as provided for in this chapter. The contract shall:

1. Provide that if the scholarship recipient defaults while still in dental school, by voluntarily notifying the commissioner in writing that he will not practice dentistry in a Virginia dental underserved area as required by his contract, by voluntarily not proceeding to the next year of dental education, or by withdrawing from dental school, the student shall pay the Commonwealth of Virginia all monetary scholarship awards plus interest at the prevailing bank rate for similar amounts of unsecured debt.

2. Provide that the scholarship recipient who defaults by failing to maintain grade levels that will allow the dental student to graduate, or by reason of his dismissal from dental school for any reason, shall repay the Commonwealth of Virginia all monetary scholarship awards plus interest at the prevailing bank rate for similar amounts of unsecured debt.

3. Provide that if the scholarship or loan repayment recipient is in default due to death or permanent disability so as not to be able to engage in dental practice, the recipient or his personal representative shall repay the Commonwealth all monetary ~~scholarship~~ awards plus 8.0% interest on the amount of the award. Partial fulfillment of the recipient's contractual obligation by the practice of dentistry as provided for in this contract prior to death or permanent disability shall reduce the amount of repayment plus interest due by a proportionate amount of money, such proportion being determined as the ratio of the number of whole months that a recipient has practiced dentistry in an approved location to the total number of months of the contractual obligation the recipient has incurred. The commissioner may waive all or part of the scholarship or loan repayment obligation under application by the recipient or his estate under these conditions and consider whole or partial forgiveness of payment or service in consideration of individual cases of ~~extraordinary~~ hardship or inability to pay.

4. Provide that any recipient of a scholarship or loan repayment who defaults by evasion or refusal to fulfill the obligation to practice dentistry in an underserved area or designated state facility for a period of years equal to the

number of annual scholarships or loan repayment awards received shall make restitution ~~by repaying all monetary scholarship or loan repayment awards plus penalty plus interest~~ to the Commonwealth of Virginia.

B. A scholarship or loan repayment recipient will be considered to be in such default on the date:

1. The commissioner is notified in writing by the recipient that he does not intend to fulfill his contractual obligation;

2. The recipient has not accepted a placement and commenced his period of obligated practice as provided for in ~~subdivision~~ subdivisions 1 and 2 of 12VAC5-520-160; or

3. The recipient absents himself without the consent of the commissioner from the place of dental practice that the commissioner has approved for fulfillment of his contractual obligation.

Part VII
Repayment

12VAC5-520-200. Repayment.

Repayment requirements for scholarship and loan repayment recipients are as follows:

1. Payment of restitution or repayment of award plus interest shall be due on the date that the recipient is deemed by the commissioner to be in default.

2. The commissioner in his discretion shall permit extension of the period of ~~payment of restitution plus interest~~ repayment for up to 24 months from the date that the recipient is deemed to be in default.

3. Partial fulfillment of the recipient's contractual obligation by the practice of dentistry as provided for in this contract shall reduce the amount of restitution ~~or payment plus interest due by an amount of money equal to the same percentage of all monetary awards as~~ by a percentage based on the number of whole months that the recipient has practiced dentistry in an approved location ~~as a percentage of~~ and the total number of months of the contractual obligation the recipient has incurred.

4. Failure of a recipient to make any payment on his debt ~~of restitution plus interest~~ when it is due shall be cause for the commissioner to refer the debt to the Attorney General of the Commonwealth of Virginia for collection. The recipient shall be responsible for any costs of collection as may be provided in Virginia law.

Part VIII
Records and Reporting

12VAC5-520-210. Reporting requirements.

Reporting requirements of Virginia Commonwealth University School of Dentistry scholarship and loan repayment recipients are as follows:

1. Virginia Commonwealth University School of Dentistry shall maintain accurate records of the status of scholarship recipients until the recipient's graduation from dental school. The dental school shall provide a report listing the status of each recipient annually to the commissioner.

2. Each scholarship and loan repayment recipient shall at any time provide information as requested by the commissioner to verify compliance with the practice requirements of the scholarship or loan repayment contract. The recipient shall report any changes of mailing address, change of academic standing, change of intent to fulfill his contractual obligation and any other information that may be relevant to the contract at such time as changes or information may occur. The recipient shall respond within ~~60~~ 30 days with such information as may be requested by the commissioner.

VA.R. Doc. No. R08-1336; Filed January 21, 2010, 11:01 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10).**

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-110).

Statutory Authority: § 32.1-351 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804)

371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

This amendment implements a mandate in § 111 of the federal Child Health Insurance Plan Reauthorization Act (CHIPRA) of 2009 that provides for automatic enrollment for children born to women receiving pregnancy-related assistance under Title XXI of the Social Security Act. FAMIS is Virginia's Health Insurance Program authorized by Title XXI. CHIPRA adds § 2112 to the Social Security Act, which includes the following paragraph:

"(e) AUTOMATIC ENROLLMENT FOR CHILDREN BORN TO WOMEN RECEIVING PREGNANCY-RELATED ASSISTANCE.—If a child is born to a targeted low-income pregnant woman who was receiving pregnancy-related assistance under this section on the date of the child's birth, the child shall be deemed to have applied for child health assistance under the State child health plan and to have been found eligible for such assistance under such plan or to have applied for medical assistance under title XIX and to have been found eligible for such assistance under such title, as appropriate, on the date of such birth and to remain eligible for such assistance until the child attains 1 year of age. During the period in which a child is deemed under the preceding sentence to be eligible for child health or medical assistance, the child health or medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires)."

Currently, a child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth is deemed eligible for Medicaid for one year from birth. However, in the FAMIS program, an application is still required to enroll a child born to a young woman who is eligible for and receiving FAMIS. Most children born to a FAMIS enrollee mother are found eligible for Medicaid, but a few are found eligible for FAMIS or are enrolled in neither program. While the income of the pregnant teens' parents is considered in determining the eligibility of a pregnant teen less than 19 years of age, it is not considered in determining the eligibility of her infant. This action does not apply to individuals enrolled in the FAMIS MOMS program.

Under the revised policy, a child born to a young woman enrolled in FAMIS will be deemed eligible for Medicaid or FAMIS for one year from birth. Those newborns eligible for Medicaid based on an income screen will be enrolled in Medicaid. Those newborns with income too high for Medicaid will be enrolled automatically in FAMIS without having to apply as a result of this federal statutory change.

This regulatory action conforms the Commonwealth's regulations to the referenced federal statute.

12VAC30-30-10. Mandatory coverage: Categorically needy and other required special groups.

The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services.

1. Recipients of AFDC.

a. The approved state AFDC plan includes:

(1) Families with an unemployed parent for the mandatory six-month period and an optional extension of 0 months.

(2) AFDC children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training.

b. The standards for AFDC payments are listed in 12VAC30-40-220.

2. Deemed recipients of AFDC.

a. Individuals denied a Title IV-A cash payment solely because the amount would be less than $10.

b. Effective October 1, 1990, participants in a work supplementation program under Title IV-A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program, in accordance with § 482(e)(6) of the Act.

c. Individuals whose AFDC payments are reduced to zero by reason of recovery of overpayment of AFDC funds.

d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or increased collection of support and meets the requirements of § 406(h) of the Act.

e. Individuals deemed to be receiving AFDC who meet the requirements of § 473(b)(1) or (2) for whom an adoption of assistance agreement is in effect or foster care maintenance payments are being made under Title IV-E of the Act.

3. Effective October 1, 1990, qualified family members who would be eligible to receive AFDC under § 407 of the Act because the principal wage earner is unemployed.

4. Families terminated from AFDC solely because of earnings, hours of employment, or loss of earned income disregards entitled up to 12 months of extended benefits in accordance with § 1925 of the Act.

5. Individuals who are ineligible for AFDC solely because of eligibility requirements that are specifically prohibited under Medicaid. Included are:

a. Families denied AFDC solely because of income and resources deemed to be available from:

(1) Stepparents who are not legally liable for support of stepchildren under a state law of general applicability;

(2) Grandparents;

(3) Legal guardians; and

(4) Individual alien sponsors (who are not spouses of the individual or the individual's parent);

b. Families denied AFDC solely because of the involuntary inclusion of siblings who have income and resources of their own in the filing unit.

c. Families denied AFDC because the family transferred a resource without receiving adequate compensation.

6. Individuals who would be eligible for AFDC except for the increases in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972 and who were receiving cash assistance in August 1972.

a. Includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in the state's August 1972 plan).

b. Includes persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

7. Qualified pregnant women and children.

a. A pregnant woman whose pregnancy has been medically verified who:

(1) Would be eligible for an AFDC cash payment if the child had been born and was living with her;

(2) Is a member of a family that would be eligible for aid to families with dependent children of unemployed parents if the state had an AFDC-unemployed parents program; or

(3) Would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

b. Children born after September 30, 1973 (specify optional earlier date), who are under age 19 and who would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

12VAC30-40-280 and 12VAC30-40-290 describe the more liberal methods of treating income and resources under § 1902(r)(2) of the Act.

8. Pregnant women and infants under one year of age with family incomes up to 133% of the federal poverty level who are described in §§ 1902(a) (10)(A)(i)(IV) and 1902(l)(A) and (B) of the Act. The income level for this group is specified in 12VAC30-40-220.

9. Children:

a. Who have attained one year of age but have not attained six years of age, with family incomes at or below 133% of the federal poverty levels.

b. Born after September 30, 1983, who have attained six years of age but have not attained 19 years of age, with family incomes at or below 100% of the federal poverty levels.

Income levels for these groups are specified in 12VAC30-40-220.

10. Individuals other than qualified pregnant women and children under subdivision 7 of this section who are members of a family that would be receiving AFDC under § 407 of the Act if the state had not exercised the option under § 407(b)(2)(B)(i) of the Act to limit the number of months for which a family may receive AFDC.

11. a. A woman who, while pregnant, was eligible for, applied for, and receives Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period (beginning on the last day of her pregnancy) and for any remaining days in the month in which the 60th day falls.

b. A pregnant women who would otherwise lose eligibility because of an increase in income (of the family in which she is a member) during the pregnancy or the postpartum period which extends through the end of the month in which the 60-day period (beginning on the last day of pregnancy) ends.

12. a. A child born to a woman who is eligible for and receiving Medicaid ~~as categorically needy~~ on the date of the child's birth. The child is deemed eligible for one year from birth.

b. A child born to a woman under the age of 19 who is eligible for and receiving Title XXI coverage through the Family Access to Medical Insurance Security Plan (FAMIS) as of the date of the child's birth and who is screened to be income eligible for coverage under Medicaid. The child is deemed Medicaid eligible for one year from his date of birth.

13. Aged, blind and disabled individuals receiving cash assistance.

a. Individuals who meet more restrictive requirements for Medicaid than the SSI requirements. (This includes

persons who qualify for benefits under § 1619(a) of the Act or who meet the eligibility requirements for SSI status under § 1619(b)(1) of the Act and who met the state's more restrictive requirements for Medicaid in the month before the month they qualified for SSI under § 1619(a) or met the requirements under § 1619(b)(1) of the Act. Medicaid eligibility for these individuals continues as long as they continue to meet the § 1619(a) eligibility standard or the requirements of § 1619(b) of the Act.)

b. These persons include the aged, the blind, and the disabled.

c. Protected SSI children (pursuant to § 1902(a)(10)(A)(i)(II) of the Act) (P.L. 105-33 § 4913). Children who meet the pre-welfare reform definition of childhood disability who lost their SSI coverage solely as a result of the change in the definition of childhood disability, and who also meet the more restrictive requirements for Medicaid than the SSI requirements.

d. The more restrictive categorical eligibility criteria are described below:

(1) See 12VAC30-30-40.

(2) Financial criteria are described in 12VAC30-40-10.

14. Qualified severely impaired blind and disabled individuals under age 65 who:

a. For the month preceding the first month of eligibility under the requirements of § 1905(q)(2) of the Act, received SSI, a state supplemental payment under § 1616 of the Act or under § 212 of P.L. 93-66 or benefits under § 1619(a) of the Act and were eligible for Medicaid; or

b. For the month of June 1987, were considered to be receiving SSI under § 1619(b) of the Act and were eligible for Medicaid. These individuals must:

(1) Continue to meet the criteria for blindness or have the disabling physical or mental impairment under which the individual was found to be disabled;

(2) Except for earnings, continue to meet all nondisability-related requirements for eligibility for SSI benefits;

(3) Have unearned income in amounts that would not cause them to be ineligible for a payment under § 1611(b) of the Act;

(4) Be seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment; and

(5) Have earnings that are not sufficient to provide for himself or herself a reasonable equivalent of the Medicaid, SSI (including any federally administered SSP), or public funded attendant care services that would be available if he or she did have such earnings.

The state applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under § 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under § 1619(b)(1) of the Act and who met the state's more restrictive requirements in the month before the month they qualified for SSI under § 1619(a) or met the requirements of § 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under § 1619(a) of the Act or meet the SSI requirements under § 1619(b)(1) of the Act.

15. Except in states that apply more restrictive requirements for Medicaid than under SSI, blind or disabled individuals who:

a. Are at least 18 years of age;

b. Lose SSI eligibility because they become entitled to OASDI child's benefits under § 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absence their OASDI eligibility.

c. The state does not apply more restrictive income eligibility requirements than those under SSI.

16. Except in states that apply more restrictive eligibility requirements for Medicaid than under SSI, individuals who are ineligible for SSI or optional state supplements (if the agency provides Medicaid under § 435.230 of the Act), because of requirements that do not apply under Title XIX of the Act.

17. Individuals receiving mandatory state supplements.

18. Individuals who in December 1973 were eligible for Medicaid as an essential spouse and who have continued, as spouse, to live with and be essential to the well-being of a recipient of cash assistance. The recipient with whom the essential spouse is living continues to meet the December 1973 eligibility requirements of the state's approved plan for OAA, AB, APTD, or AABD and the spouse continues to meet the December 1973 requirements for have his or her needs included in computing the cash payment.

In December 1973, Medicaid coverage of the essential spouse was limited to: the aged; the blind; and the disabled.

19. Institutionalized individuals who were eligible for Medicaid in December 1973 as inpatients of Title XIX medical institutions or residents of Title XIX intermediate care facilities, if, for each consecutive month after December 1973, they:

a. Continue to meet the December 1973 Medicaid State Plan eligibility requirements;

b. Remain institutionalized; and

c. Continue to need institutional care.

20. Blind and disabled individuals who:

a. Meet all current requirements for Medicaid eligibility except the blindness or disability criteria; and

b. Were eligible for Medicaid in December 1973 as blind or disabled; and

c. For each consecutive month after December 1973 continue to meet December 1973 eligibility criteria.

21. Individuals who would be SSI/SSP eligible except for the increase in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972, and who were receiving cash assistance in August 1972.

This includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in this state's August 1972 plan), and persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

22. Individuals who:

a. Are receiving OASDI and were receiving SSI/SSP but became ineligible for SSI/SSP after April 1977; and

b. Would still be eligible for SSI or SSP if cost-of-living increases in OASDI paid under § 215(i) of the Act received after the last month for which the individual was eligible for and received SSI/SSP and OASDI, concurrently, were deducted from income.

The state applies more restrictive eligibility requirements than those under SSI and the amount of increase that caused SSI/SSP ineligibility and subsequent increases are deducted when determining the amount of countable income for categorically needy eligibility.

23. Disabled widows and widowers who would be eligible for SSI or SSP except for the increase in their OASDI benefits as a result of the elimination of the reduction factor required by § 134 of P.L. 98-21 and who are deemed, for purposes of Title XIX, to be SSI beneficiaries or SSP beneficiaries for individuals who would be eligible for SSP only, under § 1634(b) of the Act.

The state does not apply more restrictive income eligibility standards than those under SSI.

24. Disabled widows, disabled widowers, and disabled unmarried divorced spouses who had been married to the insured individual for a period of at least 10 years before the divorce became effective, who have attained the age of 50, who are receiving Title II payments, and who because of the receipt of Title II income lost eligibility for SSI or SSP which they received in the month prior to the month in which they began to receive Title II payments, who would be eligible for SSI or SSP if the amount of the Title II benefit were not counted as income, and who are not entitled to Medicare Part A.

The state applies more restrictive eligibility requirements for its blind or disabled than those of the SSI program.

25. Qualified Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818 of the Act);

b. Whose income does not exceed 100% of the federal level; and

c. Whose resources do not exceed twice the maximum standard under SSI.

(Medical assistance for this group is limited to Medicare cost sharing as defined in item 3.2 of this plan.)

26. Qualified disabled and working individuals:

a. Who are entitled to hospital insurance benefits under Medicare Part A under § 1818A of the Act;

b. Whose income does not exceed 200% of the federal poverty level; ~~and~~

c. Whose resources do not exceed twice the maximum standard under SSI~~.~~; and

d. Who are not otherwise eligible for medical assistance under Title XIX of the Act.

(Medical assistance for this group is limited to Medicare Part A premiums under §§ 1818 and 1818A of the Act.)

27. Specified low-income Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818A of the Act);

b. Whose income for calendar years 1993 and 1994 exceeds the income level in subdivision 25 b of this section, but is less than 110% of the federal poverty level, and whose income for calendar years beginning 1995 is less than 120% of the federal poverty level; and

c. Whose resources do not exceed twice the maximum standard under SSI.

(Medical assistance for this group is limited to Medicare Part B premiums under § 1839 of the Act.)

28. a. Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for

purposes of Title XIX, as receiving SSI benefits for the month.

b. The state applies more restrictive eligibility standards than those under SSI.

Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.

Part III
Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must:

1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;

2. Be under 19 years of age;

3. Be residents of the Commonwealth;

4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;

5. Be uninsured, that is, not have comprehensive health insurance coverage;

6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency;

7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the

Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b and c of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance the child currently has or had within the past four months. If the child had health insurance coverage that was terminated in the past four months, inquiry as to why the health insurance was terminated is made. Each redetermination of eligibility shall also document inquiry about current health insurance or health insurance the child had within the past four months. If the child has been covered under a health insurance plan within four months of application for or receipt of FAMIS services, the child will be ineligible, unless the child is pregnant at the time of application, or, if age 18 or if under the age of 18, the child's parent, caretaker relative, guardian, legal custodian or authorized representative demonstrates good cause for discontinuing the coverage.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

c. Good cause. A child shall not be ineligible for FAMIS if health insurance was discontinued within the four-month period prior to the month of application if one of the following good cause exceptions is met.

(1) The family member who carried insurance, changed jobs, or stopped employment, and no other family member's employer contributes to the cost of family health insurance coverage.

(2) The employer stopped contributing to the cost of family coverage and no other family member's employer contributes to the cost of family health insurance coverage.

(3) The child's coverage was discontinued by an insurance company for reasons of uninsurability, e.g., the child has used up lifetime benefits or the child's coverage was discontinued for reasons unrelated to payment of premiums.

(4) Insurance was discontinued by a family member who was paying the full cost of the insurance premium under a COBRA policy and no other family member's employer contributes to the cost of family health insurance coverage.

(5) Insurance on the child was discontinued by someone other than the child (if 18 years of age) or if under age 18, the child's parent or stepparent living in the home, e.g., the insurance was discontinued by the child's absent parent, grandparent, aunt, uncle, godmother, etc.

(6) Insurance on the child was discontinued because the cost of the premium exceeded 10% of the family's monthly income or exceeded 10% of the family's monthly income at the time the insurance was discontinued.

(7) Other good cause reasons may be established by the DMAS director.

I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time. A child born to a mother who is enrolled in FAMIS on the date of the child's birth shall be deemed eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.

12VAC30-141-110. Duration of eligibility.

A. The effective date of FAMIS eligibility shall be the date of birth for a newborn deemed eligible under 12VAC30-141-100 I. Otherwise the effective date of FAMIS eligibility shall be the first day of the month in which a signed application was received by either the FAMIS central processing unit or a local department of social services if the applicant met all eligibility requirements in that month. In no case shall a child's eligibility be effective earlier than the date of the child's birth.

B. Eligibility for FAMIS will continue for 12 months so long as the child remains a resident of Virginia and the child's countable income does not exceed 200% of the federal poverty level. A child born to a mother who was enrolled in FAMIS on the date of the child's birth shall remain eligible for one year regardless of income unless otherwise found to

be eligible for Medicaid. A change in eligibility will be effective the first of the month following expiration of a 10-day advance notice. Eligibility based on all eligibility criteria listed in 12VAC30-141-100 C will be redetermined no less often than annually.

VA.R. Doc. No. R10-2236; Filed January 22, 2010, 4:28 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department Medical Assistance Services will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-50, 12VAC30-70-221, 12VAC30-70-271, 12VAC30-70-321, 12VAC30-70-341, 12VAC30-70-351, 12VAC30-70-391).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-180).

12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-41).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

This regulatory action is intended to implement reimbursement changes mandated by the Virginia General Assembly through Item 306 of Chapter 781 of the 2009 Acts of the Assembly. These changes include eliminating inflation for both hospitals and nursing facilities, reducing hospital capital payments, eliminating reimbursement for hospital-acquired conditions (effective January 1, 2010), rebasing freestanding psychiatric hospitals, and reducing inflation for home health agencies. Item 306 permitted DMAS to implement these changes pending the completion of these relevant regulatory actions.

Reimbursement Changes Affecting Hospitals (12VAC30-70):

1. Amendments to 12VAC30-70-351 eliminate state fiscal year (SFY) 2011 inflation for all hospitals as directed in Item 306.

2. Amendments to 12VAC30-70-50, 12VAC30-70-271, and 12VAC30-70-321 reduce capital reimbursement for Type Two hospitals, except those with Virginia Medicaid utilization rates greater than 50%, from 80% of cost to 75% of cost as directed in Item 306 GGG.

3. Amendments to 12VAC30-70-341 and 12VAC30-70-391 rebase operating rates for freestanding psychiatric hospitals to 100% of 2005 costs inflated forward (but subject to other limitations on operating rates including no inflation in FY10) as directed in Item 306 FFF.

4. Amendments to 12VAC30-70-221 eliminate reimbursement for hospital-acquired conditions in a manner similar to the Medicare initiative implemented October 1, 2008. DMAS will implement this change in January 2010. This change is mandated in Item 306 ZZ.

Reimbursement Changes Affecting Other Providers (12VAC 30-80):

Amendments to 12VAC30-80-180 reduce the inflation increase home health agencies received on January 1, 2009, by 50% and delay another inflation increase until July 1, 2010, as directed in Item 306 III.

Reimbursement Changes Affecting Nursing Facilities (12VAC 30-90):

1. Amendments to 12VAC30-90-41 remove the 1.329% reduction to operating rates for nursing facilities in SFY 2010 as directed in Item 306 VV.

2. Amendments to 12VAC30-90-41 eliminate SFY 2011 inflation for operating rates and ceilings for nursing facilities and specialized care facilities, except for government-owned nursing facilities with Medicaid utilization rates of 85% or greater, as directed in Item 306 NNN.

12VAC30-70-50. Hospital reimbursement system.

The reimbursement system for hospitals includes the following components:

A. Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural - 0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban - 0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

B. Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on or after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points, (200 basis points) to the then current allowance for inflation. The escalation factor shall be applied in accordance with the inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

C. Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator factor.

D. Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator factor, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (§ 400), shall be considered as pass throughs and not part of the calculation. Capital interest is reimbursed the percentage of allowable cost specified in 12VAC30-70-271.

E. An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allow-able Cost Per Day	$	Differ-ence % or Ceiling	$	Sliding Scale Incentive % of Differ-ence
$230.00	$230.00	-0-	-0-	-0-	-0-

230.00	207.00	23.00	10%	2.30	10%
230.00	172.00	57.50	25%	14.38	25%
230.00	143.00	76.00	33%	19.00	25%

F. There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

G. Disproportionate share hospitals defined.

The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

1. Criteria.

a. A Medicaid inpatient utilization rate in excess of 8% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision 1 b of this subsection does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the number of utilization Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

b. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0% times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0% times (ii) the lower of the prospective operating cost rate or ceiling.

c. No payments made under subdivision 1 or 2 of this subsection shall exceed any applicable limitations upon such payments established by federal law or regulations.

H. Outlier adjustments.

1. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

2. DMAS shall pay to disproportionate share hospitals (as defined in paragraph G above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

3. The outlier adjustment calculation.

a. Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

b. Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. Any hospital which qualifies for the extensive neonatal care provision (as governed by paragraph F, above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in subdivision H 1 or 2 above.

c. Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision H 3 (ii) above.

d. DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which

exceed the applicable threshold or thresholds for that hospital.

4. Pursuant to 12VAC30-50-100, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

Article 2
Prospective (DRG-Based) Payment Methodology

12VAC30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12VAC30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12VAC30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12VAC30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12VAC30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12VAC30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12VAC30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. Payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full time equivalent (FTE) interns and residents as reported on the cost report.

7. As stipulated in 12VAC30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12VAC30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" reflects the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" reflects the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as

amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This definition includes all paid Medicaid days (from DMAS MR reports for fee-for-service days and managed care organization or hospital reports for HMO days) and nonpaid/denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits (with appropriate documentation). The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The operating cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and include (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12VAC30-50-95 through 12VAC30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" occur when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a

new case. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Type One" hospitals means those hospitals that were state-owned teaching hospitals on January 1, 1996. "Type Two" hospitals means all other hospitals.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. Until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals when updating the system to later grouper versions.

E. Effective January 1, 2010, DRG cases shall be grouped based on the exclusion of Hospital Acquired Conditions (HAC) as published by Medicare periodically. HACs shall be defined using the criteria published by Medicare in the Federal Register (73 FR 48471-48491 (August 19, 2008)). Any significant changes to the Medicare list of conditions shall be implemented each January 1.

~~E.~~ F. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology	
Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

12VAC30-70-271. Payment for capital costs.

A. Inpatient capital costs shall be determined on an allowable cost basis and settled at the hospital's fiscal year end. Allowable cost shall be determined following the methodology described in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130). Inpatient capital costs of Type

One hospitals shall continue to be settled at 100% of allowable cost. For services beginning July 1, 2003, and ending June 30, 2009, inpatient capital costs of Type Two hospitals, except those with Virginia Medicaid utilization rates greater than 50%, shall be settled at 80% of allowable cost. For services beginning July 1, 2009, inpatient capital costs of Type Two hospitals, excluding Type Two hospitals with greater than 50% Virginia Medicaid utilization, shall be settled at 75% of allowable cost. For hospitals with fiscal years that are in progress and do not begin on July 1, 2003, or July 1, 2009, inpatient capital costs for the fiscal year in progress on ~~that date~~ those dates shall be apportioned between the time period before and the time period after ~~that date~~ those dates based on the number of calendar months before and after ~~that date~~ those dates. Capital costs apportioned before ~~that date~~ July 1, 2003, shall be settled at 100% of allowable cost ~~and those after at 80% of allowable cost~~.

B. The exception to the policy in subsection A of this section is that the hospital specific rate per day for services in freestanding psychiatric facilities licensed as hospitals, as determined in 12VAC30-70-321 B, shall be an all-inclusive payment for operating and capital costs. The capital rate per day determined in 12VAC30-70-321 will be multiplied by the same percentage of allowable cost specified in subsection A of this section.

12VAC30-70-321. Hospital specific operating rate per day.

A. The hospital specific operating rate per day shall be equal to the labor portion of the statewide operating rate per day, as determined in subsection A of 12VAC30-70-341, times the hospital's Medicare wage index plus the nonlabor portion of the statewide operating rate per day.

B. For rural hospitals, the hospital's Medicare wage index used in this section shall be the Medicare wage index of the nearest metropolitan wage area or the effective Medicare wage index, whichever is higher.

C. Effective July 1, 2008, and ending after June 30, 2010, the hospital specific operating rate per day shall be reduced by 2.683%.

D. The hospital specific rate per day for freestanding psychiatric cases shall be equal to the hospital specific operating rate per day, as determined in subsection A of this section plus the hospital specific capital rate per day for freestanding psychiatric cases.

E. The hospital specific capital rate per day for freestanding psychiatric cases shall be equal to the Medicare geographic adjustment factor for the hospital's geographic area, times the statewide capital rate per day for freestanding psychiatric cases times the percentage of allowable cost specified in 12VAC 30-70-271.

F. The statewide capital rate per day for freestanding psychiatric cases shall be equal to the weighted average of the GAF-standardized capital cost per day of freestanding psychiatric facilities licensed as hospitals.

G. The capital cost per day of freestanding psychiatric facilities licensed as hospitals shall be the average charges per day of psychiatric cases times the ratio total capital cost to total charges of the hospital, using data available from Medicare cost report.

12VAC30-70-341. Statewide operating rate per day.

A. The statewide operating rate per day shall be equal to the base year standardized operating costs per day, as determined in subsection B of 12VAC30-70-371, times the inflation values specified in 12VAC30-70-351 times the adjustment factor specified in subsection B or C of this section.

B. The adjustment factor for acute care rehabilitation cases shall be the one specified in subsection B of 12VAC30-70-331.

C. The adjustment factor for acute care psychiatric cases for Type Two hospitals shall be 0.8400. The adjustment factor for acute care psychiatric cases for Type One hospitals shall be the one specified in subdivision B 1 of 12VAC30-70-331 times 0.8400 divided by the factor in subdivision B 2 of 12VAC30-70-331.

D. Effective July 2009, for freestanding psychiatric facilities, the adjustment factor shall be 1.0000.

12VAC30-70-351. Updating rates for inflation.

Each July, the ~~DRI Virginia~~ Virginia moving average values as compiled and published by ~~DRI-WEFA, Inc~~ Global Insight (or its successor), under contract with the department shall be used to update the base year standardized operating costs per case, as determined in 12VAC30-70-361, and the base year standardized operating costs per day, as determined in 12VAC30-70-371, to the midpoint of the upcoming state fiscal year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by ~~DRI-WEFA, Inc.~~ Global Insight (or its successor), in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year.

The inflation adjustment for hospital operating rates, disproportionate share hospitals payments, and graduate medical education payments shall be eliminated for fiscal year (FY) 2010, with the exception of long stay hospitals. This reduction will not be applicable to rebasing in FY 2011.

12VAC30-70-391. Recalibration and rebasing policy.

A. The department recognizes that claims experience or modifications in federal policies may require adjustment to

the DRG payment system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the DRG relative weights and hospital case-mix indices) and rebase (review and update the base year standardized operating costs per case and the base year standardized operating costs per day) the DRG payment system at least every three years. Recalibration and rebasing shall be done in consultation with the Medicaid Hospital Payment Policy Advisory Council noted in 12VAC30-70-490. When rebasing is carried out, if new rates are not calculated before their required effective date, hospitals required to file cost reports and freestanding psychiatric facilities licensed as hospitals shall be settled at the new rates, for discharges on and after the effective date of those rates, at the time the hospitals' cost reports for the year in which the rates become effective are settled.

B. ~~Rates for freestanding psychiatric facilities licensed as hospitals shall continue to be based on the 1998 base year.~~ Effective July 1, 2009, rates for freestanding psychiatric facilities shall be rebased using 2005 cost data as the base year. Future rebasings shall be consistent with rebasing for all other hospitals.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-70)

All Patient Diagnosis Related Groups (AP-DRG) Grouper, DRG and MDC Code Listings, Version 12, January 1995.

Health Care Cost Review, ~~Second Quarter 2000, copyright 2001, DRI WEFA, Inc~~ Third Quarter 2009, IHS Global Insight.

International Classification of Diseases (ICD-9-CM), Physician, Volumes 1 and 2, American Medical Association, 2007.

12VAC30-80-180. Establishment of rate per visit.

~~1.~~ A. Effective for dates of services on and after July 1, 1991, the Department of Medical Assistance Services (DMAS) shall reimburse home health agencies (HHAs) at a flat rate per visit for each type of service rendered by HHAs (i.e., nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, supplies left in the home and extraordinary transportation costs will be paid at specific rates.

~~2.~~ B. Effective for dates of services on and after July 1, 1993, DMAS shall establish a flat rate for each level of service for HHAs by peer group. There shall be three peer groups: (i) the Department of Health's HHAs, (ii) non-Department of Health HHAs whose operating office is located in the Virginia portion of the Washington DC-MD-VA metropolitan statistical area, and (iii) non-Department of Health HHAs whose operating office is located in the rest of Virginia. The use of the Health Care Financing Administration (HCFA) designation of urban metropolitan statistical areas (MSAs) shall be incorporated in determining the appropriate peer group for these classifications.

The Department of Health's agencies are being placed in a separate peer group due to their unique cost characteristics (only one consolidated cost report is filed for all Department of Health agencies).

~~3.~~ C. Rates shall be calculated as follows:

~~A.~~ 1. Each home health agency shall be placed in its appropriate peer group.

~~B.~~ 2. Department of Health HHAs' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from its 1989 cost-settled Medicaid cost report. Non-Department of Health HHAs' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from the 1989 cost-settled Medicaid Cost Reports filed by freestanding HHAs. Costs shall be inflated to a common point in time (June 30, 1991) by using the percent of change in the moving average factor of the Data Resources Inc., (DRI), National Forecast Tables for the Home Health Agency Market Basket (as published quarterly).

~~C.~~ 3. To determine the flat rate per visit effective July 1, 1993, the following methodology shall be utilized:

~~(1)~~ a. The peer group HHA's per visit rates shall be ranked and weighted by the number of Medicaid visits per discipline to determine a median rate per visit for each peer group at July 1, 1991.

~~(2)~~ b. The HHA's peer group median rate per visit for each peer group at July 1, 1991, shall be the interim peer group rate for calculating the update through January 1, 1992. The interim peer group rate shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1992, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation to the end of December 31, 1993, to establish the final peer group rates. The lower of the final peer group rates or the Medicare upper limit at January 1, 1993, will be effective for payments from July 1, 1993, through December 1993.

~~(3)~~ c. Separate rates shall be provided for the initial assessment, follow-up, and comprehensive visits for skilled nursing and for the initial assessment and follow-up visits for physical therapy, occupational therapy, and speech therapy. The comprehensive rate shall be 200% of the follow-up rate, and the initial assessment rates shall be ~~fifteen dollars ($15.00)~~ $15 higher than the follow-up rates. The lower of the peer group median or Medicare upper limits shall be adjusted as appropriate to assure budget neutrality when the higher rates for the comprehensive and initial assessment visits are calculated.

~~D.~~ 4. The fee schedule shall be adjusted annually ~~on or about January~~ beginning July 1, 2010, based on the percent of change in the moving average of ~~Data Resources, Inc.,~~ the National Forecast Tables for the Home Health Agency Market Basket ~~determined in the third~~ published by Global Insight (or its successor) for the second quarter of the ~~previous~~ calendar year in which the fiscal year begins. The report shall be the latest published report prior to the fiscal year. The method to calculate the annual update shall be:

~~(1)~~ a. All subsequent year peer group rates shall be calculated utilizing the previous final ~~interim~~ peer group rate established on ~~January~~ July 1~~, becoming the interim peer group rate at December 31, each year. The interim peer group rate shall be updated for 100 percent of historical inflation for the previous twelve months, January 1 through December 31, and shall become the final interim peer group rate which shall be updated by 50 percent of the forecasted inflation for the subsequent twelve months, January 1 through December 31~~.

~~(2)~~ b. The annual July 1 update shall be compared to the Medicare upper limit per visit in effect on each January 1, and the HHA's shall receive the lower of the annual update or the Medicare upper limit per visit as the final peer group rate.

D. Effective July 1, 2009, the previous inflation increase effective January 1, 2009, shall be reduced by 50%.

12VAC30-90-41. Nursing facility reimbursement formula.

A. Effective on and after July 1, 2002, all NFs subject to the prospective payment system shall be reimbursed under "The Resource Utilization Group-III (RUG-III) System as defined in Appendix IV (12VAC30-90-305 through 12VAC30-90-307)." RUG-III is a resident classification system that groups NF residents according to resource utilization. Case-mix indices (CMIs) are assigned to RUG-III groups and are used to adjust the NF's per diem rates to reflect the intensity of services required by a NF's resident mix. See 12VAC30-90-305 through 12VAC30-90-307 for details on the Resource Utilization Groups.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings and rates.

a. In accordance with 12VAC30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in 12VAC30-90-271.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, for the rest of the state for facilities with less than 61 licensed beds, and for the rest of the state for facilities with more than 60 licensed beds.

3. Each facility's average case-mix index shall be calculated based upon data reported by that nursing facility to the Centers for Medicare and Medicaid Services (CMS) (formerly HCFA) Minimum Data Set (MDS) System. See 12VAC30-90-306 for the case-mix index calculations.

4. The normalized facility average Medicaid CMI shall be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NFs subsequent fiscal year. See 12VAC30-90-306 D 2 for the calculation of the normalized facility average Medicaid CMI.

a. A NFs direct patient care operating cost prospective ceiling shall be the product of the NFs peer group direct patient care ceiling and the NFs normalized facility average Medicaid CMI. A NFs direct patient care operating cost prospective ceiling will be calculated semiannually.

b. A CMI rate adjustment for each semiannual period of a nursing facility's prospective fiscal year shall be applied by multiplying the nursing facility's normalized facility average Medicaid CMI applicable to each prospective semiannual period by the nursing facility's case-mix neutralized direct patient care operating cost base rate for the preceding cost reporting period (see 12VAC30-90-307).

c. See 12VAC30-90-307 for the applicability of case-mix indices.

5. Direct and indirect ceiling calculations.

a. Effective for services on and after July 1, 2006, the direct patient care operating ceiling shall be set at 117% of the respective peer group day-weighted median of the facilities' case-mix neutralized direct care operating costs per day. The calculation of the medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group direct patient care operating ceilings shall be revised and case-mix neutralized every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

b. The indirect patient care operating ceiling shall be set at 107% of the respective peer group day-weighted median of the facility's specific indirect operating cost per day. The calculation of the peer group medians shall

be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group indirect operating ceilings shall be revised every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

6. Reimbursement for use of specialized treatment beds. Effective for services on and after July 1, 2005, nursing facilities shall be reimbursed an additional $10 per day for those recipients who require a specialized treatment bed due to their having at least one Stage IV pressure ulcer. Recipients must meet criteria as outlined in 12VAC30-60-350, and the additional reimbursement must be preauthorized as provided in 12VAC30-60-40. Nursing facilities shall not be eligible to receive this reimbursement for individuals whose services are reimbursed under the specialized care methodology. Beginning July 1, 2005, this additional reimbursement shall be subject to adjustment for inflation in accordance with 12VAC30-90-41 B, except that the adjustment shall be made at the beginning of each state fiscal year, using the inflation factor that applies to provider years beginning at that time. This additional payment shall not be subject to direct or indirect ceilings and shall not be adjusted at year-end settlement.

B. Adjustment of ceilings and costs for inflation. Effective for provider fiscal years starting on and after July 1, 2002, ceilings and rates shall be adjusted for inflation each year using the moving average of the percentage change of the Virginia-Specific Nursing Home Input Price Index, updated quarterly, published by Standard & Poor's DRI. For state fiscal year 2003, peer group ceilings and rates for indirect costs will not be adjusted for inflation.

1. For provider years beginning in each calendar year, the percentage used shall be the moving average for the second quarter of the year, taken from the table published for the fourth quarter of the previous year. For example, in setting prospective rates for all provider years beginning in January through December 2002, ceilings and costs would be inflated using the moving average for the second quarter of 2002, taken from the table published for the fourth quarter of 2001.

2. Provider specific costs shall be adjusted for inflation each year from the cost reporting period to the prospective rate period using the moving average as specified in subdivision 1 of this subsection. If the cost reporting period or the prospective rate period is less than 12 months long, a fraction of the moving average shall be used that is equal to the fraction of a year from the midpoint of the cost reporting period to the midpoint of the prospective rate period.

3. Ceilings shall be adjusted from the common point established in the most recent rebasing calculation. Base period costs shall be adjusted to this common point using moving averages from the DRI tables corresponding to the provider fiscal period, as specified in subdivision 1 of this subsection. Ceilings shall then be adjusted from the common point to the prospective rate period using the moving average(s) for each applicable second quarter, taken from the DRI table published for the fourth quarter of the year immediately preceding the calendar year in which the prospective rate years begin. Rebased ceilings shall be effective on July 1 of each rebasing year, so in their first application they shall be adjusted to the midpoint of the provider fiscal year then in progress or then beginning. Subsequently, they shall be adjusted each year from the common point established in rebasing to the midpoint of the appropriate provider fiscal year. For example, suppose the base year is made up of cost reports from years ending in calendar year 2000, the rebasing year is SFY2003, and the rebasing calculation establishes ceilings that are inflated to the common point of July 1, 2002. Providers with years in progress on July 1, 2002, would receive a ceiling effective July 1, 2002, that would be adjusted to the midpoint of the provider year then in progress. In some cases this would mean the ceiling would be reduced from the July 1, 2002, ceiling level. The following table shows the application of these provisions for different provider fiscal periods.

Table I
Application of Inflation to Different Provider Fiscal Periods

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of First PFY	Second PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of Second PFY
3/31	7/1/02	3/31/03	+ 1/4 year	3/31/04	+ 1-1/4 years
6/30	7/1/02	6/30/03	+ 1/2 year	6/30/04	+ 1-1/2 years
9/30	7/1/02	9/30/02	- 1/4 year	9/30/03	+ 3/4 year
12/31	7/1/02	12/31/02	-0-	12/31/03	+ 1 year

The following table shows the DRI tables that would provide the moving averages for adjusting ceilings for different prospective rate years.

Table II
Source Tables for DRI Moving Average Values

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Source DRI Table for First PFY Ceiling Inflation	Second PFYE After Rebasing Date	Source DRI Table for Second PFY Ceiling Inflation
3/31	7/1/02	3/31/03	Fourth Quarter 2001	3/31/04	Fourth Quarter 2002
6/30	7/1/02	6/30/03	Fourth Quarter 2001	6/30/04	Fourth Quarter 2002
9/30	7/1/02	9/30/02	Fourth Quarter 2000	9/30/03	Fourth Quarter 2001
12/31	7/1/02	12/31/02	Fourth Quarter 2000	12/31/03	Fourth Quarter 2001

In this example, when ceilings are inflated for the second PFY after the rebasing date, the ceilings will be inflated from July 1, 2002, using moving averages from the DRI table specified for the second PFY. That is, the ceiling for years ending June 30, 2004, will be the June 30, 2002, base period ceiling, adjusted by 1/2 of the moving average for the second quarter of 2002, compounded with the moving average for the second quarter of 2003. Both these moving averages will be taken from the fourth quarter 2002 DRI table.

C. The RUG-III Nursing Home Payment System shall require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rate or prospective operating ceiling.

D. Nonoperating costs. Plant or capital, as appropriate, costs shall be reimbursed in accordance with Articles 1, 2, and 3 of this subpart. Plant costs shall not include the component of cost related to making or producing a supply or service.

NATCEPs cost shall be reimbursed in accordance with 12VAC30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and plant/capital cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant or capital, as appropriate, costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. Effective July 1, 2001, for those NFs whose indirect operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable indirect operating cost rates and the indirect peer group ceilings.

1. The following table presents four incentive examples:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
$30.00	$27.00	$3.00	10%	$0.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Efficiency incentives shall be calculated only for the indirect patient care operating ceilings and costs. Effective

July 1, 2001, a direct care efficiency incentive shall no longer be paid.

G. Quality of care requirement. A cost efficiency incentive shall not be paid for the number of days for which a facility is out of substantial compliance according to the Virginia Department of Health survey findings as based on federal regulations.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

J. Effective July 1, 2005, the total per diem payment to each nursing home shall be increased by $3.00 per day. This increase in the total per diem payment shall cease effective July 1, 2006. Effective July 1, 2006, when cost data that include time periods before July 1, 2005, are used to set facility specific rates, a portion of the $3.00 per day amount identified above, based on the percentage of patient days in the provider's cost reporting period that fall before July 1, 2005, adjusted for appropriate inflation and multiplied times the provider's Medicaid utilization rate, shall be allocated to the facility specific direct and indirect cost per day prior to comparison to the peer group ceilings. For purposes of this subsection, $1.68 of the $3.00 shall be considered direct costs and $1.32 of the $3.00 shall be considered indirect costs.

K. Effective July 1, 2008, and ending after June 30, ~~2010~~ 2009, the operating rate for nursing facilities shall be reduced by 1.329%.

L. Effective July 1, 2009, through June 30, 2010, there will be no inflation adjustment for nursing facility operating rates and ceilings and specialized care operating rates and ceilings. Exempt from this are government-owned nursing facilities with Medicaid utilization of 85% or greater in provider fiscal year 2007.

VA.R. Doc. No. R10-2139; Filed January 20, 2010, 1:19 p.m.

Notice of Change in Effective Date

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-35).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: April 5, 2010.

The Department of Medical Assistance Services gives notice that the March 3, 2010, effective date of the final regulation relating to ambulatory surgery center and outpatient rehabilitation (12VAC30-80), which was published in 26:11 VA.R. 1765-1767 February 1, 2010, is changed to April 5, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R09-1405; Filed February 1, 2010, 1:18 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-160).**

Statutory Authority: § 32.1-351 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Molly Carpenter, Division of Maternal and Child Health, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

Summary:

The amendment eliminates cost sharing for pregnancy-related services covered under the Family Access to Medical Security Insurance Plan (FAMIS). Current policy allows copayments to be charged for pregnancy-related services covered under FAMIS. Under the current contract, managed care organizations (MCOs) may apply a copayment to the first prenatal care visit only. There is no cost sharing for any pregnancy-related service covered under Medicaid. Under the revised policy, copayments are not allowed for services to pregnant females related to the pregnancy, which is consistent with cost sharing limitations for Medicaid found at 12VAC30-10-570 C 2 b.

These changes are being made to conform DMAS' FAMIS regulations to the new requirements found in the federal Child Health Insurance Plan Reauthorization Act of 2009 (CHIPRA), which prohibits the use of cost sharing for

pregnancy-related services in a state's Child Health Insurance Plan for states that cover targeted low-income pregnant women. The current FAMIS regulations do not exclude cost sharing for pregnancy-related services. Because of the CHIPRA mandate, DMAS is putting pregnancy-related services on the cost sharing exclusion list for FAMIS in 12VAC30-141-160.

Section 111(a) of CHIPRA adds § 2112 to the Social Security Act, which includes a list of requirements for states that cover targeted low-income pregnant women. The list includes the requirement that the "State provides pregnancy-related assistance to a targeted low-income woman consistent with the cost-sharing protections under section 2103(e)." Section 2103(e)(3)(A)(ii) of the Social Security Act states, "[i]n the case of a targeted low-income child whose family income is at or below 150 percent of the poverty line, the State child health plan may not impose ... (ii) a deductible, cost sharing, or similar charge that exceeds an amount that is nominal." Section 111(d)(2) of CHIPRA states, "[t]he term 'pregnancy-related assistance' has the meaning given the term 'child health assistance' in section 2110(a)," which states, "the term 'child health assistance' means payment for part or all of the cost of health benefits coverage for targeted low-income children that includes any of the following, ... as specified under the State plan." The language "any of the following" includes essentially all Medicaid covered services, including prenatal care.

Part IV
Cost Sharing

12VAC30-141-160. Copayments for families not participating in FAMIS Select.

A. Copayments shall apply to all enrollees in an MCHIP.

B. These cost-sharing provisions shall be implemented with the following restrictions:

1. Total cost sharing for each 12-month eligibility period shall be limited to (i) for families with incomes equal to or less than 150% of FPL, the lesser of (a) $180 and (b) 2.5% of the family's income for the year (or 12-month eligibility period); and (ii) for families with incomes greater than 150% of FPL, the lesser of $350 and 5.0% of the family's income for the year (or 12-month eligibility period).

2. DMAS or its designee shall ensure that the annual aggregate cost sharing for all FAMIS enrollees in a family does not exceed the aforementioned caps.

3. Families will be required to submit documentation to DMAS or its designee showing that their maximum copayment amounts are met for the year.

4. Once the cap is met, DMAS or its designee will issue a new eligibility card excluding such families from paying additional copays.

C. Exceptions to the above cost-sharing provisions:

1. Copayments shall not be required for well-child ~~and,~~ well baby, and pregnancy-related services. This shall include:

a. All healthy newborn inpatient physician visits, including routine screening (inpatient or outpatient);

b. Routine physical examinations, laboratory tests, immunizations, and related office visits;

c. Routine preventive and diagnostic dental services (i.e., oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays); ~~and~~

d. Services to pregnant females related to the pregnancy; and

e. Other preventive services as defined by the department.

2. Enrollees are not held liable for any additional costs, beyond the standard copayment amount, for emergency services furnished outside of the individual's managed care network. Only one copayment charge will be imposed for a single office visit.

3. No cost sharing will be charged to American Indians and Alaska Natives.

VA.R. Doc. No. R10-2266; Filed January 22, 2010, 4:28 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Final Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-40, 18VAC105-20-45).**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4466, or email leslie.knachel@dhp.virginia.gov.

Summary:

These amendments to the board's standards of conduct and practice provide authority to address unprofessional actions or substandard patient care by optometrists. The amendments specify policy on patient records, continuity of care, prescribing for self or family, boundary violations, and compliance with law and regulations. The standard for

content of a patient record during an eye examination is updated and clarified. Since publication of the proposed regulations, citations to the specific federal rules for contact lens and spectacle prescriptions were deleted and replaced with a description of the key requirements of those rules.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC105-20-40. ~~Unprofessional~~ Standards of conduct.

~~It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to violate any statute or regulation governing the practice of optometry or to fail to~~ The board has the authority to deny, suspend, revoke [,] or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."

2. ~~Maintain records on each patient for not less than five years from the date of the most recent service rendered~~ Disclose to the board any disciplinary action taken by a regulatory body in another jurisdiction.

3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.

4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC105-20-45.

5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed in compliance with requirements of § 54.1-2405 of the Code of Virginia on the transfer of patient records in conjunction with closure, sale, or relocation of practice.

6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.

7. Provide for continuity of care in the event of an absence from the practice or, in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.

9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing [,] or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family to include, but not [be] limited to, actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement, or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

13. Not practice with an expired or unregistered professional designation.

14. Not violate or cooperate with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) or 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

18VAC105-20-45. Standards of practice.

A. ~~A complete record of all examinations made of a patient shall include a diagnosis and any treatment and shall also~~

~~include but not be limited to~~ An optometrist shall legibly document in a patient record the following:

1. During a ~~comprehensive~~ routine or medical eye examination:

a. ~~Case~~ An adequate case history, including the patient's chief complaint;

b. ~~Acuity measure~~ The performance of appropriate testing;

c. ~~Internal health evaluation~~ The establishment of an assessment or diagnosis; and

~~d. External health evaluation; and~~

~~e. Recommendations and directions to the patients, including prescriptions~~ d. A recommendation for an appropriate treatment or management plan, including any necessary follow up.

2. During an initial contact lens examination:

a. The requirements of a ~~comprehensive~~ routine or medical eye examination as prescribed in subdivision 1 of this subsection;

b. Assessment of corneal curvature;

c. ~~Assessment of corneal/contact lens relationship~~ Evaluation of contact lens fitting;

d. Acuity through the lens; and

e. Directions for the wear, care, and handling of lenses ~~and an explanation of the implications of contact lenses with regard to eye health and vision~~.

3. During a follow-up contact lens examination:

a. ~~Assessment~~ Evaluation of ~~corneal/contact~~ contact lens ~~relationship~~ fitting and anterior segment health;

b. Acuity through the lens; and

c. Such further instructions as ~~in subdivision 2 of this subsection, as~~ necessary for the individual patient.

4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

1. The printed name of the prescribing optometrist;

2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;

3. The name of the patient;

4. The signature of the optometrist;

5. The date of the examination and an expiration date, if medically appropriate; and

6. Any special instructions.

C. ~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.~~ [Contact lens.

1. Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to (i) the power, (ii) the material or manufacturer or both, (iii) the base curve or appropriate designation, (iv) the diameter when appropriate, and (v) medically appropriate expiration date.

2.] An optometrist shall provide a patient with a copy of the patient's contact lens prescription [~~in accordance with the Fairness to Contact Lens Consumers Act (16 CFR Part 315)~~ at the end of the contact lens fitting, even if the patient does not ask for it. An optometrist may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products].

[3. An optometrist shall provide or verify the prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers.

4. An optometrist shall not require patients to buy contact lens, pay additional fees, or sign a waiver or release in exchange for a copy of the contact lens prescription.

5. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.]

D. [Spectacle lens.

1.] A licensed optometrist shall provide a written prescription for spectacle lenses ~~upon the request of the patient once all fees have been paid. In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit~~ [~~in accordance with the Federal Trade Commission Eyeglass Rule (16 CFR Part 456)~~ immediately after the eye examination is completed. He may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products].

[2. An optometrist shall not require patients to buy ophthalmic goods, pay additional fees, or sign a waiver or release in exchange for a copy of the spectacle prescription.

3. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.]

E. Practitioners shall maintain a patient record for a minimum of five years following the last patient encounter with the following exceptions:

1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

F. From [~~(one year after the effective date of this regulation)~~ March 17, 2011], practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

VA.R. Doc. No. R08-1098; Filed January 20, 2010, 2:19 p.m.

Final Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-70).**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4466, or email leslie.knachel@dhp.virginia.gov.

Summary:

These amendments (i) require that in order to maintain approval for continuing education (CE) courses, providers or sponsors not only must provide a certificate of attendance showing the date, location, presenter or lecturer, content hours of the course, and contact information of the provider/sponsor for verification, but must also maintain documentation about the course and attendance for at least three years following its completion; (ii) require that requests for an extension or waiver for the fulfillment of CE hours must be received by the Continuing Education Committee prior to December 31 of each year; (iii) require that optometrists who are certified in the use of therapeutic pharmaceutical agents have at least two hours of CE "directly related to the treatment of the human eye and its adnexa with pharmaceutical agents" and (iv) specify that a licensee who falsifies CE compliance or fails to comply with CE requirements may be subject to disciplinary action by the board. Changes to the regulation since publication of the proposed regulation include: (a) reinserting the Council on Optometric Practitioner Education and the Accreditation Council for Continuing Medical Education into the list of approved providers in subsection G and deleting proposed subsection H referencing these councils; (b) deleting Category 2 continuing medical education as approved CE for optometric licensure renewal; and (c) changing "independent" to "designated" to describe the monitor for verification of licensee attendance at a CE course.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 16 hours of continuing education taken by the applicant during the previous license period.

1. Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR).

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the required continuing education hours shall be directly related to the ~~prescribing and administration of such drugs~~ treatment of the human eye and its adnexa with pharmaceutical agents.

3. Courses ~~that are solely designed~~ for which the primary purpose is to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to December 31 unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to December 31 of each year.

C. All continuing education courses shall be offered by an approved sponsor [or accrediting body] listed in subsection G [~~or accredited as provided in subsection H~~] of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence

substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor [or accrediting body] as listed in subsection G [~~or accredited as provided in subsection H~~] of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored [, accredited,] or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

[8. Council on Optometric Practitioner Education (C.O.P.E.).]

[9. ~~8.~~] State or federal governmental agencies.

[10. ~~9.~~] College of Optometrists in Vision Development.

[11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1] ~~or Category 2~~ [credit.]

[~~10.~~ 12.] Providers of training in cardiopulmonary resuscitation (CPR).

[~~11.~~ 13.] Optometric Extension Program.

[~~H. Courses accredited by the Council on Optometric Practitioner Education (COPE) or the Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association for Category 1 or Category 2 credit shall be approved.~~

~~I.~~ H.] In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider/sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by [~~an independent~~ a designated] monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

[~~J.~~ I.] Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with §54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R07-238; Filed January 20, 2010, 2:19 p.m.

BOARD OF PHARMACY

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (adding 18VAC110-20-25).**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

Summary:

This action adds a section on unprofessional conduct to address certain issues and licensee conduct that have been problematic and to supplement the statutory provision in § 54.1-3316 of the Code of Virginia that establishes grounds for disciplinary action based on unprofessional conduct specified in regulations promulgated by the board. The amendments include, but are not limited to, patient confidentiality, unethical behavior, sexual misconduct, failure to report a known dispensing error in a manner that protects the public, and inappropriate delegation of pharmacy acts to subordinates. No changes were made to the regulation since publication of the proposed regulation.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC110-20-25. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to provision of patient records to another practitioner or to the patient or his personal representative;

2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;

3. Failing to maintain confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;

4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family, including but not limited to sexual misconduct with a patient or a member of his family or other conduct that results or could result in personal gain at the expense of the patient;

6. Failing to maintain adequate safeguards against diversion of controlled substances;

7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;

8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;

9. Failing by the PIC to ensure that pharmacy interns and pharmacy technicians working in the pharmacy are registered and that such registration is current; or

10. Failing to exercise professional judgment in determining whether a prescription meets requirements of law before dispensing.

VA.R. Doc. No. R08-1341; Filed January 20, 2010, 2:19 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-25. Auxiliary Grants Program (amending 22VAC40-25-10 through 22VAC40-25-70; adding 22VAC40-25-15).**

Statutory Authority: §§ 63.2-217 and 63.2-800 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 16, 2010.

Agency Contact: Paige McCleary, Adult Services Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, or email paige.mccleary@dss.virginia.gov.

Basis: Sections 63.2-217 and 63.2-800 of the Code of Virginia provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the Auxiliary Grant (AG) Program, respectively.

Purpose: Amending this regulation will enhance the health, safety, and welfare of vulnerable adults age 60 and over and individuals age 18 to 59 who have a disability and reside in assisted living facilities (ALFs) throughout Virginia. The annual certification will provide sufficient assurances that the personal funds of individuals residing in an ALF are maintained appropriately and not commingled with facility funds. Implementing use of an annual certification form instead of the costly and complicated annual audit requirement in the current regulation will reduce burdensome reporting requirements that may hinder providers' willingness to continue to accept individuals who receive AG.

Establishing a residency requirement will ensure that more AG beds are available to low-income Virginia residents in need of ALF placements and reduce the number of out-of-state residents who relocate to Virginia in order to take advantage of the AG Program.

Clarifying assessment procedures for emergency admissions to ALFs and the ALF providers' responsibilities associated with discharging residents will improve communication between local departments of social services (LDSS) and ALF providers regarding individuals who are receiving AG payments. These clarifications will also ensure conformity with current licensing regulations.

Substance: The proposed regulation amends the ALFs' financial reporting standards, adds AG residency requirements, clarifies assessment and discharge requirements, changes language to ensure that the AG

regulation comports with licensing regulations, clarifies conditions of ALFs' participation in the AG Program, and promotes person-centered language when referring to individuals who apply for AG or live in ALFs. Substantive provisions include:

1. Changing annual audit report requirements to an annual certification requirement thereby minimizing the administrative burden while still ensuring ALFs appropriately manage the funds of the residents.

2. Adding a 90-day residency requirement for AG eligibility to ensure AG funds are available for Virginia residents.

3. Clarifying the assessment requirements associated with emergency placements to comport with licensing regulations.

4. Clarifying conditions of ALF providers' participation in the AG Program, including maintenance of residents' personal needs allowances in a separate bank account and issuance of monthly account statements.

5. Introducing person-centered language by removing references to applicant, recipient, and resident.

Issues: 1. ALF providers in the Commonwealth have expressed concerns that the annual audit requirements in the current regulation are costly, complicated, and burdensome and that without changes to this requirement some providers may withdraw from the AG Program, thus reducing the number of available AG beds. Replacing the annual audit requirement with an annual certification requirement will provide sufficient information to assure that personal funds of individuals residing in ALFs are properly maintained and not commingled with facility funds.

2. Creating a residency requirement will ensure that AG beds are available to low-income Virginia residents in need of ALF placements and reduce the number of out-of-state residents who relocate to Virginia to take advantage of the AG Program. AG Program payments are comprised of 80% state and 20% local funds. Implementation of a residency requirement may mean that localities supporting a large number of out-of-state individuals with AG would see a reduction in their large local match requirements. However some ALF providers with a majority of AG residents from out-of-state may express concern about the limitations imposed by an AG residency requirement.

3. Clarifying the current regulation regarding conditions of ALF providers' participation in the AG Program, particularly with regard to admissions and discharges, will improve communication between LDSS and providers, reduce possible errors in AG payments, and remove current disparities between the AG regulation and department licensing regulations.

4. Use of person-centered language in the regulation promotes personal dignity by recognizing that everyone is unique and removes labels that categorize, and sometimes stigmatize, individuals who use state services and benefits.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services proposes to 1) add a 90-day Virginia residency requirement for Auxiliary Grant eligibility, 2) replace the annual audit requirement with an annual certification requirement, and 3) clarify several existing requirements.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. These regulations establish rules for the Auxiliary Grant (AG) program. The program provides supplemental financial assistance to Social Security Income recipients and aged, blind, or disabled individuals residing in a licensed assisted living facility (ALF) or an adult foster care (AFC) home. The program, funded by 80% state and 20% local monies, absorbs the difference between the ongoing provider reimbursement rate and the Social Security Income and provides a personal needs allowance. The current reimbursement rate for nine Northern Virginia localities is $1,279 per month while the rate for the rest of the state is $1,112. The current personal needs allowance is $81 per month. In fiscal year 2008, the amount of assistance provided to a monthly average caseload of 5,425 individuals was approximately $29.7 million.

With this regulatory action, the State Board of Social Services (the board) proposes to 1) add a 90-day Virginia residency requirement for Auxiliary Grant eligibility, 2) replace the annual audit requirement with an annual certification requirement, and 3) clarify several existing requirements.

The current AG policy allows a non-Virginia resident to move into an ALF located in Virginia and establish Virginia residency immediately for the AG benefit. This easy access to the AG benefit has created incentives to move into Virginia from neighboring states where similar benefits do not exist or are less than the AG benefits. According to Department of Social Services, 60 percent of cases sampled in Bristol were found to be former Tennessee residents prior to receiving AG benefits. Similarly, 64 out of 206 (31 percent) September 2008 cases in Washington County resided in Tennessee prior to receiving AG benefits. Given the $515 Washington County's average monthly AG benefit, approximately $395,520 per year is estimated to be expended on individuals who were not Virginia residents immediately prior to residing in an ALF. While the size of the abuse at the state level is probably much greater, no reliable statewide estimate is available at this time.

The proposed regulations will require a minimum of 90-day Virginia residency immediately prior to receiving AG benefits. This proposed change is expected to reduce

significantly the number of out-of-state residents who relocate to Virginia in order to take advantage of the AG program. Since the program is funded by 80 percent state funds and 20 percent local funds, state and local governments where the abuse currently occur most are expected to gain the most from this proposed change. An accurate description of the benefits of the reduced AG spending will depend on where the expected savings in state and local funds will be spent.

Also, if the move of needy people into Virginia is made less attractive by the proposed residency requirement, there may be other avoided costs in government spending in some other areas.

The main cost of the proposed residency requirement, on the other hand, is expected to fall on the individuals who would have moved into a Virginia ALF without having at least a 90-day residency prior to their move. The size of this cost is estimated to be about three times the average monthly AG benefit. For example, if a Tennessee resident moves into a Washington County ALF, he or she would not receive, under the proposed changes, the AG benefit for the first 90 days which would amount to approximately $1,545.

In addition, the ALF facilities that are currently enjoying heightened admission requests from non-Virginia residents will likely see a reduction in demand for their services. Reduced excess demand for ALFs will likely cause a reduction in free market price of ALF care and an increase in the number of empty beds.

The proposed regulations will also replace the annual audit requirement with an annual certification requirement. The main goal of the audit or the certification is to make sure that facilities maintain personal funds of residents appropriately and do not commingle these funds with other facility funds. The board amended regulations which became effective in 2007 to require the facilities to have an annual financial audit to make sure personal funds are maintained separately. According to DSS, later it was determined that the financial audit requirement was overly burdensome and also did not correctly reflect the original intent of the board. Instead, an annual certification prepared by the facilities is found to be sufficient. Thus, the financial audit requirement has never been enforced in reality. Since the proposed change merely reflects what is being enforced in practice, no significant economic effect is expected other than improving the clarity of the regulations.

Similarly, the board proposes to clarify requirements regarding an ALF's participation in the AG program; submission of the provider agreement; assessment process for emergency ALF placements; procedures for discharging residents from facilities. The board also proposes to use person centered language throughout the regulation. While all of these clarifications are expected to improve the clarity of the regulations and reduce possible misunderstandings, no other significant economic effect is expected.

Businesses and Entities Affected. The proposed regulations apply to 323 ALFs that accept AG recipients and 68 approved AFC homes. These facilities provided services to a monthly average caseload of 5,425 individuals in fiscal year 2008.

Localities Particularly Affected. The proposed regulations is expected to affect the most localities where non-Virginia residents are moving to in ALFs without establishing residency in Virginia first. These localities are believed to be counties of Bristol, Washington, Scott, Russel, Smyth, and Lee.

Projected Impact on Employment. The proposed residency requirement is expected to reduce the demand for beds in ALFs and consequently have a negative impact on demand for labor providing assisted living services. On the other hand, a corresponding increase in the demand for other goods and services are expected elsewhere depending on where the realized savings are spent. Thus, the statewide net impact on employment is unknown, but likely to be small.

Effects on the Use and Value of Private Property. The expected reduction in demand for ALF beds is likely to reduce revenues and consequently asset values of facilities providing services to AG recipients. While the asset values of businesses where the expected savings may be spent are expected to increase, it may be spread over many types of goods and services to be significant.

Small Businesses: Costs and Other Effects. The proposed regulations are expected to reduce revenues of ALFs most of which are believed to be small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no alternative method under these regulations that would minimize the impact.

Real Estate Development Costs. The proposed regulations are not expected to have any effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include

(i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) add a 90-day Virginia residency requirement for auxiliary grant eligibility; (ii) replace the annual audit reporting requirement with an annual certification requirement; (iii) clarify requirements for program participation and the submission of the provider agreement; (iv) modify the assessment process for emergency assisted living facility placements; and (v) clarify procedures surrounding resident discharges from facilities.

22VAC40-25-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Adult foster care (AFC)" means a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health need. Adult foster care may be provided for up to three adults by any one provider who is approved by the local department of social services.

~~"Applicant" means an adult currently residing or planning to reside in an assisted living facility or in adult foster care and who has applied for financial assistance under the Auxiliary Grants Program.~~

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the ~~uniform assessment instrument~~ Uniform Assessment Instrument.

"Assisted living facility (ALF)" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

Assuming responsibility for the well-being of individuals residing in an ALF, either directly or through contracted agents, is considered "general supervision and oversight."

~~"Audit report" is an annual report prepared by the assisted living facility's private auditor. The auditor shall determine that the financial statements of the auditee are presented fairly and in conformity with generally accepted accounting principles.~~

"Auxiliary Grants (AG) Program" means a state and locally funded assistance program to supplement income of ~~a~~ an individual receiving Supplemental Security Income (SSI) ~~recipient~~ or adult who would be eligible for SSI except for excess income, who resides in an ~~assisted living facility~~ ALF or in ~~adult foster care~~ AFC with an ~~approved~~ established rate.

"Certification" means a form provided by the department and prepared by the ALF annually certifying that the ALF has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations.

"Department" means the Virginia Department of Social Services.

"Established rate" means the ~~auxiliary grant~~ rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

~~"Newly licensed assisted living facility" means a facility that has been licensed for 12 months or less.~~

~~"Other operating expense" means expenses incurred by the provider for activities that are not directly related to the care of residents.~~

~~"Other operating revenue" means income earned by the provider for activities that are not directly related to the care of residents.~~

~~"Operating costs" means the allowable expenses incurred by a provider for activities directly related to the care of residents.~~

"Personal needs allowance" means an amount of money reserved for meeting the adult's personal needs when computing the amount of the ~~auxiliary grant~~ AG payment.

"Personal representative" means the person representing or standing in the place of the ~~recipient~~ individual for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next-of-kin, descendent, trustee, or other person expressly named by the ~~recipient~~ individual as his agent.

"Personal toiletries" means hygiene items provided to the individual by the ALF or AFC home including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Program" means the Auxiliary Grant Program.

"Provider" means an ~~assisted living facility~~ ALF that is licensed by the Department of Social Services or an ~~adult foster care~~ AFC provider that is approved by a local department of social services.

"Provider agreement" means a document that the ~~assisted living facility~~ ALF must complete and submit to the department when requesting to be ~~licensed as an assisted living facility provider and~~ approved for admitting ~~auxiliary grant recipients~~ individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC40-745 to perform an assessment, reassessment, or change in level of care for an ~~applicant to or resident of~~ individual applying for AG or residing in an ~~assisted living facility~~ ALF.

"Rate" means the ~~approved auxiliary grant~~ established rate.

~~"Recipient" means an adult approved to receive financial assistance under the Auxiliary Grants Program when residing in a licensed assisted living facility or an approved adult foster care provider with an approved rate.~~

"Residential living care" means a level of service provided by an ~~assisted living facility~~ ALF for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the ~~uniform assessment instrument~~ Uniform Assessment Instrument (UAI).

"Uniform ~~assessment instrument~~ Assessment Instrument (UAI)" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

~~"Virginia Department of Medical Assistance Services (DMAS)" means the single state agency designated to administer the Medical Assistance Program in Virginia.~~

22VAC40-25-15. Residency requirement.

A. Individuals applying for AG must have resided in Virginia voluntarily for a minimum of 90 days with the intent to remain.

1. Individuals applying for AG must submit a written statement of intent to remain in Virginia on a form provided by the department.

2. Individuals applying for AG also must provide verification of Virginia residency using one of the following documents:

a. Postmarked letters;

b. Public utility records or credit accounts;

c. Voter registration records;

d. Home or apartment lease;

e. Real property records;

f. Medical bills; or

g. State or federal tax records.

B. Exceptions to the 90-day residency requirement.

1. Individuals who have moved to Virginia to join a close relative who has lived in Virginia for at least 180 days. A close relative is limited to the individual's parent, grandparent, grandchild, brother, sister, spouse, or child. The close relative shall furnish verification of kinship at the time of application using one of the following documents:

a. Birth certificate;

b. Proof of marriage; or

c. Notarized affidavit.

2. The close relative shall furnish proof of residency as specified in subdivision A 2 of this section.

C. Virginia locality of residence.

1. An individual who is a resident of Virginia shall apply for AG in the locality in which he resides.

2. The Virginia locality where the individual last resided prior to entering a Virginia-based institution, including but not limited to a nursing home, intermediate care facility, correctional facility, rehabilitation center, psychiatric facility, or medical facility, is the individual's place of residence for purposes of applying for AG.

22VAC40-25-20. Assessment.

A. In order to receive payment from the ~~Auxiliary Grants Program~~ program for care in an ~~assisted living facility~~ ALF or in ~~adult foster care~~ AFC, ~~applicants~~ an individual applying for AG shall have been assessed by a qualified assessor using the ~~uniform assessment instrument~~ UAI and determined to need residential or assisted living care or ~~adult foster care~~ AFC.

B. As a condition of eligibility for the ~~Auxiliary Grants Program~~ program, a ~~uniform assessment instrument~~ UAI shall be completed on ~~a recipient~~ an individual prior to admission, except for an emergency placement as documented and approved by a Virginia adult protective services worker or when an individual residing in an ALF who was formerly private pay needs to apply for AG, at least once annually, and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ~~assisted living facility~~ ALF or ~~adult foster care~~ AFC.

C. The ~~assisted living facility~~ ALF or ~~adult foster care~~ AFC provider ~~are~~ is prohibited from charging a security deposit or any other form of compensation for providing a room and services to the ~~recipient~~ individual. The collection or receipt of money, gift, donation or other consideration from or on behalf of ~~a recipient~~ an individual for any services provided is prohibited.

22VAC40-25-30. Basic services.

The rate established under the ~~Auxiliary Grants Program~~ program shall cover the following services:

1. Room and board.

a. Provision of a furnished room;

b. Housekeeping services based on the needs of the ~~recipient~~ individual;

c. Meals and snacks provided in accordance with 22VAC40-72 including, but not limited to food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for a ~~resident~~ individual by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all ~~residents~~ individuals desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the ~~resident's~~ individual's physician, the daily menu, including snacks, for each ~~resident~~ individual shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex, and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish~~.~~; and

d. Clean bed linens and towels as needed by the ~~recipient~~ individual and at least once a week.

2. Maintenance and care.

a. Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;

b. Medication administration as required by licensing regulations including insulin injections;

c. Provision of ~~generic~~ personal toiletries including ~~soap and~~ toilet paper;

d. Minimal assistance with the following:

(1) Care of personal possessions;

(2) Care of personal funds if requested by the ~~recipient~~ individual and provider policy allows this practice, and ~~are~~ in compliance with ~~22VAC40-72-440 through 22VAC40-72-460~~ 22VAC40-72-140 and 22VAC40-72-150, Standards for Licensed Assisted Living Facilities;

(3) Use of the telephone;

(4) Arranging transportation;

(5) Obtaining necessary personal items and clothing;

(6) Making and keeping appointments; and

(7) Correspondence;

e. Securing health care and transportation when needed for medical treatment;

f. Providing social and recreational activities; and

g. General supervision for safety.

22VAC40-25-40. Personal needs allowance.

A. The personal needs allowance is included in the monthly ~~auxiliary grant~~ AG payment to the ~~resident~~ individual and must be used by the ~~auxiliary grant recipient~~ individual for personal items. These funds shall not be commingled with the

funds of the provider and shall be maintained in a separate bank account. The personal needs allowance ~~for the recipient~~ shall not be charged by the provider for any item or service not requested by the ~~recipient~~ individual. The provider shall not require an ~~auxiliary grants recipient~~ individual or his personal representative to request any item or service as a condition of admission or continued stay. The provider must inform the ~~recipient~~ individual or his personal representative of a charge for any requested item or service not covered under the ~~auxiliary grant~~ AG and the amount of the charge. The personal needs allowance is expected to cover the cost of the following items and services:

1. Clothing;

2. Personal toiletries not included in those to be provided by the provider or if the ~~recipient~~ individual requests a specific type or brand of ~~toiletries~~ toiletry;

3. Personal items including tobacco products, sodas, and snacks beyond those required in subdivision 1 c of 22VAC40-25-30;

4. Hair care services;

5. Over-the-counter medication, medical copayments and deductibles, insurance premiums;

6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;

7. Personal telephone, television, or radio;

8. Social events and entertainment offered outside the scope of the activities program; and

9. Other items agreed upon by both parties except those listed in subsection B of this section.

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);

2. Administration of accounts (bookkeeping, account statements);

3. Debts owed the provider for basic services as outlined by regulations; or

4. Provider laundry charges in excess of $10 per month.

22VAC40-25-45. Conditions of participation in the ~~Auxiliary Grants Program~~ program.

A. Provider agreement for ~~assisted living facilities~~ ALF.

1. As a condition of participation in the ~~Auxiliary Grants Program~~ program, the ~~assisted living facility~~ ALF provider is required to complete and submit to the department a signed provider agreement as stipulated below. The agreement is to be submitted ~~with the application to be a licensed assisted living facility~~ prior to the ALF accepting AG payment for qualified individuals. A copy of the ALF's current license must be submitted with the provider agreement.

2. The ~~assisted living facility~~ ALF provider shall agree to the following conditions in the provider agreement to participate in the ~~Auxiliary Grants Program~~ program:

a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;

b. Submit an annual ~~financial audit~~ certification form by ~~June 30~~ October 1 of each year;

c. Care for ~~auxiliary grant recipients~~ individuals with AG in accordance with the requirements herein at the current established rate;

d. Refrain from charging the ~~recipient~~ individual, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;

e. Accept the ~~auxiliary grant payment~~ established rate as payment in full for services rendered~~, except as permitted herein~~;

f. Account for the ~~resident's~~ personal needs ~~allowance~~ allowances in a separate bank account and apart from other facility funds and issue a monthly statement to each individual regarding his account balance;

~~g. Provide the local department of social services a 60-day written notice when a recipient is to be discharged from the facility;~~

~~h.~~ g. Provide a 60-day written notice to the ~~department~~ regional licensing office in the event of the facility's closure or ownership change; ~~and~~

h. Provide written notification of the date and place of an individual's discharge or the date of an individual's death to the local department of social services determining the individual's AG eligibility and to the qualified assessor within 10 days of the individual's discharge or death; and

i. Return to the local department of social services determining the individual's AG eligibility, all ~~auxiliary grant~~ AG funds received after the death or discharge date of an ~~auxiliary grant recipient~~ individual in the facility.

B. As a condition of participation in the ~~Auxiliary Grants Program~~ program, the ~~adult foster care~~ AFC provider shall be approved by a local department of social services and comply with the requirements set forth in ~~22VAC40-770~~ 22VAC40-771.

22VAC40-25-50. Establishment of rate.

~~A. Submission of an audit report to the department is required for an assisted living facility to accept residents who receive an auxiliary grant.~~

~~B. The rate shall be valid unless the assisted living facility is required to submit a new audit report as a result of (i) significant operational changes as defined by department policy, (ii) the assisted living facility changes ownership, (iii) the assisted living facility changes location, or (iv) the adult foster care provider is no longer approved by the local department of social services.~~

~~C.~~ The ~~auxiliary grant~~ established rate for ~~recipients~~ individuals authorized to reside in an ~~assisted living facility~~ ALF or in ~~adult foster care~~ AFC is the established rate as set forth in the appropriation act~~,~~ or as set forth by changes in the federal maintenance of effort formula. The AG payment is determined by adding the rate plus the personal needs allowance minus the ~~recipient's~~ individual's countable income. The effective date is the date of the individual's approval for AG by the local department of social services ~~for an auxiliary grant~~.

~~D. Assisted living facilities that have been in licensed operation in excess of 12 months shall submit an annual audited financial report by June 30 for the preceding calendar year. In lieu of an audited financial report, facilities that are licensed for 19 or fewer beds may submit an audited report that includes only the following: validation that resident funds are held separately from any other funds of the facility; number of resident beds occupied during the reporting period; operating revenue and expenses; and average monthly cost per resident. The audit report shall be reviewed by the department. The approved rate shall be the established rate as set forth in the appropriation act or as set forth by changes in the federal maintenance of effort formula. The approved rate will be retroactive to the first month of the calendar year. If a provider fails to submit an annual audit report for a new calendar year, the provider will not be authorized to accept new auxiliary grant recipients.~~

22VAC40-25-60. Reimbursement.

A. Any moneys ~~in excess of the provider's established rate~~ contributed toward the cost of care pending ~~public pay~~ AG eligibility determination shall be reimbursed to the ~~recipient~~ individual or contributing party by the ~~assisted living facility~~ ALF or ~~adult foster care~~ AFC provider once eligibility for ~~public pay~~ AG is established and that payment received. The ~~auxiliary grants~~ payment shall be made payable to the ~~recipient~~ individual, who will then reimburse the provider for care. If the ~~recipient~~ individual is not capable of managing his finances, his personal representative is responsible for reimbursing the provider.

B. In the event an ~~assisted living facility~~ ALF is closed ~~or sold~~, the facility shall ~~provide verification that all recipient funds, including auxiliary grants funds, have been transferred and shall obtain a signed receipt from the new owner or new facility~~ prorate the rate up to the date of the individual's discharge and return the balance to the local department of social services that determined the individual's eligibility for the grant. If the facility maintained the individual's personal needs allowance, the facility shall provide a final accounting of the individual's personal needs allowance account within 60 days of the individual's discharge. Verification of the accounting and of the reimbursement to the individual shall be mailed to the case management agency responsible for the individual's annual reassessment. In the event of ~~a recipient's~~ the individual's death ~~or discharge~~, the provider shall give to the ~~resident's~~ individual's personal representative a final accounting of the ~~recipient's~~ individual's funds within ~~30~~ 60 calendar days of the event. All ~~auxiliary grants~~ AG funds received after the death or discharge date shall be returned to the local department of social services responsible for determining the individual's AG eligibility as soon as practicable. Providers who do not comply with the requirements of this regulation may be subject to adverse action.

22VAC40-25-70. ~~Audits~~ Certification.

A. ALFs shall submit an annual certification form by October 1 of each year for the preceding state fiscal year. The certification shall include the following: identifying information about the ALF, census information including a list of individuals who resided in the facility and received AG during the reporting period, and personal needs allowance accounting information. If a provider fails to submit an annual certification form, the provider will not be authorized to accept additional individuals with AG.

~~A.~~ B. All ~~financial~~ information reported by an ~~assisted living facility~~ ALF on the ~~annual audit report shall be reconcilable to the residence's general ledger system or similar records. The audit shall account separately for the personal needs allowance of auxiliary grant recipients. All reports are subject to audit by the department~~ certification form shall be subject to audit by the department. Financial information that is not reconcilable to the provider's general ledger or similar records could result in ~~retroactive adjustment of the rate and~~ establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

~~B.~~ C. All records maintained by an ~~adult foster care~~ AFC provider, as required by ~~22VAC40-770~~ 22VAC40-771, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to the provider's records could result in ~~retroactive adjustment of the rate and~~ establishment of a liability to the provider. Records shall be retained for three

years after the end of the reporting period or until audited by the department, whichever is first.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (22VAC40-25)

Auxiliary Grant Program Provider Agreement, 032-02-0747-00-eng (rev. 5/09).

Auxiliary Grant Certification, 032-02-0745-01-eng (rev. 4/09).

VA.R. Doc. No. R09-1327; Filed January 27, 2010, 10:21 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

Titles of Regulations: **24VAC30-150. Land Use Permit Manual (repealing 24VAC30-150-10 through 24VAC30-150-2200).**

24VAC30-151. Land Use Permit Regulations (adding 24VAC30-151-10 through 24VAC30-151-760).

Statutory Authority: § 33.1-12 of the Code of Virginia.

Effective Date: March 17, 2010.

Agency Contact: Mutaz Alkhadra, Land Use Permit Manager, Department of Transportation, Asset Management Division, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 662-9403, FAX (804) 662-9426, or email mutaz.alkhadra@vdot.virginia.gov.

Summary:

This action repeals the existing Land Use Permit Manual and replaces it with a new regulation to define what uses may be permitted on the right-of-way under the control of the Commonwealth Transportation Board and the Virginia Department of Transportation (VDOT). This action simplifies permit requirements for utilities in subdivisions, permits roadside memorial signing under certain conditions, increases permit fees, adds accommodation fees for utilities within limited access right-of-way, eliminates redundant and obsolete provisions, and makes other clarification changes.

Since publication of the proposed regulations, changes were made to (i) reflect the transfer of responsibilities within VDOT; (ii) provide greater detail concerning permit requirements and administration and greater flexibility in assigning responsibility for permit issuance; (iii) remove the classification of utilities; (iv) eliminate certain provisions governing entrances and secondary street acceptance that are addressed in separate regulations; (v) revise provisions concerning overhead utilities to allow VDOT to decline to enter a shared resource agreement; (vi) revise certain installation requirements concerning underground utilities and pipelines to provide flexibility to the parties affected by these regulations; (vii) revise provisions concerning appeals to provide additional information on the appeals process, correct or clarify requirements, make appeals timelines consistent for land use regulations, and eliminate documentation requirements to streamline the appeals process; (viii) remove provisions concerning periodic adjustment for fees; (ix) standardize and update references to documents incorporated by reference to reflect current engineering practices; and (x) remove unnecessary definitions or terms and clarify or correct others.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 151
LAND USE PERMIT [~~MANUAL~~ REGULATIONS]

Part I
Definitions

24VAC30-151-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

[~~"AASHTO" means American Association of State Highway and Transportation Officials.~~]

"Backfill" means replacement of suitable material compacted as specified around and over a pipe, conduit, casing, or gallery.

"Boring" means a method of installation that is done underground and by which a carrier or casing is jacked through an oversize bore. The bore is carved progressively ahead of the leading edge of the advancing pipe as soil is [~~mucked~~ forced] back through the pipe. [~~Direction~~ Directional] drilling, coring, jacking, etc., are also considered boring.

"Carrier" means a pipe directly enclosing a transmitted [~~fluid (~~] liquid or gas [~~)~~].

"Casing" means a larger pipe enclosing a carrier.

[~~"Class G utility" means any utility facility that is owned and operated by a city, county, town, public utility district,~~

~~public utility authority, or a political subdivision of the Commonwealth, which has the right to install lines within a specific area, except where they are providing telecommunication services.~~

~~"Class P utility" means all owners and operators of a utility facility, except those that are providing telecommunication or cable television services, and not meeting the definition of a Class G Utility, as defined in this section, to include all privately, investor and cooperatively owned entities.~~

~~"Class T utility" means all owners and operators of a telecommunication or cable television facility that have been authorized to provide telecommunication or cable television services.~~

"Central Office Permit Manager" means the VDOT employee assigned to provide management, oversight, and technical support for the state-wide land use permit program.]

"Clear zone" means the [~~unobstructed, relatively flat~~ total border] area [~~provided beyond the edge of the traveled way for the recovery~~] of [a roadway, including, if any, parking lanes or planting strips, that is sufficiently wide for an] errant [~~vehicles~~ vehicle to avoid a serious accident]. [~~The width of the clear zone is determined by the type of facility, traffic volume, speed, horizontal alignment and embankment and is detailed~~ Details on the clear zone are] in VDOT's Road Design Manual [~~(revised January 2005)~~] (see 24VAC30-151-760 [~~for document information~~]).

"[~~CFR (~~] Code of Federal Regulations [~~)~~]" [or "CFR"] means the regulations promulgated by the administrative and regulatory agencies of the federal government.

"Commercial entrance" means any entrance serving [~~all entities~~ land uses] other than two or fewer individual private residences [, agricultural operations to obtain access to fields, or civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins]. (See "private entrance.")

"Commonwealth" means the Commonwealth of Virginia.

[~~"Comprehensive agreement" means an agreement between VDOT and utility companies allowing utility placements within VDOT right of way.~~

"Commonwealth Transportation Commissioner" means the individual serving as the chief executive officer of the Virginia Department of Transportation or a designee.]

"Conduit" means an enclosed tubular runway for carrying wires, cable or fiber optics.

"Cover" means the depth of the top of a pipe, conduit, or casing below the grade of the roadway, ditch, or natural ground.

"Crossing" means any utility facility that is installed across the roadway, either perpendicular to the longitudinal axis of the roadways or at a skew of no [~~more~~ less] than 60 degrees to the roadway centerline.

["District administrator" means the VDOT employee assigned the overall supervision of the departmental operations in one of the Commonwealth's nine construction districts.

"District administrator's designee" means the VDOT employee assigned to supervise land use permit activities by the district administrator.]

"District roadside manager" means the VDOT employee assigned to provide management, oversight and technical support for district-wide vegetation program activities.

"Drain" means an appurtenance to discharge liquid contaminants from casings.

"Encasement" means a structural element surrounding a pipe.

"Erosion and sediment control" means the control of soil erosion or the transport of sediments caused by the natural forces of wind or water.

[~~"Functional area" means the area of the physical highway feature, including a specific highway feature such as an intersection, traffic circle, roundabout, railroad grade crossing, or interchange, plus that portion of highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.~~]

"Grounded" means connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Limited access highway" means a highway especially designed for through traffic over which abutters have no easement or right of light, air, or access by reason of the fact that their property abuts upon such limited access highway.

"Longitudinal installations" means any utility facility that is installed parallel to the centerline of the roadway or at a skew of less than 60 degrees to the roadway centerline.

"Manhole" means an opening in an underground system that workers or others may enter for the purpose of making installations, inspections, repairs, connections and tests.

"Median" means the portion of a divided highway [~~separating the traveled ways for traffic in opposite directions~~ that separates opposing traffic flows].

"Nonbetterment cost" means the cost to relocate an existing facility as is with no improvements.

"Permit" means a document that sets the conditions under which VDOT allows [~~others to use or change VDOT~~ its] right-of-way [to be used or changed].

"Permittee" means the person or persons, firm, corporation or government entity that has been issued a land use permit.

"Pipe" means a tubular product or hollow cylinder made for conveying materials.

"Pole line" means poles or a series or line of supporting structures such as towers, cross arms, guys, racks (conductors), ground wires, insulators and other materials assembled and in place for the purpose of transmitting or distributing electric power or communication, signaling and control. It includes appurtenances such as transformers, fuses, switches, grounds, regulators, instrument transformers, meters, equipment platforms and other devices supported by poles.

"Power line" means a line for electric power or communication services.

"Pressure" means relative internal pressure in pounds per square inch gauge (psig).

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants [or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins].

[~~"Private subdivision road or street" means a road or street that serves more than two individual properties or residences, and is maintained by entities other than VDOT.~~]

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical [,] and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Relocate" means [~~the movement and reestablishment of~~ to move or reestablish] existing facilities.

[~~"Residency" means the local VDOT office for the county in which the applicant will be performing the work.~~

~~"Residency administrator" means the VDOT employee assigned to supervise departmental operations within a specified geographical portion of the Commonwealth, consisting of one to four counties, or his designee. In districts having centralized functions for the review and approval of site plans, this position may be either:~~

~~1. The district land development manager for functions related to plan approval;~~

~~2. The residency permit manager for functions related to construction and inspection of permits; or~~

~~3. Any other position specifically designated to perform these functions.~~]

"Right-of-way" means that property within the system of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel. The property includes the [~~traveled~~ travel] way and associated boundary lines [~~and,~~] parking and recreation areas [and other permanent easements for a specific purpose].

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Service connections" means any utility facility installed overhead or underground between a distribution main, pipelines, or other sources of supply and the premises of the individual customer.

"Site plan" means the engineered or surveyed drawings depicting proposed development of land.

"Storm sewer" means the system containing and conveying roadway drainage. [~~Storm sewer systems are not utilities.~~]

"Stormwater management" means the engineering practices and principles used to intercept stormwater runoff, remove pollutants and slowly release the runoff into natural channels to prevent downstream flooding.

"Structure" means that portion of the transportation facility that spans space, supports the roadway, or retains soil. This definition includes, but is not limited to, bridges, tunnels, drainage structures, retaining walls, sound walls, signs, traffic signals, etc.

"System of state highways" means all highways and roads under the ownership, control, or jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate systems.

"Telecommunication service" means the offering of telecommunications for a fee directly to the public or to privately, investor- or cooperatively owned entities.

"Transportation project" means a public project in development or under construction to provide a new transportation facility or to improve or maintain the existing system of state highways.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow, open excavation.

"Underground utility facilities" means any item of public or private property placed below ground or submerged for use [~~in connection with the storage or conveyance of materials~~ by the utility].

"Utility" means a privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing telecommunications, cable television, electricity, gas, oil, petroleum products, water, steam, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system.

"VDOT" means the Virginia Department of Transportation [~~,~~ or] the Commonwealth Transportation Commissioner [~~, or a designee~~].

"Vent" means an appurtenance to discharge gaseous contaminants from [a] casing [or carrier pipe].

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Part II
Authority

24VAC30-151-20. Authority.

The General Rules and Regulations of the Commonwealth Transportation Board ([~~24VAC30-20~~ see 24VAC30-151-760]) are adopted pursuant to the authority of § 33.1-12 of the Code of Virginia, and in accordance with the Virginia Administrative Process Act ([Chapter 40 ( ] § 2.2-4000 et seq.[ ) of Title 2.2] of the Code of Virginia). These rules and regulations provide that no work of any nature shall be performed on any real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT. Real property includes, but is not limited to, the right-of-way of any highway in the state highways system. Written permission is granted either by permit or a state-authorized contract let by VDOT. By issuing a permit, VDOT is giving permission only for whatever rights it has in the right-of-way; the permittee is responsible for obtaining permission from others who may also have an interest in the property. [~~Agents~~ Employees] of VDOT are authorized to issue permits as described in this chapter. This chapter prescribes the specific requirements of such permits.

24VAC30-151-30. Permits and agreements.

[~~One of the following types of documents shall be used to authorize the use or occupancy of the right-of-way.~~

~~1.~~ A. The following shall apply to all authorized use or occupancy of the right-of-way:

1. A permit is required for any type of utility activity occurring within the right-of-way.

2. A permit is required to install any entrance onto a state highway.

3. A permit is required to perform surveying operations within the right-of-way.

4. A permit is required for any agricultural and commercial use and occupancy of the right-of-way.

5. A permit is required for any miscellaneous activity or use of the right-of-way except for mailboxes and newspaper boxes (see 24VAC30-151-560) and public service signs (see 24VAC30-151-570).

B.] Single use permits. A single use permit allows the permittee to perform [~~all~~ any] approved activities [not covered by a districtwide permit held by the permittee] within limited access and nonlimited access rights-of-way [at a specific location]. [~~All permits issued pursuant to this chapter are single use permits unless otherwise noted. The following requirements apply to single use permits:~~

~~a. A permit is required for all types of utility activities occurring within the rights of way. These activities include, but are not limited to, changes in voltage or pressure of an existing facility, maintenance activities affecting vehicle traffic, all crossings of the right of way, and in all cases where utility installations are relocated or modified within the existing right of way.~~

~~b. A permit is required for all entrances onto state highways.~~

~~c. A permit is required for all agricultural and commercial uses and occupancy of the right of way.~~

~~d. A permit is required for all miscellaneous activities or uses as defined in Part VII of this chapter.~~

The district administrator's designee shall be responsible for the issuance of all single use permits, except that those requests for tree trimming and tree removal may be issued by the district roadside manager in consultation with the district administrator's designee. The size of the specific location covered by a single use permit shall be at the discretion of the district administrator's designee and may cover work up to two miles along the right-of-way (see 24VAC30-151-40). The land use permit issued for the original installation allows the permittee to repair or perform routine maintenance operations to existing facilities. A single use permit shall be required when the following actions are proposed, even if the

activities being conducted are normally allowed under a districtwide permit:

1. Stopping or impeding highway travel in excess of 15 minutes or implementing traffic control that varies from the standard, or any combination of these, as outlined in the Virginia Work Area Protection Manual (see 24VAC30-151-760).

2. Performing work within limited access right-of-way.

3. Trimming or cutting any trees located within the right-of-way.

4. Applying any pesticide or landscaping within the right-of-way.

5. Construction of a permanent entrance to a state highway.]

[~~2. Residencywide~~ C. Districtwide] permits. [~~The following requirements apply to residencywide permits: a.~~] A [~~residencywide~~ districtwide] permit allows the permittee to perform multiple occurrences of certain activities [~~within~~ on] nonlimited access right-of-way without obtaining [~~specific permission~~ a single use permit] for each occurrence. [~~A residencywide permit shall be issued for one year. The residency administrator may exercise discretion to require a single use permit for the operations described in the~~ The central office permit manager shall be responsible for the issuance of all districtwide permits. VDOT may authorize districtwide permits covering multiple districts (see 24VAC30-151-710).

The] following [is a] list of [~~accepted~~ acceptable] activities [~~for residencywide~~ under the jurisdiction of districtwide] permits:

[~~(1)~~ 1.] Utilities.

[~~Residencywide~~ a. Districtwide] permits may be issued [~~to allow~~ granting] cities, towns, counties, public agencies, or utility companies the authority to install and maintain service connections to their existing main line facilities. Work under a [~~residencywide~~ districtwide] permit will allow the permittee to install a service connection across a [~~two lane road~~ nonlimited access primary or secondary highway] above or below ground, provided the installation can be made from the side of the roadway without [~~equipment stopping or~~] impeding travel [~~lanes~~ for more than 15 minutes to pull or drop a service line across a highway], and [~~where~~ provided] no part of the roadway pavement, shoulders and ditch lines will be disturbed. [~~It does not allow the permittee to perform maintenance operations on existing mainline facilities or to expand existing plants.~~ The installation of parallel utility service connections, not to exceed 500 feet in length, shall be placed along the outer edge of the right-of-way with a minimum of 36 inches of cover. Telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover; however the permittee assumes full responsibility for any and all damages caused by VDOT or VDOT contractors resulting from a service connection buried with less than 30 inches of cover within the right-of-way.

A districtwide permit allows for the overlashing of telecommunication lines onto existing lines or strand.

b. A separate single use permit will be required when the following activities associated with the installation and maintenance of utility service connections are proposed:

(1) Cutting highway pavement or shoulders, or both, to locate underground utilities.

(2) Working within the highway travel lane on a nonemergency basis.

(3) Constructing a permanent entrance.

(4) Installing electrical lines that exceed 34.5 KV.

(5) Installing telecommunication services that exceed 100 pair copper cable or the fiber optic cable diameter equivalent.

(6) Installing new pole, anchors, parallel lines, or casing pipe extensions to existing utilities where such installation necessitates disturbance to the pavement, shoulder, or ditch line.

(7) Installing underground telephone, power, cable television, water, sewer, gas, or other service connections or laterals where the roadway or ditch lines are to be disturbed.

c. The installation of parallel utility service connections, not to exceed 500 feet in length, shall be placed along the outer edge of the right-of-way with a minimum of 36 inches of cover. Telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover; however the permittee assumes full responsibility for any and all damages caused by VDOT or VDOT contractors resulting from a service connection buried with less than 30 inches of cover within the right-of-way.

d. A districtwide permit allowing the installation and maintenance of utility service connections may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:

(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate Regional Traffic Engineer should be consulted to select or tailor the proper traffic

control devices. Each flag-person must be certified by VDOT and carry a certification card when flagging traffic and have it readily available for inspection when requested by authorized personnel.

(2) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.

e. The permittee must obtain single use permits from the district administrator's designee to continue the installation and maintenance of utility service connections during this revocation period.

2. Temporary logging entrances.

a. Districtwide permits may be issued for the installation, maintenance, and removal of temporary entrances onto nonlimited access primary and secondary highways for the purpose of harvesting timber.

b. A separate single use permit is required when the following activities associated with timber harvesting operations are proposed:

(1) Installing a permanent entrance.

(2) Making permanent upgrades to an existing entrance. Improvements to existing entrances that are not permanent upgrades will not require a separate single use permit.

(3) Cutting pavement.

(4) Grading within the right-of-way beyond the immediate area of the temporary entrance.

c. A logging entrance permit may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:

(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate district traffic engineer should be consulted to select or tailor the proper traffic control measures. Each flag-person must be certified by VDOT and carry a certification card and have it available for inspection upon request by authorized VDOT personnel.

(2) The permittee shall contact the appropriate district administrator's designee prior to installing a new logging entrance or initiating the use of an existing entrance for logging access.

(3) The permittee shall contact the appropriate district administrator's designee for final inspection upon completion of logging activities and closure of the temporary entrance.

(4) The permittee shall restore all disturbed right-of-way at the temporary entrance, including but not limited to ditches, shoulders, and pavement, to pre-activity condition subject to acceptance by the appropriate district administrator's designee.

(5) The permittee shall remove excessive mud and any debris that constitutes a hazardous condition from the highway pursuant to a request from the appropriate district administrator's designee. Noncompliance may also result in the issuance of a separate citation from the Virginia State Police or a local law-enforcement authority.

(6) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.

d. The permittee must obtain single use permits from the appropriate district administrator's designee to continue accessing state maintained highways for the purpose of harvesting timber during this revocation period.]

[~~(2)~~ 3.] Surveying.

[~~Residencywide~~ a. Districtwide] permits may be issued for surveying operations [~~where no part of the roadway pavement, shoulders and ditch lines will be disturbed.~~ on nonlimited access primary and secondary highways subject to the following:]

[~~b. The permittee must apply for a separate single use permit when the activities listed below occur, because they are not covered under the authority of a residencywide permit:~~

~~(1) Stopping or impeding highway travel or if any variance in implementing standardized traffic control plan is desired.~~

~~(2) Performing work within the "limited access" right-of-way.~~

~~(3) Trimming or cutting of any trees located within the right-of-way, applying any pesticide, or landscape activities.~~

~~(4) Cutting highway pavement or shoulders to locate utilities.~~

~~(5) Working within a highway travel lane on a nonemergency basis.~~

~~(6) Constructing a permanent entrance.~~

~~(7) Upgrading in excess of normal maintenance.~~

~~(8) Installing electrical lines that exceed 34.5 KV.~~

~~(9) Installing new poles, anchors, parallel lines or pipe extension to existing utilities necessitating disturbance of the pavement, shoulder, or ditch line.~~

(1) No trees are to be trimmed or cut within the right-of-way.

(2) No pins, stakes, or other survey markers that may interfere with mowing operations or other maintenance activities are to be placed within the right-of-way.

(3) No vehicles shall be parked so as to create a traffic hazard. Parking on through lanes is strictly prohibited.

b. A separate single use permit is required when the following surveying activities are proposed:

(1) Entering onto limited access right-of-way. Consideration for the issuance of such permits will be granted only when the necessary data cannot be obtained from highway plans, monuments, triangulation, or any combination of these, and the applicant provides justification for entry onto the limited access right-of-way.

(2) Stopping or impeding highway travel in excess of 15 minutes or varying the implementation of standard traffic control, or any combination of these, as outlined in the Virginia Work Area Protection Manual (see 24VAC30-151-760).

(3) Trimming or cutting any trees located within the right-of-way.

(4) Cutting highway pavement or shoulders to locate underground utilities.

c. A districtwide permit for surveying activities may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:

(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate Regional Traffic Engineer should be consulted to select or tailor the proper traffic control devices. Each flag-person must be certified by VDOT and carry a certification card when flagging traffic and have it readily available for inspection when requested by authorized personnel.

(2) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.

d. The permittee must obtain single use permits from the district administrator's designee to continue surveying activities during this revocation period.]

[~~3.~~ D.] In-place permits. [~~The following requirements apply to in-place permits:~~] In-place permits allow utilities to remain within the right-of-way of newly constructed [~~subdivision~~ secondary] streets. These utilities shall be installed according to VDOT approved street plans and [shall be] in place prior to VDOT street acceptance. [~~No fee is required for these permits.~~

E. Prior-rights permits. Prior-rights permits allow existing utilities to remain in place that are not in conflict with transportation improvements authorized under the auspices of a land use permit.

F. As-built permits. Agreements for the relocation of utilities found to be in conflict with a transportation project may stipulate that an as-built permit will be issued upon completion of the project.]

[~~4. Other requirements~~ G. Agreements]. In addition to obtaining a single use permit, [~~some utilities~~ a utility] may be required to enter an agreement with VDOT allowing the utility to use the [limited access] right-of-way in exchange for monetary compensation, [~~barter~~ the mutually agreeable exchange] of [goods or] services, or both.

[~~a.~~ 1.] Permit agreement. [~~(1).~~] A permit agreement is required for:

[~~(a)~~ a.] Any new longitudinal occupancy of the limited access right-of-way [where none have existed before], as allowed for in 24VAC30-151-300 and [~~24VAC30-151-320~~ 24VAC30-151-310].

[~~(b)~~ b.] Any new communication tower or small site facilities installed within the right-of-way, as allowed for in [~~24VAC30-151-320 or~~] 24VAC30-151-350.

[c. Any perpendicular crossing of limited access right-of-way, as allowed for in 24VAC30-151-310.]

[~~(2)~~] All [permit] agreements [~~and attachments~~] shall specify the terms and conditions required in conjunction with work performed within the right-of-way. If appropriate, all agreements shall provide for the payment of monetary compensation as may be deemed proper by the Commonwealth Transportation Commissioner [~~or a designee~~] for the privilege of utilizing the right-of-way.

[~~b.~~ 2.] Shared resource agreement. A shared resource agreement allows the utility to occupy the limited access right-of-way in exchange for the utility providing the needed VDOT facility or services. VDOT and the utility will agree upon the appropriate facilities or services to be provided and will establish the length of the term that will be compensated through the infrastructure needs or monetary compensation, or both. Any shared resource agreement shall also provide for compensation as may be deemed proper by the Commonwealth Transportation Commissioner [~~or a designee~~] in any renewal term. The shared resource agreement shall specify the initial and renewal terms of the lease.

24VAC30-151-40. General rules, regulations and requirements.

A. A land use permit is valid only on highways and rights-of-way under VDOT's jurisdiction. This permit neither implies nor grants otherwise. County and city permits must be secured for work on roads and streets under their jurisdictions. A land use permit covers the actual performance of work within highway rights-of-way and the subsequent maintenance, adjustments or removal of the work as approved by the [~~residency administrator. The residency administrator shall issue all permits, except that permits for tree trimming and tree removal may be issued by the district roadside manager in consultation with the residency administrator~~ central office permit manager or the district administrator's designee. Permits for communications facility towers may only be issued by the Commonwealth Transportation Commissioner]. The Commonwealth Transportation Commissioner [~~or a designee~~] shall approve all activities within limited access right-of-way prior to permit issuance. All permits shall be issued to the owner of the facility within highway rights-of-way or adjacent property owner in the case of entrance permits. Permits may be issued jointly to the owner and his contractor as agent. The applicant shall comply with all applicable federal, state, county and municipal requirements.

B. [~~Applicant shall apply for a land use permit at the local VDOT residency responsible for the county where the work is to be performed~~ Application shall be made for a district-wide permit through the central office permit manager and for single use permits from the district administrator's designee responsible for the county where the work is to be performed]. The applicant shall submit site plans or sketches for proposed installations within the right-of-way to VDOT for review, with studies necessary for approval. VDOT may require electronic submission of these documents. Where work is of a continuous nature along one route, or on several routes within one [~~residency~~ jurisdiction], it may be consolidated into one permit application. [For single use permits, such consolidation shall not be for a length greater than two miles.] The applicant shall also submit any required certifications for staff performing or supervising the work, and certification that applicable stormwater management requirements are being met. The plans shall include the ultimate development and also any applicable engineering design requirements. VDOT retains the authority to deny [an application for] or revoke a land use permit to ensure the safety, use, or maintenance of the highway right-of-way, or in cases where a law has been violated relative to the permitted activity.

C. The proposed installation granted by this permit shall be constructed exactly as shown on the permit or accompanying sketch. Distances from edge of pavement, existing and proposed right-of-way line, depths below existing and proposed grades, depths below ditch line or underground drainage structures, or other features shall be shown. Any existing utilities [~~in relation to~~ within close proximity of] the permittee's work shall be shown. Location of poles, guys, pedestals, relief valves, vent pipes, etc. shall be shown. Height of wires or cables above the crown of the roadway shall be shown. [~~Method of construction shall be indicated; i.e., plowing, trenching, boring, jacking, etc.~~]

D. In the event of an emergency situation that requires immediate action to protect persons or property, [~~the residency administrator may verbally authorize~~] work [may proceed] within the right-of-way [without authorization from the district administrator's designee]; however, [~~application for a permit must be initiated as soon as the emergency is alleviated and within 48 hours of~~ the permittee must contact the VDOT Emergency Operations Center as soon as reasonably possible but no later than 48 hours after] the end of the emergency situation.

E. The land use permit is not valid unless signed by the [~~residency administrator~~ central office permit manager] or [the district administrator's] designee.

F. The permittee shall secure and carry sufficient insurance to protect against liability for personal injury and property damage that may arise from the work performed under the authority of a land use permit and from the operation of the permitted activity. Insurance must be obtained prior to start of permitted work and shall remain valid through the permit completion date. The [~~residency administrator~~ central office permit manager or the district administrator's designee] may require a valid certificate or letter of insurance from the issuing insurance agent or agency prior to issuing the land use permit.

G. VDOT and the Commonwealth shall be absolved from all responsibilities, damages and liabilities associated with granting the permit. All facilities shall be placed and maintained in a manner to preclude the possibility of damage [to VDOT owned facilities or other facilities placed] within the highway right-of-way [by permit]. [~~VDOT will not be responsible for damage to the facility placed under permit as a result of future maintenance or construction activities performed by VDOT.~~]

H. A copy of the land use permit and approved site plans or sketches shall be [~~kept at the~~ maintained at every] job site [~~at all times~~] and [such items made] readily available for inspection when requested by authorized personnel. Strict adherence to the permit is required at all times. Any activity other than that described in the permit shall render the permit null and void. Any changes to the permit shall be coordinated and approved by the [~~residency administrator~~ district administrator's designee] prior to construction.

I. For permit work within the limits of a VDOT construction project, the permittee must obtain the contractor's consent in writing before the permit will be issued. The permittee shall

[coordinate and] schedule all permitted work within the limits of a VDOT construction project to avoid conflicts with contracted work.

J. Disturbances within the right-of-way shall be kept to a minimum during [~~construction~~ permitted] activities. Permit applications for proposed disturbances within the right-of-way that include disturbance on property directly adjacent to the right-of-way, in which the combined area of disturbance constitutes a land-disturbing activity as defined in § 10.1-560 of the Code of Virginia and [~~4VAC50-60-(~~ the] Virginia Stormwater Management Program [(VSMP)] Permit Regulations [~~).~~] (see 24VAC30-151-760), must be accompanied by documented approval of erosion and sediment control plans and stormwater management plans, if applicable, from the corresponding jurisdictional local or state government plan approving authority.

K. Restoration shall be made in accordance with VDOT Road [~~&~~ and] Bridge Specifications [~~,~~] VDOT Road and Bridge Standards [~~,~~] Virginia Erosion and [~~Sedimentation~~ Sediment] Control Handbook, [3rd Edition,] a technical guide to [~~4VAC50-30 (Virginia~~ the] Erosion and Sediment Control Regulations [~~),~~] and the Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2 [~~(effective 1999)~~], a technical guide to [~~4VAC50-60-(~~ the] Virginia Stormwater Management Program [(VSMP)] Permit Regulations [~~).~~] (see 24VAC30-151-760).

[~~The~~ Additionally, the] permittee shall:

1. Ensure compliance with [~~4VAC50-30 (Virginia~~ the] Erosion and Sediment Control Regulations [~~).~~] and [~~4VAC50-60-(~~ the] Virginia Stormwater Management Program [(VSMP)] Permit Regulations [~~).~~] (see 24VAC30-151-760).

2. Ensure copies of approved erosion and sediment control plans, stormwater management plans, if applicable, and all related non-VDOT issued permits are available for review and [~~kept on permitted areas~~ posted at every job site] at all times.

3. Take all necessary precautions to ensure against siltation of adjacent properties, streams, etc. in accordance with VDOT's policies and standards and the Virginia Erosion and Sediment Control Handbook, 3rd edition, [~~(effective 1992)~~] and the Virginia Stormwater Management Manual (see 24VAC30-151-760).

4. Keep dusty conditions to a minimum by using VDOT-approved methods.

5. Cut pavement only as approved by the [~~residency administrator~~ district administrator's designee]. Pavement cuts, restoration and compaction efforts, to include all materials, shall be accomplished in accordance with VDOT Road [~~&~~ and] Bridge Specifications (see 24VAC30-151-760) [~~and Form LUP-OC (1-2006)~~].

6. Ensure that an individual certified by VDOT in erosion and sediment control is present whenever any land-disturbing activity governed by the permit is performed. [All land disturbance activities performed under a VDOT land use permit shall be in accordance with all local, state, and federal regulations. The installation of underground facilities by a boring method shall only be deemed as a land-disturbing activity at the entrance and exit of the bore hole and not the entire length of the installation.]

7. Stabilize all disturbed areas immediately upon the end of each day's work and reseed in accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760). Temporary erosion and sediment control measures shall be installed in areas not ready for permanent stabilization.

8. Ensure that no debris, mud, water, or other material is allowed on the highways. [~~Written permission~~ Permission, documented in writing or electronic communication,] must be obtained from VDOT prior to placing excavated materials on the pavement. When so permitted, the pavement shall be cleaned only by approved VDOT methods.

L. Accurate "as built" plans and profiles of work completed under permit shall be furnished to VDOT upon request, unless waived by the [~~residency administrator~~ district administrator's designee]. For utility permits, the owner shall maintain records for the life of the facility that describe the utility usage, size, configuration, material, location, height or depth and special features such as encasement.

M. All work shall be performed in accordance with the [Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia) and the] Rules for Enforcement of the Underground Utility Damage Prevention Act [~~(20VAC5-309)~~] (see 24VAC30-151-760). For work within 1,000 feet of traffic signals or adjacent to other VDOT utilities, the permittee shall contact the [~~local VDOT residency~~ district administrator's designee] prior to excavation. [~~VDOT shall receive notification~~ The permittee shall notify VDOT] on the business day preceding 48 hours before excavation.

N. [~~Written permission~~ Permission, documented in writing or electronic communication,] must be obtained from the [~~residency administrator~~ district administrator's designee] prior to blocking or detouring traffic. Additionally, the permittee shall:

1. Employ safety measures [~~such as~~ including, but not limited to,] certified flaggers, adequate lights and signs.

2. Conduct all permitted activities in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways ([~~MUCTD~~ MUTCD]) and [related] special provisions (see [~~24VAC30-561 concerning adoption of this document~~ 24VAC30-151-760]) and the typical traffic control figures from the Virginia Work Area

Protection Manual ([~~filed as part of 24VAC30-310~~ see 24VAC30-151-760]).

3. Plan construction and maintenance operations with regard to safety and minimum traffic interference.

4. Coordinate notification with all county or municipal officials.

5. Ensure that permitted work does not interfere with traffic during periods of peak flow on heavily traveled highways.

6. Plan work so that closure of intersecting streets, road approaches and other access points is held to a minimum and as noted and approved in the permit documents.

7. Maintain safe access to all entrances and normal shoulder slope of the roadway across the entire width of the entrance.

[~~Failure to employ proper traffic control and construction standards mandated by the permit shall be cause for the residency administrator to remove the permittee from the right-of-way or revoke the permit, or both.~~]

O. All construction activities shall conform to Occupational Safety & Health Administration (OSHA) requirements.

P. The permittee shall be responsible for any settlement in the backfill or pavement for a period of [~~three~~ two] years after the completion date of permit, and for the continuing maintenance of the facilities placed within the highway right-of-way. [A one-year restoration warranty period may be considered, provided the permittee adheres to the following criteria:

1. The permittee retains the services of a professional engineer (or certified technician under the direction of the professional engineer) to observe the placement of all fill embankments, pavement, and storm sewer and utility trench backfill.

2. The professional engineer (or certified technician under the direction of the professional engineer) performs any required inspection and testing in accordance with all applicable sections of VDOT's Road and Bridge Specifications (see 24VAC30-151-760).

3. The professional engineer submits all testing reports for review and approval, and provides written certification that all restoration procedures have been completed in accordance with all applicable sections of VDOT's Road and Bridge Specifications (see 24VAC30-151-760) prior to completion of the work authorized by the permit.]

Q. The permittee shall [immediately] notify the [nearest] VDOT [~~residency~~ official who approved the land use permit] of involvement in any personal or vehicular accident [~~immediately~~ at the work site].

R. Stormwater management facilities or wetland mitigation sites shall not be located within VDOT rights-of-way unless the Commonwealth Transportation Board has agreed to participate in the use of a regional facility authorized by the local government. Stormwater management facilities or wetlands mitigation sites shall be designed and constructed to minimize impact within VDOT right-of-way. VDOT's share of participation in a regional facility will be the use of the right-of-way where the stormwater management facility or wetland mitigation site is located.

S. The [permittee shall notify, by telephone, voice mail message, or email, the] VDOT [~~residency or district~~] office where the land use permit [~~is~~ was] obtained [~~shall be notified 48 hours in advance of the start of the permitted work~~ prior to commencement of the permitted activity or any nonemergency excavation within the right-of-way].

T. Upon completion of the work under permit, the permittee shall [~~notify the residency administrator by letter giving~~ provide notification, documented in writing or electronic communication, to the district administrator's designee requesting final inspection. This request shall include] the permit number, county [name], route [number,] and name of the party or parties to whom the permit was issued. The [~~residency administrator~~ district administrator's designee] shall promptly [~~inspect~~ schedule an inspection of] the work covered under the permit and advise the permittee of any [~~needed~~ necessary] corrections.

24VAC30-151-50. Violations of rules and regulations.

A. Objects placed on, above, or under the right-of-way in violation of the general rules and regulations shall be removed within 10 calendar days of [receipt of notice from] VDOT [~~notification~~]. Objects not removed within 10 calendar days shall be moved at the owner's expense. Objects requiring immediate removal for public safety, use, or maintenance of any highway shall be moved immediately at the owner's expense. The provisions of § 33.1-373 of the Code of Virginia shall govern the [~~placement of advertising signs~~ removal of advertisements from] within the right-of-way. [The provisions of § 33.1-375 of the Code of Virginia shall govern the removal of other signs from within the right-of-way.]

B. The permittee will be civilly liable to the Commonwealth for expenses and damages incurred by VDOT as a result of violation of any of the [~~preceding~~] rules and regulations [of this chapter]. Violators shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.1-19 of the Code of Virginia.

[C. Failure to implement proper traffic control and construction standards mandated by the permit shall be cause for the district administrator's designee to remove the permittee from the right-of-way or revoke the permit, or both.

D. See 24VAC30-151-30 for violations related to specific district-wide permit types.]

24VAC30-151-60. Authority of [~~residency administrator~~ district administrator's designee].

A. The [~~residency administrator~~ district administrator's designee] may suspend the work, wholly or in part, if the permittee fails to correct conditions that are unsafe for workers or the general public or to adequately carry out provisions of the permit. The [~~residency administrator~~ district administrator's designee] may also suspend work within the right-of-way for such periods as [~~he may deem~~ deemed] necessary because of weather or other conditions unsuitable for work or any other condition or reason deemed to be in the public interest. The [~~residency administrator~~ district administrator's designee] may delegate this authority.

B. Should the permittee fail to comply immediately with any order of the [~~residency administrator~~ district administrator's designee] made under the provisions of this section, the [~~residency administrator~~ district administrator's designee] may cause unacceptable authorized work to be removed and replaced and unauthorized work to be removed. The [~~residency administrator~~ district administrator's designee] may revoke the permit and restore the right-of-way. Any costs to restore the right-of-way upon revocation of a permit shall be borne by the permittee.

24VAC30-151-70. Plan review and permit inspection.

[~~The residency administrator may assign a~~ When a permit request is of extraordinary nature or extent, or both, in lieu of the fee payment outlined in 24VAC30-151-710, VDOT may require the permittee to pay the actual costs associated with plan review, other administrative tasks, inspection, and equipment usage. A] VDOT inspector, consultant inspector, or both, [may be assigned] to inspect or monitor [, or both,] any work performed within the right-of-way. The absence of [~~a VDOT~~ an] inspector does not relieve the permittee [~~of~~ from] performing the [authorized] work [~~according to~~ in accordance with] the provisions of the permit. [~~The permittee may be responsible for the cost of site plan, sketch reviews and any other administrative functions, as well as all costs associated with an inspector and any equipment used.~~]

24VAC30-151-80. Permit time limits and cancellations.

A. The permittee shall provide an estimate of the number of days needed to accomplish the work under permit. The [~~residency administrator~~ district administrator's designee] shall determine the actual time limit of all work being accomplished under permit [, which shall not normally be less than six months in duration]. Weather conditions and seasonal operations such as seeding, paving, etc., will be considered when determining a realistic time limit for work to be completed. [~~Work shall begin within 30 days of permit issuance; otherwise, the permit may be cancelled.~~]

B. [~~Requests for extension of time and reinstatement of permits shall be made in writing to the residency administrator. If the request is made prior to the original expiration date an extension of time may be granted on the permit.~~ It shall be the responsibility of the permittee to ensure that the permitted activity will be completed within the time limit established with the original permit issuance. If it is anticipated that the work covered by the permit cannot be completed during the original permit term, the permittee shall provide a request, documented in writing or electronic communication, for an extension of time to the district administrator's designee. The request shall provide reasonable justification for granting the extension. A one-time extension of time may be granted if the request is received at least 10 calendar days prior to the original permit expiration date. Should the original time limit or the one-time permit extension expire, the permittee shall provide a written request for reinstatement to the district administrator's designee. The request shall provide reasonable justification for granting the reinstatement. At the time of reinstatement, the district administrator's designee shall notify the permittee that no additional extensions of the permit will be allowed and that the work must be completed within the time limits indicated in the reinstatement notice. Consideration will not be given to an extension request for a permit that has been reinstated after an extension.

C. The permittee shall make every effort to ensure that work begins within 30 calendar days of permit issuance. If the permitted work cannot commence within 30 calendar days of permit issuance, the permittee shall notify the district administrator's designee of the delay.] Upon request by the permittee, the permit may be cancelled if no work has started. [~~The original permit shall be returned to the issuing VDOT residency.~~]

24VAC30-151-90. Hours and days work authorized; holiday schedule.

Normal hours for work under the authority of a permit [, single use or districtwide,] are [~~between the hours of~~ from] 9 a.m. [~~and~~ to] 3:30 p.m. Monday through Friday [~~. The residency administrator may authorize work on Saturday or Sunday~~ for all highways classified as arterial or collector. All highways classified as local roads will have unrestricted work hours and days].

[~~No permitted work will~~ Permitted nonemergency work will not] be allowed [on arterial and collector highway classifications] from noon on the preceding weekday through the following state observed holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

If the observed holiday falls on a Monday, the permit will not be valid from noon on the preceding Friday through noon on Tuesday. [~~The residency administrator will establish additional time restrictions or changes in working hours~~ The

district administrator's designee may establish alternate time restrictions in normal working hours and days for single use permits. The central office permit manager may establish alternate time restrictions in normal working hours and days for districtwide permits].

24VAC30-151-100. Appeal.

[~~A.~~] The district administrator is authorized to consider and rule on unresolved differences of opinion between the [applicant or] permittee and the [~~residency administrator~~ district administrator's designee] that pertain to the interpretation and application of the requirements of this chapter [~~. The resolution of any appeals that involve limited access permits must have the concurrence of the Commonwealth Transportation Commissioner or a designee~~ as they relate to single use permits within nonlimited access highways].

To initiate an appeal with the district administrator, the [applicant or] permittee must provide the district administrator and the [~~residency administrator~~ district administrator's designee] with a written request for such action [within 30 calendar days of receipt of written notification of denial or revocation and must set forth the grounds for the appeal]. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the district administrator will advise the [applicant or] permittee in writing [within 60 calendar days upon receipt of the appeal] regarding the decision of the appeal, with a copy to the [~~residency administrator~~ district administrator's designee]. The [applicant or] permittee may further appeal the district administrator's decision to the Commonwealth Transportation Commissioner [~~or a designee~~]. All correspondence requesting an appeal should include copies of all prior correspondence regarding the issue or issues with [~~the county official and~~] VDOT representatives.

[~~The permit applicant may appeal denial or revocation of a permit in writing to the district administrator or a designee. All appeals must be made within 10 working days of receipt of written notification of denial or revocation, setting forth the grounds for the appeal.~~ The central office division administrator responsible for overseeing the statewide land use permit program is authorized to consider and rule on unresolved differences of opinion that pertain to the interpretation and application of the requirements of this chapter as they relate to districtwide permits. To initiate an appeal, the applicant or permittee must provide the division administrator with a written request for such action within 30 calendar days of receipt of written notification of denial or revocation and must set forth the grounds for the appeal. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the division administrator will advise the applicant or permittee in writing within 60 calendar days upon receipt of the appeal regarding the decision of the appeal. The applicant or permittee may further appeal the division administrator's decision to the Commonwealth Transportation Commissioner. All correspondence requesting an appeal should include copies of all prior correspondence regarding the issue or issues with VDOT representatives.]

[~~B.~~] Appeals [~~on permits for any work~~ involving permit requests] within limited access rights-of-way [and appeals of decisions of the district administrator and the division administrator] shall be made to the Commonwealth Transportation Commissioner [~~or a designee~~ for resolution. To initiate an appeal, the applicant or permittee must provide the Commonwealth Transportation Commissioner with a written request for such action within 30 calendar days of receipt of written notification of denial or revocation and must set forth the grounds for the appeal. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the Commonwealth Transportation Commissioner will advise the applicant or permittee in writing within 60 calendar days upon receipt of the appeal regarding the decision of the appeal].

Part III
Denial or Revocation of Permits

24VAC30-151-110. Denial; revocation; refusal to renew.

A. A land use permit may be revoked upon written finding that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating activities within the right-of-way. Repeated violations may result in a permanent denial of the right to work within the right-of-way. A permit may also be revoked for misrepresentation of information on the application, fraud in obtaining a permit, alteration of a permit, unauthorized use of a permit, or violation of a water quality permit. Upon revocation, the permit shall be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new land use permit shall be obtained prior to performing any work within the right-of-way.

B. Land use permits may be denied to any applicant or company, or both, for a period not to exceed six months when the applicant or company, or both, has been notified in writing by [~~a VDOT designee that violations existed under a previously issued permit~~ the Commonwealth Transportation Commissioner, the central office permit manager, district administrator, or district administrator's designee that violations have occurred under the jurisdiction of a districtwide or previously issued single use permit]. Any person, firm, or corporation violating a water quality permit shall permanently be denied a land use permit. Furthermore, these violators may be subject to criminal prosecution as provided for by § 33.1-19 of the Code of Virginia.

Part IV
Entrances

24VAC30-151-120. [~~Introduction to provisions~~ Provisions] governing entrances.

VDOT's authority to regulate highway entrances is provided in §§ 33.1-197 [~~and,~~] 33.1-198 [, and 33.198.1] of the Code of Virginia and its authority to make regulations concerning the use of highways generally is provided in § 33.1-12 (3) of the Code of Virginia. [~~No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and a permit has been issued. The Commonwealth Transportation Board has the authority to designate highways as limited access and to extinguish access rights to those facilities as provided in § 33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control, 24VAC30-401 (see 24VAC30-760).~~

~~The design and construction of entrances shall comply with the specifications in this part and any additional conditions, restrictions, or modifications deemed necessary by the residency administrator to preserve the safety, use and maintenance of the state highway system~~ Regulations regarding entrances are set forth in VDOT's regulations promulgated pursuant to § 33.1-198.1 of the Code of Virginia (see 24VAC30-151-760)].

24VAC30-151-130. [~~General provisions governing entrances.~~ (Reserved)]

[~~A. VDOT shall not be obligated to grant more than one access point per parcel of record. If a parcel is served by more than one road in the state highway system, the residency administrator shall determine upon which road or roads the proposed access point or points are to be constructed. VDOT will provide reasonably convenient access to the parcel; VDOT is not obligated to provide the most convenient access, nor is VDOT obligated to provide the permit applicant's preferred entrance location or entrance design.~~

~~B. When two or more properties are to be served by the same entrance, the permittee shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the residency administrator.~~

~~C. The residency administrator may alter any proposed entrance location or design, whether private or commercial, to obtain the best possible sight distance or entrance spacing.~~

~~D. No less than minimum sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT engineering standards as described in the Road Design Manual (see 24VAC30-151-760), except that the legal speed limit shall be used in lieu of design speed. In cases where the operating speed of the segment of highway is determined to be lower than the legal speed limit and, in the judgment of the residency administrator, will not create hazards for either a driver at a connection or on the highway, the operating speed may be used in lieu of the legal speed limit. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed entrance including, but not limited to, median crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersectional or stopping sight distance at a proposed entrance shall be borne by the permittee.~~

~~E. Only the Commonwealth Transportation Commissioner or a designee may waive the required sight distance, after a traffic engineering investigation has been performed. If a sight distance waiver is requested, the permittee shall furnish the residency administrator a traffic engineering investigation report, prepared by a professional engineer. The methodology and format of the report shall be determined by the residency administrator.~~]

24VAC30-151-140. [~~Private entrances.~~ (Reserved)]

[~~A. The property owner shall identify the desired location of the private entrance with the assistance of a VDOT representative. The entrance should be placed at the location with the best possible sight distance. Slope grading or tree removal, or both, may be required to provide safe and convenient means of ingress and egress.~~

~~B. The property owner shall obtain a permit and, on shoulder and ditch section roads, shall be responsible for installing the entrance, unless the property owner requests VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder in accordance with VDOT policies and engineering standards at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.~~

~~C. Grading and installation of an asphalt or concrete driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.~~

~~D. VDOT will not install driveways, private entrances, or pipes for property owned and being developed for sale by developers, speculators or contractors.~~

~~E. Installation of an entrance on a curb and gutter street shall be the responsibility of the property owner.~~

F. In all cases, positive drainage away from the roadway must be achieved.

G. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section roadways, that portion of the entrance within the normal shoulder portion of the roadway.

2. On roadways with ditches, the drainage pipe at the entrance.

3. On roadways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

4. On roadways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.]

24VAC30-151-150. [Commercial entrances – coordination with local governments. (Reserved)]

[A. For all commercial entrances, the applicant shall coordinate with appropriate local government agencies to identify possible conflicts with local, state or federal regulation and plans, including but not limited to local zoning regulations, land use plans, transportation plans, access management plans, overlay districts and planned urban developments.

B. If local governments have established site plan approval processes for developments, VDOT may not process and approve the permit prior to the local government's approval.

C. Some local governments charge a traffic impact fee based on the size of a development or the projected traffic generated by the proposed development. Such fees do not release the applicant from fees and improvements required by VDOT. When a local government requires improvements to the abutting state highway compatible with an ultimate transportation plan, VDOT may require additional improvements to assure the safety and capacity of the proposed entrances and to manage access points along the highway.]

24VAC30-151-160. [Tenure of commercial entrances. (Reserved)]

[A. The tenure of an entrance to any highway is not infinite, nor is the entrance meant to be transferred from one owner to another. Should the residency administrator determine that an entrance is substandard or that safety, use, or maintenance of the entrance has changed significantly enough to require correction, the necessary changes shall be made by the owner or the entrance may be closed at the direction of the residency administrator.

B. VDOT will maintain the entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons and curb and gutter, culvert and drainage structures.

C. Reconstruction, relocation or upgrading, or a combination of these, may be required at owner's cost when a VDOT representative determines after review that one of the following conditions exists:

1. Safety. When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other condition.

2. Use. When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or characteristics of the traffic.

3. Maintenance. When the entrance becomes unserviceable due to heavy equipment damage, reclamation by natural causes, or increased traffic volumes generated by development, etc.

D. Commercial entrances may be reviewed by the residency administrator periodically for substandard conditions as outlined in subsection C of this section. Commercial entrances should also be reviewed by the residency administrator when any of the following occur:

1. The property is being considered for sale.

2. The property is being considered for rezoning or other local legislative action.

3. The property is subject to a site plan review.

4. There is a change in commercial use either by the property owner or by a tenant.

5. Interparcel access becomes available.

These periodic reviews are necessary to provide both patron and other highway users with a safe means of travel.]

24VAC30-151-170. [Access management /entrance location. (Reserved)]

[A. As entrance location and design are reviewed, appropriate access management shall be utilized to ensure safety, integrity and functionality of the transportation system is maintained. As part of any commercial entrance permit review, the residency administrator will determine what improvements are needed to preserve the functionality of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, to protect the transportation corridor. If the location of the entrance is within the limits of a local or VDOT approved access management plan, the plan should guide the residency administrator in determining the appropriate design and location of the entrance. Access management techniques include but are not limited to:

1. Restricting entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances shall not be permitted within the functional areas of intersections, traffic circles, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations, on highways classified as principal arterial or minor arterial. The residency administrator may grant a waiver of this requirement after receipt of a traffic engineering study prepared by a professional engineer showing that highway operation and safety shall not be adversely impacted by the proposed entrance. Entrances at the above listed locations on highways classified as collector or local may be permitted at discretion of the residency administrator.

2. Shared entrances with adjacent properties. To reduce the number of access points to state highways, joint use entrances are recommended for adjacent parcels if an agreement can be reached by the property owners. For a joint use entrance to be approved by the residency administrator, a copy of the property owners' recorded agreement shall be submitted with the permit application.

3. Coordination of access points. The spacing of proposed access point or points in relation to existing or approved entrances and the use of the roadway shall be considered when determining the location of the proposed entrance. Access points on principal arterial and minor arterial highways shall not be permitted within the functional area of adjacent entrances. The residency administrator may grant a waiver of this requirement after receipt of a traffic engineering study prepared by a professional engineer showing that highway operation and safety shall not be adversely impacted by the proposed entrance.

4. Encouraging interparcel connectivity. When commercial properties exist adjacent to the permittee's property, the permittee is encouraged to construct designated vehicular connections between his property and any or all of the adjacent commercial properties and to grant cross access easements to any or all of these adjacent commercial properties in such a manner that affords access between the highway and these adjacent properties. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide interparcel connectivity, unless the residency administrator deems such connectivity unsafe or inappropriate.

5. Service or frontage roads. To limit connections to some highways and facilitate interparcel connections, the permittee shall construct service, frontage, or reverse frontage roads from the proposed entrance to adjacent property line or lines if the proposed development will cause traffic signal warrants to be met at the entrance and the entrance is on a highway classified as principal arterial or minor arterial. The residency administrator may grant a waiver of this requirement. The residency administrator may require the construction of service, frontage, or reverse frontage roads by the permittee on highways functionally classified as collector or local, or in cases where development traffic is not expected to cause traffic signal warrants to be met. At such time as a road serves three or more separately owned parcels, is constructed to VDOT standards, is in good condition, and if the board of supervisors of the county in which it is constructed requests it, the service, frontage, or reverse frontage road may be accepted into the appropriate system of state highways for maintenance. Service, frontage, or reverse frontage roads that are not dedicated to public use must be protected as easements. If a permit applicant cannot or does not wish to comply with this requirement, the entrance shall be limited to right in right out movements.

6. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below VDOT signal spacing standards and guidelines. If sufficient spacing between adjacent traffic signals is not available, the entrance shall be limited to right in right out movements. The residency administrator may grant a waiver of this requirement after receipt of a traffic engineering study prepared by a professional engineer showing that highway operation and safety shall not be adversely impacted by the proposed entrance and its associated traffic signal.

7. Limiting entrance movement. to preserve the safety and function of certain highways, the residency administrator may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

B. At the request of the residency administrator, the permit applicant shall furnish a traffic impact analysis that documents the effect of the proposed entrance and its related traffic upon the operation of the state highway system. The applicant or his agent shall obtain the requirements for the traffic impact analysis from the residency administrator prior to conducting the traffic impact analysis.

1. A professional engineer shall prepare the traffic impact analysis.

2. If the traffic impact analysis indicates that the proposed entrance will cause the state highway system to suffer an increase in delay or a reduction in capacity beyond acceptable levels established in the requirements of the traffic impact analysis, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of any mitigation measures.

3. Any mitigation measures shall be approved by the residency administrator prior to permit approval. Mitigation measures may include but are not limited to:

a. The construction of additional lanes on the roadway;

b. Construction of auxiliary lanes or turning lanes;

c. Construction or removal of crossovers;

d. Installation, modification, or removal of traffic signals and related equipment;

e. Provisions to limit the traffic generated by development served by the proposed entrance;

f. Recommendations from adopted corridor studies or design studies and other access management practices and principles not otherwise mentioned herein; or

g. Dedication of additional right of way or easement, or both, for future road improvements.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the residency administrator may deny the permit.]

24VAC30-151-180. [~~Drive in theaters.~~ (Reserved)]

[A drive in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in § 33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive in theaters.]

24VAC30-151-190. [~~Temporary entrances (construction/logging entrances).~~ (Reserved)]

[Construction of temporary construction or logging entrances upon the state highway system shall be authorized by single use permit only. The permittee must contact the appropriate residency administrator for an on site meeting to approve the location prior to installing an entrance or utilizing an existing entrance. The residency administrator shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage and flaggers shall be used to ensure safe ingress and egress.

Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately if it poses a threat to safety or, if it does not pose a threat to safety, as directed by the residency administrator.

The permittee must restore, at the permittee's cost, all disturbed highway rights of way, including, but not limited to, ditches, shoulders, roadside and pavement to their original condition when removing the entrance. All such restorations are subject to approval by the residency administrator.]

24VAC30-151-200. [~~Access to public waters.~~ (Reserved)]

[VDOT may grant the use of portions of the highway right of way for access to public waters upon written request from the Executive Director of the Virginia Department of Game and Inland Fisheries to the Commonwealth Transportation Commissioner.]

24VAC30-151-210. [~~Entrance design.~~ (Reserved)]

[A. All entrance design and construction shall comply with standards in the Road Design Manual (see 24VAC30-151-760), Road and Bridge Standards (see 24VAC30-151-760), Road and Bridge Specifications (see 24VAC30-151-760), and other VDOT engineering and construction standards as may be appropriate. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.).

B. In the event an entrance is proposed within the limits of a future planned roadway project that will ultimately change a highway, the permittee may be required to construct entrances compatible with the roadway's ultimate design.

C. All entrance design and construction shall consider pedestrian and bicycle users of the highway.

D. The residency administrator will determine the need for curb and gutter, sidewalks, or other features at the proposed entrance. Ordinances or entrance standards established by counties or cities that exceed those of VDOT, supersede those of VDOT.

E. It is essential that entrance and site design allow unimpeded movements of traffic entering or exiting the entrance. The permittee shall demonstrate to the satisfaction of the residency administrator that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use or maintenance of the highway.

F. Sites accessed by a proposed entrance shall be designed so as to prevent on site queues from impacting travel on the abutting highway. At the request of the residency administrator, the permit applicant shall furnish a report prepared by a professional engineer that documents the impact of expected on site queues upon the function of the abutting highway during the peak hours of the site. The district administrator or designee may waive this requirement in exceptional circumstances after a review of the queue report.]

Part V
Occupancy of Right-of-Way

24VAC30-151-220. Commercial use agreements.

A. Where wider rights-of-way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the highway, including such preliminary features as tree planting,

the correction of existing drainage conditions, etc., the Commonwealth Transportation Commissioner does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.

When the land adjoining the highway is used for commercial purposes and where the existing road is located on the opposite side of the right-of-way, thereby placing the business from 65 feet (in the case of 110 feet right-of-way) to 100 feet or more (in the case of 160 feet right-of-way) away from the main traveled road, the owner of the business may continue to locate his driveways and pumps, in the case of a filling station, within the state right-of-way, provided that the driveways and pumps are at least as far from the edge of the existing pavement as existing driveways and pumps in evidence on the road are from the nearest edge of the pavement to their similar structures. No additional driveways or pumps may be constructed within the right-of-way. In such cases, agreements for "commercial uses" may be entered into for use of portions of the right-of-way for temporary or limited periods under the following policies and conditions:

1. Until such time as the Commonwealth Transportation Commissioner deems it necessary to use right-of-way acquired for future construction on a project for road purposes, agreements may be made with adjoining property owners for the temporary use of sections thereof. The use of this land shall be limited to provisions as set forth in the agreement, which shall cover commercial pursuits consistent with similar operations common to the highway. These operations and special conditions may include gasoline pumps, but not gasoline tanks.

2. The area of right-of-way designated for use of the landowner must not be used for the storing of vehicles, except while the vehicles are being serviced at the gasoline pumps. The area must be kept in a clean and orderly condition at all times.

B. Agreements may be revoked for cause or as outlined [~~above~~ in subdivision A 1 of this section], either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:

1. The storage of road materials when other nearby suitable areas are not available;

2. The planting of trees and shrubs for permanent roadside effects;

3. The correction or improvement of drainage;

4. Development of wayside, parking or turnout areas; or

5. For other purposes as may be deemed necessary by the Commonwealth Transportation Commissioner.

C. Applications for agreements for commercial uses shall be made to the [~~residency administrator~~ district administrator's designee]. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right-of-way, together with description and plat of the area to be covered by it. The text of the application should describe the specific use for the site.

D. Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in [~~24VAC30-151-220 B~~ subsection C of this section]. VDOT shall not be responsible in any way for the policing of areas subject to commercial agreements. No structures are to be erected on areas subject to commercial agreements without written approval of the Commonwealth Transportation Commissioner.

24VAC30-151-230. Agriculture use agreements.

A. In cases where wider rights-of-way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the same, including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the Commonwealth Transportation Commissioner does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.

When this land is being used for agricultural purposes, which would necessitate the owner preparing other areas for the same use, agreements for agricultural uses may be entered into for use of portions of the right-of-way for temporary or limited periods.

B. Agreements for agricultural uses may be made with adjoining property owners, until such time as the Commonwealth Transportation Commissioner deems it necessary to use right-of-way acquired for future construction on a project for road purposes. Agricultural use is not permitted on limited access highways. The use of this land will be limited to provisions as set forth in the agreement, which, in general, will cover agricultural pursuits the same as those carried out on adjoining lands and thereby made an integral part of the agreement. Operations and special conditions covering such operations may include one or more of the following:

1. Grazing of cattle and other livestock [– is] permitted provided the area is securely enclosed by appropriate fence to eliminate any possibility of animals getting outside of the enclosure.

2. Forage crops such as hay, cereals, etc. [– are] permitted provided that their growth will not interfere with the safe and orderly movement of traffic on the highway, and that, after crops are harvested, the land is cleared, graded and

seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.

3. Vegetable crops [– are] permitted provided that its growth will not interfere with the safe and orderly movement of traffic on the highway, and that all plants will be removed promptly after crops are harvested and the land cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.

4. Fruit trees [– are] permitted to maintain existing fruit trees, provided that they are sprayed to control insects and diseases; fertilized and the area is kept generally clear of weeds, etc., but no guarantee of longevity may be expected.

5. Small fruits [– are] permitted, but no guarantee of longevity may be expected.

6. Other uses [–] as may be specifically approved.

C. Agricultural use agreements will be subject to revocation for cause or as outlined [~~above~~ in subsection B of this section], either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:

1. Storage of road materials when other nearby suitable areas are not available;

2. The planting of trees and shrubs for permanent roadside effects;

3. The correction or improvement of drainage;

4. The development of wayside, parking or turnout areas; or

5. For other purposes as may be deemed necessary by the Commonwealth Transportation Commissioner.

D. Applications for agreements for agricultural uses shall be made to the [~~residency administrator~~ district administrator's designee]. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right-of-way, together with a description and plat of the area to be covered by it. The text of the application should describe in detail the specific use for which the area is to be utilized.

Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in subsection C of this section. VDOT shall not be held responsible in any way for the policing of areas subject to agricultural use agreements. No structures are to be erected on areas subject to agricultural use agreements without written approval of the Commonwealth Transportation Commissioner.

24VAC30-151-240. Dams.

A. VDOT may permit dams [~~, including dams~~] for farm ponds [~~,~~] within the right-of-way [~~when all of the following provisions are satisfied~~. The local Soil and Water Conservation District, as defined in § 10.1-500 of the Code of Virginia, will coordinate the approval of all requests to establish farm ponds, including existing or proposed roadway occupation of the dam, with the district administrator's designee]. For the purpose of this section, a roadway will be considered to [~~occupy a~~ accommodate a farm pond] dam if:

1. Any part of the fill for the roadway and the fill for the dam overlap; [~~or~~]

2. The area between the two embankments is filled in so that the downstream face of the dam is obscured; or

3. A closed drainage facility from a dam extends under a roadway fill.

B. Permittee responsibility. The permittee acknowledges that VDOT's liability is limited to the maintenance of the roadway and that VDOT has no responsibility or liability due to the presence of the dam, the maintenance of which shall remain the responsibility of the permittee.

[~~C. Design review. A professional engineer shall certify that the hydraulic and structural design of any dam, as described above, is in accordance with current national and state engineering practice and that all pertinent provisions of the Road Design Manual (see 24VAC30-151-760) have been considered. Prior to approval of the permit, the hydraulic and structural design of a proposed dam shall be reviewed by VDOT and meet its requirements.~~

~~D. Supplemental, alternative access. To be permitted, a dam occupying a roadway must be supplemented by an appropriate alternative roadway facility for public ingress or egress, having suitable provisions that ensure perpetual maintenance.~~

~~E. Permits. All applicable federal and state permits associated with dams shall be secured and filed with the county prior to VDOT's approval of any permit for a dam.~~ C. All other roadway occupation of dams shall be in accordance with the Secondary Street Acceptance Requirements (see 24VAC30-151-760).]

24VAC30-151-250. Railroad grade crossing or encroachments.

Applications for permits to construct railroad tracks over, under, across or along the right-of-way of a state highway must be made by the railroad company or other company which will use the tracks. Permits shall not be issued to concerns contracting for such operations. All permit applications for highway grade crossings of secondary highways shall be accompanied by resolutions from the county board of supervisors, approving the crossings.

Sketches shall be submitted with the permit application, which show clearly the angle of crossing or location of the tracks with reference to the centerline of the road, the entrance onto the right-of-way, departure from the right-of-way, and width of the right-of-way of both railroad and highway. The grade line of the railroad must conform to the grade line of the highway and be so indicated on the sketch. Any necessary alteration in grade, due to crown of the highway, must be adjusted by the railroad company with the use of plant-mix-asphalt material, or as may be specified by the [~~residency administrator~~ district administrator's designee].

24VAC30-151-260. Railroad crossing permit requests from railroad companies.

A. Operations by the railroad company shall conform to applicable statutes of the Code of Virginia in regard to construction and maintenance of the crossing surface, signing and other warning devices, blocking of crossing, etc.

B. In the event of future widening of the highway, the permittee shall lengthen the crossing surface, relocate signs and signals, etc., as may be necessary, at no expense to the Commonwealth.

C. Suitable construction bond shall be required when the construction work is to be performed by a contractor for the railroad.

24VAC30-151-270. Railroad crossing permit requests by other companies.

Where a person, firm or chartered company engaged in mining, manufacturing or lumber getting, as defined in § 33.1-211 of the Code of Virginia, applies directly for a permit to construct a tramway or railroad track across the right-of-way, a permit may be issued under the following conditions:

1. Operations by the permittee shall conform to applicable statutes of the Code of Virginia in regard to construction and maintenance of the crossing surface, signing and other warning devices, blocking of crossing, etc.

2. In the event of future widening of the highway, the permittee shall lengthen the crossing surface, relocate signs and signals, etc., as may be necessary, at no expense to the Commonwealth.

3. The permittee shall furnish a performance and indemnifying bond of such amounts as VDOT deems necessary and agree to continue the same in force so long as the crossing is in place.

4. [~~Should the permittee in the future decide to dispose of the crossing to another party, VDOT shall be notified prior to such action, and proper arrangement shall then be made for the transfer~~ The permittee shall notify VDOT prior to the permittee transferring ownership of a crossing so that proper arrangement can be made for the transfer of permitted responsibilities].

24VAC30-151-280. Springs and wells.

In the acquiring of right-of-way, it is often necessary for VDOT to acquire lands where springs, wells and their facilities are located. It is the policy of VDOT to acquire these springs, wells and their facilities along with the land on which they are located. When so acquired, the landowner having previous use of [~~the~~] these springs, wells and their facilities may be granted a permit to use these springs, wells and their facilities until the Commonwealth Transportation Commissioner [~~or a designee~~] shall, by written notice, advise that the permit is terminated. The issuing of the permit shall in no way obligate VDOT to maintain the springs, wells or facilities.

24VAC30-151-290. Public telephones.

Public telephone booths may be allowed at rest areas and other locations as provided in 23 CFR 752.5 and allowed at other locations when [a] definite [~~needed is shown by VDOT~~ need is documented]. Telephone booths may be allowed when a definite need exists to serve the traveling public, such as:

1. At wayside areas, if well removed from access to off right-of-way public telephone stations.

2. At other isolated areas sufficiently removed from existing off right-of-way public telephone stations as to impair the safety and convenience of traffic, [~~providing~~ provided that]:

a. No private land is available or suitable for location of booth;

b. The location meets all safety requirements as to sight distance, access roads and parking; and

c. All costs incidental to providing turnout and parking area are borne by the telephone company.

Part VI
Utilities

24VAC30-151-300. General provisions governing utilities.

[~~A.~~ Utility installations on all highway rights-of-way shall comply with the following provisions:

1.] Overhead or underground utilities may be installed across any right-of-way by a utility under a permit. Requests for accommodations within the right-of-way shall be submitted to and reviewed by the [~~residency administrator~~ district administrator's designee]. These regulations govern all rights-of-way and apply to public and private utilities. These regulations also govern the location, design, methods and financial responsibility for installing, adjusting, accommodating and maintaining utilities.

[~~B.~~ 2.] Utility lines shall be located to minimize the need for later adjustments to accommodate future highway improvements and to allow servicing of the lines with minimum interference to highway traffic. Utility lines residing within the highway right-of-way shall conform to the type of highway and specific conditions for the highway section involved. Utility installations within the highway right-of-way and attachments to highway structures shall be of durable materials, designed for long service life and relatively free from the need for routine servicing and maintenance. [All temporary attachments to highway structures must be approved by VDOT.

3. The permittee assumes full responsibility for any and all damages caused by improperly installed facilities within the right-of-way under permit (single use or districtwide); therefore, the permittee must make every effort to install its facilities properly so as to preclude the possibility of damage.

4. The permittee is responsible for the continuing maintenance of its facilities placed within the right-of-way under permit.

5. Any conflicts with existing utility facilities shall be resolved between the permittee and the existing utility owner.

6. Utilities shall not be attached to a bridge or other structure unless the utility owner can demonstrate that the installation and maintenance methods will not interfere with VDOT's ability to maintain the bridge or other structure, will not impact the durability and operational characteristics of the bridge or other structure, and except for installation, will not require access from a limited access highway. The attachment method must be approved by VDOT (see 24VAC30-151-430).

7. The encasement of underground utility crossings shall be in accordance with 24VAC30-151-370.]

24VAC30-151-310. [~~Limited access highways – above and underground~~ Utility] installations [within limited access highways].

[~~A. Aboveground installations.~~ Utility installations on all limited access highways shall comply with the following provisions:

1. Requests for all utility installations within limited access right-of-way shall be reviewed and, if appropriate, be approved by the Commonwealth Transportation Commissioner prior to permit issuance.

2.] New utilities [~~shall~~ will] not be [permitted to be] installed [parallel to the roadway longitudinally] within [the controlled or] limited access [right-of-way lines of any highway,] except [that] in special cases [or under resource sharing agreements such installations may be permitted under strictly controlled conditions and then only] with approval from the Commonwealth Transportation Commissioner. [~~The~~ However, in each such case the utility owner must show the following:

a. That the] installation [~~shall~~ will] not adversely affect the safety, design, construction, operation, maintenance [~~and~~ or] stability of the highway [~~and may not be constructed or serviced by direct access from the through traffic roadways or connecting ramps~~].

[~~The~~ b. That the] accommodation [~~shall~~ will] not interfere with or impair the present use or future expansion of the highway. [~~All aboveground mounted installations shall be located adjacent to the right-of-way line and in accordance with clear zone requirements.~~

c. That any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility.

d. In no case will parallel installations within limited access right-of-way be permitted that involve tree removal or severe tree trimming.

3.] Overhead [and underground] utilities may be installed [~~on~~ within] limited access [~~highways as follows:~~ right-of-way by a utility company under an agreement that provides for a shared resource arrangement subject to VDOT's need for the shared resource.]

[~~1. The Commonwealth Transportation Commissioner or a designee shall approve all permits for overhead utilities to be placed within limited access right-of-way prior to issuance by the residency administrator, except for perpendicular crossings if all work for the crossings takes place outside the limited access right-of-way.~~

~~2. Longitudinal overhead utilities may be installed by a Class G, Class P or Class T utility under an agreement that provides for a shared resource arrangement or the payment of appropriate compensation, or both, subject to VDOT's need for the shared resource. Perpendicular crossings by overhead utilities may be installed by either a Class G, Class P, or Class T utility under permit issued by the residency administrator.~~

~~3. The Commonwealth Transportation Commissioner may grant exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owners must show that any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility. Where practicable, utilities shall be located in a utility area established along the outer edge of the right-~~

~~of way. A utility access control line will be established between the proposed utility installation and the through roadway and ramps. Service connections to adjacent properties shall not be permitted from the controlled access right of way.~~

~~4. Line crossings shall be located on a line that is perpendicular to the highway alignment. Parallel installations shall be located on a uniform alignment as near as practicable to the right of way line to provide a safe environment and space for future highway improvements and other utility installations, subject to the following conditions:~~

~~a. Overhead installations shall be placed with at least 21 feet of vertical clearance.~~

~~b. Installation of new parallel pole lines will not be allowed on new limited access highways or on limited access highways where parallel pole lines do not exist.~~

~~B. Underground utilities may be installed on limited access highways as follows:~~

~~1. For limited access right of way, new utilities shall not be installed parallel to the roadway except in special cases or under resource sharing agreements with approval from the Commonwealth Transportation Commissioner. The installation shall not adversely affect the safety, design, construction, operation, maintenance and stability of the highway and shall not be constructed or serviced by direct access from the through traffic roadways or connecting ramps. The accommodation shall not interfere with or impair the present use, or future expansion of, the highway.~~

~~2. Perpendicular crossings of underground utilities may be installed by either a Class G, Class P or Class T utility under permit issued by the residency administrator, provided all work takes place outside the limited access right of way~~

~~3. All underground utilities shall have a minimum of 36 inches of cover, unless conditions dictate otherwise.~~

~~4. Permits for all other underground installations within limited access right of way shall be approved by the Commonwealth Transportation Commissioner or a designee prior to issuance by the residency administrator.~~

~~5. Longitudinal underground utilities may be installed by a Class G, Class P or Class T utility under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both, subject to VDOT's need for the shared resource and the availability of space within the right of way.~~

~~6. The proposed method for placing an underground facility requires approval from the residency administrator. All underground facilities shall be designed to support the load of the highway and any superimposed loads.~~

~~7. The Commonwealth Transportation Commissioner may grant an exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owners must show that any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right of way for the accommodation of such utility. Where practicable, these utilities shall be located in a utility area established along the outer edge of the right of way. A utility access control line will be established between the proposed utility installation and the through roadway and ramps. Service connections to adjacent properties shall not be permitted from the controlled access right of way.~~

~~C. Encasements. Encasement pipe shall be utilized in accordance with 24VAC30-151-370.~~

4. All authorized longitudinal utility installations within limited access right-of-way, excluding communication tower facilities, shall be located in a utility area established along the outer edge of the right-of-way. Special exceptions must be approved by the Commonwealth Transportation Commissioner.

5. Authorized overhead utility installations within limited access right-of-way shall maintain a minimum of 21 feet of vertical clearance.

6. Authorized underground utility installations within limited access right-of-way shall have a minimum of 36 inches of cover.

7. Service connections to adjacent properties shall not be permitted from authorized utility installations within limited access right-of-way.

8. Overhead crossings shall be located on a line that is perpendicular to the highway alignment.

9. A utility access control line will be established between the proposed utility installation, the through lanes, and ramps.]

24VAC30-151-320. [~~Limited access highways: communication towers and site installations~~ (Reserved)]

[~~Communication tower structures and other types of surface mounted or underground utility facilities not associated with a longitudinal installation may be installed by a Class G, Class P or Class T utility under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both. The Commonwealth Transportation Commissioner may grant an exception for a nonshared resource arrangement where the conditions outlined in 24VAC30-151-310 B 7 are demonstrated. The design for ground mounted utility facilities shall be compatible with the visual quality of the highway section involved. Any~~

~~aboveground structures shall meet current clear zone or applicable safety requirements.~~]

24VAC30-151-330. [~~Nonlimited~~ Overhead utility installations within nonlimited] access highways [~~:~~ ~~aboveground installations~~].

[~~Line~~ A. Overhead utility] crossings shall be located on a line that is perpendicular to the highway alignment. [~~Parallel~~ Longitudinal] installations shall be located on a uniform alignment as near as [~~practicable~~ possible] to the right-of-way line to provide a safe environment and space for future highway improvements and other utility installations.

[~~1.~~ B.] Overhead longitudinal utilities may be installed on all nonlimited access highways, except in scenic areas as follows:

[~~a.~~ 1.] Overhead utilities may be installed [within nonlimited access right-of-way] by a [~~Class G~~] utility [company] under permit [, including a districtwide permit as allowed under 24VAC30-151-30 C 1].

[~~b. Either a Class P or a Class T utility may install overhead utilities under an agreement providing for a shared resource arrangement or the payment of appropriate compensation or both.~~

~~c The utility shall not be attached to a bridge or other structure unless the utility owners can demonstrate that the installation and maintenance methods will not require access from the roadway or interfere with roadway traffic.~~

~~d.~~ 2.] All [~~aboveground mounted~~ overhead] installations [, excluding communication tower facilities,] shall be located adjacent to the right-of-way line and in accordance with clear zone requirements. Repairs and replacement of similar installations may be performed in existing locations under the existing permit providing the work shall not impede the traveled way. Additional poles, taller poles, or cross-arms require a separate permit.

[~~2. Parallel~~ C. Longitudinal] installations of overhead lines within the right-of-way shall be limited to single-pole construction. Joint-use, single-pole construction will be encouraged at locations where more than one utility or type of facility is involved, especially where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements, or where separate installations may require extensive removal or alteration of trees.

[D.] Consideration will not be given to poles placed on a highway right-of-way of less than 40 feet [in width. Longitudinal pole line installation shall be located on the outer 15 feet of the right-of-way greater than 40 feet in width].

[~~3.~~ E.] Highway crossings should be grouped at one location whenever practical, and as [~~nearly~~ near] as possible to right angles to the center of the road.

[~~4. Overhead~~ F. New overhead] installations [crossing existing or proposed nonlimited access highways] shall [~~be placed with at least 21 feet~~ provide a minimum of 18 feet] of vertical clearance [or at a minimum height as established by the National Electric Safety Code (see 24VAC30-151-760), whichever is greater]. [~~The residency administrator may approve vertical clearance less than 21 feet; however, no crossing shall be permitted with less than 18 feet of vertical clearance.~~ The overlashing of telecommunications lines onto existing lines or strand is not considered a new overhead installation.

G. Existing overhead utilities that are found to be in horizontal or vertical conflict, or both, with proposed traffic control devices or signage, or both, shall be adjusted, at no cost to VDOT, to provide an unobstructed view for the traveling public and the appropriate clearance from traffic control devices or signage.

H. The vertical clearance for all new overhead installations parallel to an existing or proposed highway and within nonlimited access rights-of-way shall be in compliance with standards as specified in the National Electric Safety Code (see 24VAC30-151-760). The overlashing of telecommunications lines onto existing lines or strand is not considered a new overhead installation.]

[~~5.~~ I.] When crossing a median, all poles or other [overhead] facilities shall be placed to maintain an adequate clear zone in each direction. [~~Parallel pole lines may be placed on non limited access right of way that is 110 feet in width or wider by a signed, comprehensive agreement between VDOT and the utility owner. In such cases, poles shall be located on the outer 15 feet of the right of way. Parallel~~

J. Longitudinal] pole line installation will not be allowed in the median.

24VAC30-151-340. [~~Nonlimited access highways: underground~~ Underground utility] installations [within nonlimited access highways].

Underground longitudinal utilities may be installed under permit on all nonlimited access highways, except in scenic areas, as follows:

1. Underground utilities may be installed [within nonlimited access right-of-way] by a [~~Class G~~] utility [company] under permit [, including a districtwide permit as allowed under 24VAC30-151-30 C 1].

[~~2. Either a Class P or a Class T utility may install underground utilities under an agreement providing for a shared resource arrangement or the payment of appropriate compensation or both.~~

~~3.~~ 2.] All underground utilities [~~shall have~~ within VDOT rights-of-way will require] a minimum of 36 inches of cover, [~~unless conditions dictate otherwise~~ except

underground cables that provide cable or telecommunications services shall be at a minimum of 30 inches of cover]. [~~4. A~~ The district administrator's designee has the discretion to grant an exception to depth of cover requirements if the permittee encounters obstacles preventing the installation of main line facilities at the minimum depth of cover, as long as installation at the minimum depth of cover is resumed when the installation passes by the obstacle.

3. An underground] utility shall not be attached to a bridge or other structure unless the utility [~~owners~~ owner] can demonstrate that the installation and maintenance methods [will not interfere with VDOT's ability to maintain the bridge or other structure, will not impact the durability and operational characteristics of the bridge or other structure, and] will not require access from the roadway or interfere with roadway traffic. [~~5.~~ The attachment method must be approved by VDOT (see 24VAC30-151-430).

4.] The proposed method for placing an underground facility requires approval from the [~~residency administrator~~ district administrator's designee]. All underground facilities shall be designed to support the load of the highway and any superimposed loads. All pipelines and encasements shall be installed in accordance with 24VAC30-151-360 and 24VAC30-151-370.

[5. Underground utilities shall not be installed within the median area except, in special cases or under shared resource agreements, with approval from the Commonwealth Transportation Commissioner.

6. Underground utilities may be installed under sidewalk areas with approval from the district administrator's designee.]

24VAC30-151-350. Nonlimited access highways: communication towers and site installations.

[~~Communication tower structures and other types of surface mounted or underground utility facilities not associated with a longitudinal installation on a nonlimited access highway may be installed by a Class G, Class P or Class T utility under permit.~~ Communication tower structures and other types of surface mounted or underground utility facilities may be installed by a utility company under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both. The Commonwealth Transportation Commissioner may grant an exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owner must show that any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility. Communication pedestals, nodes, and amplifiers may be installed in the right-of-way pursuant to permit unless the district administrator's designee reasonably concludes that safety concerns at a specific location require placement of communication pedestals, nodes, or amplifiers elsewhere in the right-of-way. The placement of communication pedestals, nodes, or amplifiers between the edge of pavement or back of curb and the sidewalk shall not be permitted.]

24VAC30-151-360. Pipelines.

The permittee shall maintain minimum cover for any underground facility. Where pavement exists, the permittee shall bore, push, or jack and maintain a minimum cover of 36 inches [~~, unless conditions dictate otherwise~~].

The vertical and horizontal clearance between a pipeline and a structure or other highway facility shall be sufficient to permit maintenance of the pipeline and facility. [~~Parallel~~ Longitudinal] pipeline installations shall be kept out of the ditch line [~~whenever possible. When no other alternative is available, the minimum depth of pipes shall be 36 inches with satisfactory compaction and restoration. These installations do not normally require encasement since they are usually located in the outer edge of the highway right-of-way. The pipeline may not be constructed under the pavement or shoulders of a street, except for crossings. Pipelines may be constructed in the median or sidewalk areas if they do not conflict with other utilities, drainage facilities, or roadway features~~ where practical. When locating the utilities outside of the pavement area is not practical, such as in high density developments incorporating the principles of new urbanism as described in § 15.2-2223.1 of the Code of Virginia, utilities may be placed under the pavement. When utilities are proposed to be placed within the ditch line or under highway pavement, the permit applicant shall provide the justification to the district administrator's designee].

All water, gas, sewer, electrical, communications and any pressurized pipelines carrying hazardous material shall conform to all applicable industry codes, including materials, design and construction requirements. No asbestos cement conduit or pipe shall be used for any installation. The permittee may be required to certify [in writing that] this restriction has been [~~met in writing~~ observed,] if requested by VDOT.

Pipelines four inches in diameter or larger and no longer in use shall be cleaned of debris and plugged at open ends with Class A3 concrete. The [~~residency administrator~~ district administrator's designee] may also require such pipes to be filled prior to being plugged.

24VAC30-151-370. [~~Encasements~~ Encasement requirements].

[A.] Encasement pipe shall be required where it is necessary to avoid trenched construction, to protect carrier pipe from external loads or shock, or to convey leaking fluids or gases away from the areas directly beneath the traveled

way [if the utility has less than minimal cover; is near footings of bridges, utilities or other highway structures; crosses unstable ground; or is near other locations where hazardous conditions may exist]. [~~Encasement pipe shall be required if a utility has less than minimal cover, is near footings of bridges, utilities or other highway structures, crosses unstable ground, or is near other locations where hazardous conditions may exist. Encasement should be extended a suitable distance beyond the slope for side ditches and beyond the curb line in curbed sections~~ Encasements crossing nonlimited access rights-of-way shall extend a suitable distance beyond the slope for side ditches and beyond the back of curb in curbed sections]. The [~~residency administrator~~ district administrator's designee] may require encasement pipe even if an installation meets industry standards for nonencasement. [~~The residency administrator may approve directional bores without encasement on a case-by-case basis.~~

~~Limited access facility encasement pipes shall be installed from outside to outside of right of way line. All pipelines under pressure shall be encased where they cross the right of way. Encasement pipe for roadway crossings shall be extended completely through infield or median areas.~~]

Casing pipe shall be sealed at the ends with approved material to prevent flowing water and debris from entering the annular space between the casing and the carrier. All necessary appurtenances such as vents and markers shall be included.

[B. Uncased crossings of welded steel pipelines carrying transmittants that are flammable, corrosive, expansive, energized, or unstable, particularly if carried at high pressure, may be permitted subject to the following conditions:

1. The applicant provides supporting data documenting that its proposed installation meets or exceeds industry standards for unencased crossings,

2. The applicant provides supporting data documenting that the pipeline will support the anticipated load generated by highway traffic, and

3. All unencased pipeline crossings that fail must be relocated a minimum of 36 inches to either side of the failure. The failed line shall then be filled with grout and plugged at both ends.]

24VAC30-151-380. Appurtenances.

A. When vents are required they shall be located at the high end of casings less than 150 feet in length and generally at both ends of casings longer than 150 feet. Vent standpipes shall be on or beyond the right-of-way line to prevent interference with maintenance or pedestrian traffic.

B. A permit may be granted to install drains for any underground facility. [~~Permittee~~ The permittee] shall ensure [~~drains achieve~~ the achievement of] positive drainage.

C. National uniform color codes for identification of utilities shall be used to place permanent markers.

D. Manholes shall be placed in the shoulders, utility strips, or other suitable locations. When no other alternative is available, consideration will be given to placement of manholes in the pavement surface. [~~Manhole installations shall be minimized at street intersections. A manhole shall not be considered in the normal wheel path of driving lanes under any circumstances~~ Every effort should be made to minimize manhole installations at street intersections and in the normal wheel path of the travel lanes]. Manholes shall be designed and located in such a manner that shall cause the least interference to other utilities and future highway expansion.

E. Manhole frames and covers, valve boxes, and other castings located within the paved roadway, shoulder, or sidewalk shall be constructed [~~within a tolerance of ± 0.05 feet of~~ flush with] the finished grade. [Manhole frames and covers, valve boxes, and other castings located within sidewalk areas shall be constructed in accordance with the Americans with Disabilities Act (42 USC § 12101 et seq.).]

F. The permittee shall install shutoff valves, preferably automatic, in lines at or near the ends of structures and near unusual hazards, unless other sectionalizing devices within a reasonable distance can isolate hazardous segments.

24VAC30-151-390. In-place [and prior-rights] permits [~~for new subdivision streets~~].

A. Prior to [~~accepting~~ VDOT's acceptance of] a secondary street into the VDOT system, the public utility owner shall quitclaim its prior rights within the right-of-way to the Commonwealth in exchange for a permit for in-place utilities on new subdivision streets. The utility may continue to occupy such street in its existing condition and location. The public utility owner shall be responsible for the utility and resulting damages to persons and property [that might result from the presence of the utility]. Should VDOT later require the public utility owner to alter, change, adjust, or relocate any utility, the non-betterment cost will be the responsibility of the Commonwealth.

B. [In cases where existing utilities are not in conflict with transportation improvements authorized under the auspices of a land use permit, but would be located beneath transportation facility features, a prior rights permit may be issued that allows the existing utilities to remain in place.

C.] Utilities without prior rights but located within the right-of-way of new subdivision streets shall obtain an in place permit to occupy that portion of the right-of-way.

24VAC30-151-400. Utility adjustments in conjunction with a VDOT project.

A permit is required for facilities relocated in conjunction with a VDOT project. For specific information, see the Right-of-Way Utilities Relocation Policies and Procedures Manual

(see 24VAC30-151-760). Utilities may be placed within the highway right-of-way by permit, including adjustments and work performed in connection with utilities agreements. Utilities placed within the right-of-way shall conform to the requirements of this chapter. [~~Should VDOT later require the public service corporation to alter, change, adjust, or relocate any utility, the nonbetterment cost will be the responsibility of the Commonwealth.~~]

24VAC30-151-410. [~~Installations~~ Utility installations] in scenic areas.

Any new utility installations within the right-of-way or on other lands that were acquired or improved with federal-aid or direct federal highway funds, and are located within or adjacent to areas of scenic enhancement and natural beauty are discouraged. Such areas include public parks and recreational lands, wildlife and waterfowl refuges, historic sites, scenic strips, overlooks and scenic byways.

Any new utility installation in the above-mentioned areas shall be accordance with 23 CFR 645.209h.

24VAC30-151-420. [~~Roadway lighting~~ Lighting] facilities.

A. A permit is required for any lighting that will be on or overhanging the right-of-way. Lighting on or overhanging the right-of-way is classified as roadway lighting or nonroadway lighting. Roadway lighting is lighting intended to improve visibility for users of the roadway. Nonroadway lighting is lighting intended to improve visibility or to enhance safety for pedestrians or adjacent properties. [Lighting facilities are not considered a utility.]

B. Design of roadway lighting facilities shall be based upon the specifications developed by the Illuminating Engineering Society in the manual, American National Standard Practice for Roadway Lighting [~~(effective 2000)~~] (see 24VAC30-151-760). [~~An Informational Guide for Roadway Lighting~~ The Roadway Lighting Design Guide] by [the American Association of State Highway and Transportation Officials ( ] AASHTO [~~(effective 1984~~]) (see 24VAC30-151-760) may be used as a supplemental guide.

C. The permittee shall submit to the [~~residency administrator~~ district administrator's designee] two copies of scale drawings depicting lighting pole locations, mounting heights, pole and base type (breakaway or nonbreakaway), type and wattage of luminaries and arm lengths. [~~The~~ Roadway] lighting shall be installed in accordance with VDOT's Road and Bridge Specifications (see 24VAC30-151-760).

[D.] Nonroadway lighting may be allowed within the right-of-way, provided such lighting does not adversely affect the visibility of roadway users, and lighting supports and support locations do not compromise VDOT clear zone and safety standards.

24VAC30-151-430. Attachments to bridge structures.

A. Utilities may be located on highway grade separation structures across interstate [~~,~~] or other controlled access highways, over crossroads [~~,~~] and across major streams or valleys only in extreme cases, and with approval of the district structure and bridge engineer.

B. Communication and electric power lines shall be insulated, grounded and installed in a conduit or pipe to manholes or poles at either end of the structure, [~~whichever is~~ as] applicable.

C. If a utility is placed on a structure, the installation shall be located beneath the structure's floor between the girders or beams, and at an elevation above the bottom flange of the beam. The utility shall not be attached to the outside of the exterior beam, parapets or sidewalks.

D. Water and sewer attachments shall follow general controls previously listed for providing encasement and allied mechanical protection. In addition, shut-off valves shall be provided outside the limits of the structure.

E. Utilities attached to structures crossing waterways may require a water quality permit.

F. [~~Transmission natural~~ Natural] gas and petroleum mains may not be attached to highway structures.

Part VII
Miscellaneous Provisions

24VAC30-151-440. Miscellaneous permits.

In accordance with [~~24VAC30-20-20~~ the General Rules and Regulations of the Commonwealth Transportation Board (see 24VAC30-151-760)], no use of any real property under the ownership, control or jurisdiction of VDOT shall be allowed until written permission is first obtained from VDOT. A permit [, which shall constitute such permission,] is required for the uses of right-of-way described in this part.

24VAC30-151-450. Banners and decorations.

[~~VDOT may issue permits to counties, towns and religious or civic organizations~~ A county, town, or religious or civic organization shall obtain a single use permit] to hang banners or erect holiday decorations (such as lights) across state highways. Banners and decorations shall not remain in place more than 30 [calendar] days and shall be a minimum of 21 feet above the center of the road. They shall not detract from, interfere with, or conflict with any existing highway signs or signals.

24VAC30-151-460. Building movements.

[~~All~~ A single use permit shall be obtained for all] building movements over 16 feet wide [~~require the approval of the residency administrator after completion of the necessary investigative report (Form LUP HM) (1 2006)~~]. [All requests for building movements require the approval of the

district administrator's designee after the mover provides the required investigative report and route certification documents.] All building movements shall be covered by a performance bond that is commensurate with the type of move requested. [~~Applications~~ Application] for [a] building [~~movements~~ movement] shall be made through the [~~VDOT residency office~~ district administrator's designee in the district] where the move initiates.

24VAC30-151-470. Bicycle and road races, parades [,] and marches.

[A single use permit shall be obtained for bicycle and road races, parades, and marches.] Approval of such permit may be granted only under conditions that assure reasonable safety for all participants, spectators and other highway users, and will prevent unreasonable interference with traffic flow.

24VAC30-151-480. Chutes [~~and,~~] tipples [~~(coal mines, gravel pits, etc.), pipes from planning mills, and other similar structures~~].

A [single use] permit [~~is required~~ shall be obtained] for chutes, tipples or other structures to [~~handle~~ transport] coal, gravel [,] or other material [across the right-of-way]. The permit surety shall be sufficient to restore the appearance of the right-of-way and to remove the structure should it become dangerous or when it is no longer being used. Advertising signs or the names of owners shall not be placed on [~~chutes or tipples~~ such structures] located on the right-of-way.

The applicant shall obtain written approval from the local officials prior to permit application for [~~pipes from planning mills~~ such structures].

24VAC30-151-490. Construction or reconstruction of roads, bridges, or other drainage structures.

[~~Construction~~ A permit is required for construction] or reconstruction of roads, bridges or other drainage structures [. Such activities] may be permitted based upon evaluation, an engineering analysis provided by the applicant, and approval of the [~~residency administrator~~ district administrator's designee]. Approval by the [relevant] county board of supervisors may also be necessary.

24VAC30-151-500. Crest stage gauges, water level recorders.

Permits may be issued to any governmental state agency to install hydrological study equipment [within highway rights-of-way. Maintenance of these facilities is the responsibility of the permittee].

24VAC30-151-510. Emergency vehicle access.

[~~Signals may be permitted along and over streets or highways at fire stations~~ A single use permit shall be obtained for the installation of signals along and over streets or highways at a fire station] to facilitate the safe and expeditious entry of emergency vehicles. These signals include warning beacons, traffic signals to allow direct access to a roadway and modifications to existing signals. Maintenance of these facilities is the responsibility of the permittee.

24VAC30-151-520. Filming for movies.

[~~Movie filming may be permitted, but~~ A single use permit shall be obtained for movie filming within the highway rights-of-way and] shall be coordinated through the Film Office of the Virginia Tourism Corporation.

24VAC30-151-530. [~~Flashing school~~ School] signs.

[~~Flashing school signs may be placed under permit with the approval of the district traffic engineer~~ A single use permit shall be obtained for the installation and maintenance of time actuated flashing school speed limit signs within highway rights-of-way, subject to approval of the district administrator's designee].

24VAC30-151-540. Grading on right-of-way.

Grading that does not adversely affect the maintenance, safety [,] and operations of vehicles on [~~the highway~~ nonlimited access rights-of-way] may be permitted. [Permits shall not be granted for grading slopes and banks or otherwise changing their appearance within limited access rights-of-way, except in unusual circumstances where such work would improve the safety or operation of the highways.]

24VAC30-151-550. Roadside memorials.

A. Section 33.1-206.1 of the Code of Virginia directs the Commonwealth Transportation Board to establish regulations regarding the authorized location and removal of roadside memorials. Roadside memorials shall not be placed on state right-of-way without first obtaining a permit. At the site of fatal crashes or other fatal incidents, grieving families or friends often wish for a roadside memorial to be placed within the highway right-of-way. The following rules shall be followed in processing applications to place roadside memorials within the highway right-of-way:

1. Applications for a memorial shall be submitted to the [~~residency administrator~~ district administrator's designee]. The [~~residency administrator~~ district administrator's designee] will review, and if necessary, amend or reject any application.

2. If construction or major maintenance work is scheduled in the vicinity of the proposed memorial's location, the [~~residency administrator~~ district administrator's designee] may identify an acceptable location for the memorial beyond the limits of work, or the applicant may agree to postpone installation.

3. If the applicant requests an appeal to the [~~residency administrator's~~ district administrator's designee's] decision regarding amendment or rejection of an application, this appeal will be forwarded to the district administrator.

4. Criteria used to review applications shall include, but not be limited to, the following factors:

a. Potential hazard of the proposed memorial to travelers, the bereaved, VDOT personnel, or others;

b. The effect on the proposed site's land use or aesthetics; installation or maintenance concerns; and

c. Circumstances surrounding the accident or incident.

5. Approval of a memorial does not give the applicant, family, or friends of the victim permission to park, stand, or loiter at the memorial site. It is illegal to park along the interstate system, and because of safety reasons and concerns for the public and friends and family of the deceased, parking, stopping, and standing of persons along any highway is not encouraged.

B. The following rules will be followed concerning roadside memorial participation:

1. Any human fatality that occurs on the state highway system is eligible for a memorial. Deaths of animals or pets are not eligible.

2. The applicant must provide a copy of the accident report or other form of information to the [~~residency administrator~~ district administrator's designee] so that the victim's name, date of fatality, and location of the accident can be verified. This information may be obtained by contacting the local or state police. The [~~residency administrator~~ district administrator's designee] may also require that the applicant supply a copy of the death certificate.

3. Only family members of the victim may apply for a memorial.

4. The applicant will confirm on the application that approval has been obtained from the immediate family of the victim and the adjacent property owner or owners to locate the memorial in the designated location. If any member of the immediate family objects in writing to the memorial, the application will be denied or the memorial will be removed if it has already been installed.

5. If the adjacent property owner objects in writing, the memorial will be relocated and the applicant will be notified.

6. Memorials will remain in place for two years from the date of installation, at which time the permit shall expire [~~, and may not be renewed~~. The Commonwealth Transportation Commissioner may, upon receipt of a written request, grant an extension of the permit. An extension may be granted for a period of one year, and requests for further extensions must be submitted for each subsequent year]. The applicant or the family of the victim may request that the memorial be removed less than two years after installation.

7. The applicant shall be responsible for the fabrication of the memorial. VDOT will install, maintain, and remove the memorial, but the cost of these activities shall be paid by the applicant to VDOT.

C. Roadside memorial physical requirements.

1. The memorial shall be designed in accordance with [~~the Outdoor Advertising Manual~~ Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 and § 46.2-831 of the Code of Virginia and the Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices and Vegetation Control Regulations on State Rights-Of-Way] (see 24VAC30-151-760). The use of symbols, photographs, drawings, logos, advertising, or similar forms of medium is prohibited on or near the memorial.

2. Only one memorial per fatality shall be allowed.

3. VDOT reserves the right to install a group memorial in lieu of individual memorials to commemorate a major incident where multiple deaths have occurred.

4. The memorial shall be located as close as possible to the crash site, but location of the memorial may vary depending on the site and safety conditions.

a. Memorials shall be installed outside of the mowing limits and ditch line and as close to the right-of-way line as reasonably possible.

b. Memorials shall be located in such a manner as to avoid distractions to motorists or pose safety hazards to the traveling public.

c. Memorials shall not be installed in the median of any highway, on a bridge, or within 500 feet of any bridge approach.

d. Memorials shall not be permitted in a construction or maintenance work zone. VDOT reserves the right to temporarily remove or relocate a memorial at any time for highway maintenance or construction operations or activities.

e. If VDOT's right-of-way is insufficient for a memorial to be installed at the crash site, the [~~residency administrator~~ district administrator's designee] will locate a suitable location as close as possible to the incident vicinity to locate the memorial where sufficient right-of-way exists.

D. Removal. After the two-year term [or any extension of the term approved in accordance with this section] , the memorial shall be removed by VDOT personnel. The memorial nameplate will be returned to the applicant or the designated family member, if specified on the application. If the applicant does not wish to retain the nameplate, the nameplate will be reused, recycled, or disposed at VDOT's discretion.

24VAC30-151-560. Mailboxes and newspaper boxes.

Mailboxes and newspaper boxes may be placed within VDOT right-of-way without a permit; however, placement should not interfere with safety, maintenance and use of the roadway. Lightweight newspaper boxes may be mounted on the side of the support structure. Breakaway structures will be acceptable as a mailbox post. Breakaway structures are defined as a single four-inch by four-inch square or four-inch diameter wooden post or a standard strength, metal pipe post with no greater than a two-inch diameter.

24VAC30-151-570. Miscellaneous signs.

[A.] In cooperation with local, state and federal organizations, certain public service signs may be placed within the right-of-way without a permit. The [~~residency administrator~~ district administrator's designee] shall determine the appropriate location for the following signs.

1. Forestry. Authorized representatives of the National and State Forest Service may place forest fire warning signs within the right-of-way without a permit. [~~Presumably, most forest fire~~ Fire] warning signs will be placed near forest reservations or wooded areas [~~. However~~; however], only a limited number of the small cardboard or metal signs should be allowed within the right-of-way within the forest reservations. The Department of Forestry may utilize other types of signs to more forcibly impress the public with the need for protecting forest areas. Sign placement shall be accomplished under an agreement, subject to the following conditions:

a. No highway sign should carry more than one message, no other signs shall appear on posts bearing highway signs;

b. No signs shall be erected that would restrict sight distance, or are close to highway warning and directional signs; and

c. Signs regarding forest fires should be placed by fire wardens [~~at locations suitable to VDOT~~].

[d. Signs shall be maintained by the Department of Forestry.]

In all cases, the forest warden is to [~~collaborate with the residency administrator in selecting the location for~~ coordinate the desired location of] these signs [with the district administrator's designee prior to placement].

2. Garden week. These signs are erected and removed by employees of VDOT. The appropriate committee of the Garden Club of Virginia will designate the gardens and places that are to be officially opened during Garden Week and notify the [~~residency administrator~~ district administrator's designee] accordingly, who will ensure the appropriate placement of these signs.

3. Roadside acknowledgement. These signs acknowledge the name and logo of businesses, organizations, communities [,] or individuals participating in the landscape of a segment of the right-of-way in accordance with the Comprehensive Roadside Management Program [~~, 24VAC30-121~~] (see 24VAC30-151-760). As the landscaping is accomplished under a land use permit, the signs are considered to be covered by that permit.

4. Rescue squad. These signs are [fabricated,] erected [,] and maintained by VDOT. The signs may be used on the approaches to the rescue squad headquarters as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices [~~, 24VAC30-310~~] (see 24VAC30-151-760).

5. Fire station. These signs are fabricated [, erected,] and maintained by VDOT. The signs may be used on the approaches to fire station headquarters as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24VAC30-151-760).

6. Bird sanctuary. [Upon receipt of a request from a town or city,] VDOT will fabricate and erect these signs, [~~upon receipt of a request from a town or city~~ at the expense of the municipality], at the corporate limits of the town or city under the municipality name sign [~~at the expense of the municipality~~] as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24VAC30-151-760). In order for a municipality to be designated as a bird sanctuary, the municipality must pass a resolution to that effect. [The municipality shall be responsible for maintenance of bird sanctuary signs.]

7. Historical highway markers. Information regarding the historical highway marker program may be obtained from the Virginia Department of Historic Resources. Applications for historical highway markers shall be obtained from and submitted to the Virginia Department of Historic Resources.

[B. The district administrator's designee may authorize the placement of the following miscellaneous signs within right-of-way under the auspices of a single use permit:

1. Locality identification or "welcome to" signs. Requests for locality identification or "welcome to" signs to be located within nonlimited access right-of-way. These signs shall not be placed on limited access right-of-way. Locality identification or "welcome to" signs that interfere with roadway safety, traffic capacity, or maintenance shall not be permitted. A permit application requesting placement of a locality identification or "welcome to" sign within the right-of-way must be accompanied by a formal resolution from the local governing body or a letter from the chief executive officer of the local government. Such signs shall meet all VDOT breakaway requirements (see Road Design Manual, 24VAC30-151-760) or be erected outside of the

clear zone. No advertising shall be placed on these signs. The local governing body shall be responsible for maintenance of the locality's identification or "welcome to" signs in perpetuity.

2. VDOT may authorize any individual, group, local government, and other entities to place storm drain pollution prevention markers or stenciling on VDOT storm drain inlet structures accessible by pedestrian facilities. A local government, through coordination with the district administrator's designee, may apply for a countywide permit to enable this type of activity of behalf of clubs, citizens groups, and other entities. The permit application must include, at a minimum, a graphic sample or samples of the proposed markers, structure locations and a comprehensive list of streets, if a wide distribution of marker placement is anticipated. Stencil measurements shall not exceed 15" L x 20" W.

3. VDOT may authorize a local government to install "no loitering" signs within the right-of-way. The district administrator's designee shall determine the appropriate location for these signs.]

24VAC30-151-580. Ornamental posts, walls, [residential and commercial development identification signs,] or other [~~apparatus~~ nontransportation related elements].

Ornamental posts, walls [, residential and commercial development identification signs,] or other [~~apparatus~~ nontransportation elements such as pedestrian oriented trash cans, or any combination of these,] that [do not] interfere with roadway safety, traffic capacity or maintenance [~~shall not be permitted. Structures located outside the clear zone but within the right-of-way may be permitted as authorized by the residency administrator~~ may be authorized under the auspices of a single use permit. These nontransportation related elements shall not be placed on limited access rights-of-way. Requests for the placement of ornamental posts, walls, residential and commercial development identification signs, or other nontransportation related elements, or any combination of these, may be permitted as authorized by the district administrator's designee. Permit applications requesting placement of ornamental posts, walls, residential and commercial development identification signs, other nontransportation related elements, or any combination of these, within the right-of-way must be accompanied by documentation indicating the issuance of all required approvals and permissions from the local jurisdictional authority. Such ornamental posts, walls, residential and commercial development identification signs, and other nontransportation related elements shall meet all VDOT breakaway requirements (see Road Design Manual, 24VAC30-151-760) or be erected outside of the clear zone. No advertising shall be placed on these nontransportation related elements permitted within the right-of-way. The permittee shall be responsible for maintenance of these nontransportation related elements in perpetuity].

24VAC30-151-590. Outdoor advertising adjacent to the right-of-way.

Permits for outdoor advertising located off the right-of-way are obtained through the roadside management section at any VDOT district office or the [~~Central Office Asset Management~~ Maintenance] Division in accordance with [Chapter 7 (] § 33.1-351 [et seq.) of Title 33.1] of the Code of Virginia. Selective pruning permits for outdoor advertising shall be issued in accordance with § 33.1-371.1 of the Code of Virginia.

24VAC30-151-600. Pedestrian and bicycle facilities.

[~~Construction~~ The installation] of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses within right-of-way may be [~~permitted~~ authorized under the auspices of a single use permit]. VDOT shall maintain those facilities that meet the requirements of the Commonwealth Transportation Board's Policy for Integrating Bicycle and Pedestrian Accommodations [(see 24VAC30-151-760)]. The maintenance of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses not meeting these requirements shall be subject to permit requirements, and the permittee shall be responsible for maintenance of these facilities.

[The installation of pedestrian or bicycle facilities within limited access right-of-way shall be considered a change in limited access control and requires approval of the Commonwealth Transportation Board prior to permit issuance (see Change of Limited Access Control, 24VAC30-151-760).] The [~~construction~~ installation] of pedestrian or bicycle facilities parallel to and within the right-of-way of nonlimited access highways crossing limited access highways by [way of an existing] bridge or underpass shall not be considered a [~~break~~ change] in limited access but shall require the approval of the Commonwealth Transportation Commissioner prior to issuance of a permit for such activity.

24VAC30-151-610. Permits for certain overdimensional haulers and loaders.

Permits for unladen, oversize and overweight, rubber-tired self-propelled haulers and loaders shall be issued in accordance with § 46.2-1149 of the Code of Virginia and shall be obtained [~~at the local residency~~ from the district administrator's designee].

24VAC30-151-620. Roadside management, landscaping.

Placement and maintenance of plant materials by individuals or organizations may be allowed under permit in strict accordance with VDOT Road [~~&~~ and] Bridge Specifications [~~(effective 2002)~~] (see 24VAC30-151-760), VDOT Road and Bridge Standards [~~(effective 2001)~~] (see 24VAC30-151-760) [~~and current VDOT policies. All planting and~~

~~maintenance of vegetation within right-of-way, including tree planting, requires a permit and must be in accordance with provisions of the Vegetation Control Regulations on State Rights-of-Way, 24VAC30-200 (see 24VAC30-151-760),~~ § 33.1-223.2:9 of the Code of Virginia, and the Comprehensive Roadside Management Program (see 24VAC30-151-760). The applicant shall maintain any altered roadside area in perpetuity. All related permit applications shall be accompanied by a corresponding maintenance agreement. If permit conditions, including the maintenance agreement, are violated at any time, VDOT reserves the right to reclaim and restore such permitted area to its original condition or otherwise establish turf in accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760). The costs of reclamation and restoration activities shall be paid by the permittee]. Tree pruning or removal may be allowed [on right-of way] for maintenance purposes for utility facilities [or as part of a roadside beautification project sponsored by the local government or to daylight an outdoor advertising structure in accordance with Vegetation Control Regulations on State Rights-of-Way (see 24VAC30-151-760)]. See VDOT's Tree [~~Trimming~~] and Brush [~~Cutting~~ Trimming] Policy (see 24VAC30-151-760) for further information.

All pesticide applicators shall [~~possess Virginia Commercial Pesticide Applicator Category 6 Certification for Right of Way Pest Control activities, Category 5A Certification for Aquatic Pest Control activities, or Category 8 for Public Health Pest Control activities through~~ meet the applicable requirements established by] the Department of Agricultural and Consumer Services [in Rules and Regulations for Enforcement of the Virginia Pesticide Law (2VAC20-20) (see 24VAC30-151-760)]. Pesticide activities shall comply with all applicable federal and state regulations.

[~~The applicant shall maintain any altered roadside area in perpetuity. All related permit applications shall be accompanied by a corresponding maintenance agreement. If permit conditions, including the maintenance agreement, are violated at any time, VDOT reserves the right to reclaim such permitted areas to its original condition or otherwise establish turf in accordance with VDOT Road and Bridge Specifications. The costs of reclamation activities shall be paid for by the permittee.~~]

24VAC30-151-630. [~~Shelters~~ Transit and school bus shelters].

School bus shelters, public transit shelters or share ride stations may be [~~allowed~~ authorized] under [the auspices of a single use] permit. [Approval of such structures must be obtained in accordance with Virginia Department of General Services requirements set forth in the Construction and Professional Services Manual (see 24VAC30-151-760).] Shelters shall be located in accordance with all clear zone requirements described in Appendix A-2 of VDOT's Road Design Manual (see 24VAC30-151-760).

24VAC30-151-640. Trash containers and recycling sites.

[~~Trash receptacles may be allowed under permit, except on limited access highways, by locating them~~ The placement of trash receptacles on nonlimited access highways may be authorized under the auspices of a single use permit]. [Trash receptacles shall be located] as close to the right-of-way line as possible. The site shall have a clearly defined entrance and exit. Appropriate screening and landscaping may be required.

The site shall be maintained in a neat condition and sprayed as needed to minimize flies, odors, etc. VDOT will remove improperly maintained receptacles from the right-of-way at the owner's expense.

The permittee shall secure written permission from the adjacent property owners prior to locating the receptacle within the state right-of-way.

24VAC30-151-650. Test holes.

Test holes may be excavated in the roadway or right-of-way for the purpose of geological surveys or studies, monitoring wells and for locating existing utilities within the right-of-way. A [single use] permit shall be [~~required~~ obtained] for test holes. All test holes shall be kept to the smallest size and number possible. A surety will be required to sufficiently restore the appearance of the right-of-way or to repair the pavement of the roadway. The permittee shall demonstrate to the satisfaction of the [~~residency administrator~~ district administrator's designee] that the location of the site will not compromise the safety, use or maintenance of the roadway.

24VAC30-151-660. Special requests and other installations.

Any special requests may be permitted upon review and approval by the Commonwealth Transportation Commissioner [~~or a designee~~].

24VAC30-151-670. Prohibited use of right-of-way.

[~~The following uses of the right-of-way are not allowed.~~] No permit shall be issued for [~~these~~ the following] uses [~~:~~ of the right-of-way:]

1. Signs. [~~No advertising signs~~ Signs not otherwise allowed in this chapter] shall [not] be placed on the highway right-of-way [~~nor~~ or] overhang the right-of-way.

2. Vendors on right-of-way. Permits will not be issued to vendors for operation of business within state rights-of-way, except as may be allowed for waysides and rest areas under the Rules and Regulations for the Administration of Waysides and Rest Areas [~~, 24VAC30-50~~ (see 24VAC30-151-760)]. Vendors of newspapers and written materials enjoy constitutional protection under the First Amendment to place or operate their services within rights-of-way, provided they neither impede traffic nor impact the safety of the traveling public. Newspaper vending machine size, placement and location shall be as directed by the

[~~residency administrator~~ district administrator's designee] for that area.

3. Dwellings. No private dwellings, garages, or similar structures shall be placed or constructed within the right-of-way, except as may be allowed under 24VAC30-151-220 and 24VAC30-151-230.

Part VIII
Hazardous Materials

24VAC30-151-680. Hazardous materials, waste, or substances.

In the event that the permittee, in pursuit of the activities allowed by the permit, encounters underground storage tanks, buried drums, petroleum-saturate soils, or other potentially hazardous materials, waste, or substances within the right-of-way, the permittee shall immediately cease all activities in the vicinity of such discovery and immediately notify the VDOT [~~residency administrator~~ official who approved the land use permit]. The permittee shall also immediately notify any local emergency response organizations, as appropriate. The permittee shall not attempt to remove any containers or wastes without VDOT concurrence. The [~~residency administrator~~ district administrator's designee] will take necessary actions to ensure that the materials/wastes/substances are managed in accordance with state and federal laws and regulations. The permittee shall not be allowed within the potentially contaminated area until the [~~residency administrator~~ district administrator's designee] obtains clearance from the district environmental section. The permittee shall abide by any conditional use restrictions developed by VDOT as a result of such discovery and, as necessary, to comply with state and federal laws and regulations. The permittee shall be solely responsible for properly managing any contaminated soil or groundwater, or both, that is not otherwise required under regulation to be remediated, but [~~necessary to~~ that must] be removed in order to properly complete the proposed activities within the right-of-way.

24VAC30-151-690. Permitted discharge to VDOT right-of-way.

A. Permits to discharge to VDOT right-of-way may be issued upon written approval of the local public health department or the Virginia Department of Environmental Quality, or both, and this written approval shall be made part of the permit application. Discharges made to VDOT right-of-way pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) Permit shall demonstrate prior to discharge that no feasible alternative discharge point exists. If discharge is made to VDOT right-of-way, the permittee shall notify the [~~residency administrator~~ district administrator's designee] of any instances where the regulated discharge limits are exceeded and take immediate corrective action to ensure future excursions are prevented, and any damage to VDOT property is remediated. Any discharges made pursuant to [~~9VAC25-120,~~ the] General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites [, Groundwater Remediation and Hydrostatic Tests (see 24VAC30-151-760)] shall be prohibited from containing any water exhibiting visible oil sheen.

B. Any damages to VDOT property, regardless of authorization implied by any non-VDOT issued permit, shall be remedied or repaired immediately by the permittee.

Part IX
Fees and Surety

24VAC30-151-700. General provisions for fees, surety and other compensation.

Except as otherwise provided in this part, the [~~permittee~~ applicant] shall pay an application fee to cover the cost of permit processing, pay additive fees to offset the cost of plan review and inspection and provide surety to guarantee the satisfactory performance of the work under permit. [For locally administered VDOT projects, the permit fees are waived and in lieu of a surety, the locality may (i) provide a letter that commits to using the surety in place or (ii) have the contractor execute a dual obligation rider that adds VDOT as an additional obligee to the surety bond provided to the locality, with either of these options guaranteeing the work performed within state maintained right-of-way under the terms of the land use permit for that purpose. A copy of the original surety and letter or rider shall be attached to the land use permit.] Except as provided in 24VAC30-151-740, utilities within the right-of-way shall pay an annual accommodation fee as described in 24VAC30-151-730. In the event of extenuating circumstances, the Commonwealth Transportation Commissioner [~~or a designee~~] may waive all or a portion of any of the fees or surety.

24VAC30-151-710. Fees.

A. Single use permit. A nonrefundable application fee shall be charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements below:

1. The application fee for a single permit is $100.

2. Additive costs shall be applied as indicated below. The [~~residency administrator~~ district administrator's designee] will determine the total permit fees [~~-~~ using the following schedule:]

Activity	Fee
[~~Application for Permit~~	~~$100~~]
[~~Additive Fees for:~~]	
Private Entrances	none

Activity	Fee
Commercial Entrance	$150 for first entrance $50 for each additional entrance
Street Connection	$150 for first connection $50 for each additional connection
[Temporary] Logging Entrance	$10 for each entrance
Temporary Construction Entrance	$10 for each entrance
Turn Lane	$10 per 100 linear feet
Crossover	$500 per crossover
Traffic Signal	$1,000 per signal [installation]
Reconstruction of Roadway	$10 per 100 linear feet
Curb and Gutter	$10 per 100 linear feet
Sidewalk	$10 per 100 linear feet
Tree Trimming (for outdoor advertising)	in accordance with § 33.1-371 of the Code of Virginia
Tree Trimming (all other activities)	$10 per acre or 100 feet of frontage
Landscaping	$10 per acre or 100 feet of frontage
Storm Sewer	$10 per 100 linear feet
Box Culvert or Bridge	$5 per linear foot of attachment
Drop Inlet	$10 per inlet
Paved Ditch	$10 per 100 linear feet
Under Drain or Cross Drain	$10 per crossing
Above-ground Structure (including poles, pedestals, fire hydrants, towers, etc.)	$10 per structure
Pole Attachment	$10 per structure
[~~Minor overhead~~ Span] Guy	$10 per crossing
Additive Guy and Anchor	$10 per guy and anchor
Underground Utility [- Parallel]	$10 per 100 linear feet
Overhead or Underground Crossing	$10 per crossing
Excavation Charge (including Test Bores and Emergency Opening)	$10 per opening

[~~3. Whenever the size of the utility facility to be installed in a longitudinal occupancy requires the use, including separation clearances, of more than a six-foot width of the right-of-way, the longitudinal fee shall be doubled.~~

~~4.~~ 3.] Time extensions for [~~existing~~ active] permits shall incur a monetary charge equal to [one-half] the application fee [~~plus one-half the additive fees~~] charged to the initial permit. Expired permits may be reinstated [~~provided permit fees are paid as established by the residency administrator. Fees~~; however, fees] for reinstatement of expired permits shall equal the [~~initial permit~~ application] fee.

[~~5.~~ 4.] If a permit is cancelled prior to the beginning of work, the application fee and one-half of the additive fee will be retained as compensation for costs incurred by VDOT during plan review.

[~~6.~~ 5.] The [~~residency administrator~~ district administrator's designee] may establish an account to track plan review and inspection costs, and may bill the permittee not more often than every 30 [calendar] days. If an account is established for these costs, the permittee shall be responsible for the nonrefundable application fee and the billed costs. When actual costs are billed, the [~~residency administrator~~ district administrator's designee] shall waive the additive fees above.

B. [~~Residencywide~~ Districtwide] permits. [~~Residencywide~~ Districtwide] permits, as defined in 24VAC30-151-30, are valid for a period of [~~one year~~ two years]. [~~The fee is $100 per residency and the permit is valid for work on the secondary and primary road systems~~ The biennial fee for a districtwide permit for utilities and logging operations is $750 per district. The biennial fee for a districtwide permit for surveying is $200 per district. The central office permit manager may exercise discretion in combining requests for multijurisdictional districtwide permits.

C. Miscellaneous permit fees. To connect the facility to the transmission grid pipeline, the operator of a nonutility renewable energy facility that produces not more than two megawatts of electricity from a renewable energy source, not more than 5,000 mmBtus/hour of steam from a renewable energy source, or landfill gas from a solid waste management facility, shall remit to VDOT a one-time permit fee of $1,500 per mile as full compensation for the use of the right-of-way in accordance with § 67-1103 of the Code of Virginia].

[~~C.~~ D. No-fee permits. The following permits shall be issued at no cost to the applicant:

1.] In-place permits [. ~~In place permits~~] as defined in [~~24VAC30-151-190~~ 24VAC30-151-30] and 24VAC30-151-390 [~~shall be issued at no cost to the permittee~~].

[2. Prior-rights permits as defined in 24VAC30-151-30 and 24VAC30-151-390.

3. As-built permits as defined in 24VAC30-151-30.

4. Springs and wells as defined in 24VAC30-151-280.

5. Crest stage gauges and water level recorders as defined in 24VAC30-151-500.

6. Filming for movies as defined in 24VAC30-151-520.

7. Roadside memorials as defined in 24VAC30-151-550.

8. No loitering signs as defined in 24VAC30-151-570.]

24VAC30-151-720. Surety.

A. Performance surety. The permittee shall provide surety to guarantee the satisfactory performance of the work. Surety shall be based on the estimated cost of work to be performed within the right-of-way. Surety may be in the form of a check, cash, irrevocable letter of credit, insurance bond, or any other VDOT-approved method. Under no circumstances shall VDOT or any agency of the Commonwealth be named the escrow agent, nor shall funds deposited with VDOT as surety be subject to the payment of interest. The surety will be refunded or released upon completion of the work and inspection by VDOT subject to the provisions of § 2.2-1151.1 of the Code of Virginia. If a permit is cancelled prior to the beginning of work, the surety shall be refunded or released.

Should the permittee fail to complete the work to the satisfaction of the [~~residency administrator~~ district administrator's designee], then all or whatever portion of the surety that is required to complete work covered by the permit or to restore the right-of-way to its original condition shall be retained by VDOT.

B. Continuous surety. Permittees installing, operating and maintaining facilities within the highway right-of-way shall secure and maintain a continuous bond. Governmental customers may use a resolution in lieu of a continuous bond. The continuous surety shall be in an amount sufficient to restore the right-of-way in the event of damage or failure. The surety shall remain in full force as long as the work covered by the permit remains within the right-of-way. [~~Private and commercial entrances do~~ A private or commercial entrance does] not require a continuous surety. [~~All other installations may require a continuous surety as determined by the residency administrator~~ Any other installation may require a continuous surety as determined by the district administrator's designee. An applicant for a districtwide permit for utilities shall provide a continuous surety in the amount of $10,000 per county. An applicant for a districtwide permit for logging entrances shall provide a continuous surety in the amount of $10,000 per district. There is no surety requirement for districtwide permits for surveying].

24VAC30-151-730. Accommodation fees.

After initial installation, the Commonwealth Transportation Commissioner or a designee shall determine the annual compensation for the use of the right-of-way by a utility, except as provided in 24VAC30-151-740. The rates shall be established on the following basis:

1. Limited Access Crossings - $50 per crossing.

2. Limited Access Longitudinal Installation - $250 per mile annual use payment.

3. Communication Tower Sites (limited and nonlimited access):

a. $24,000 annual use payment for a communication tower site, and

b. $14,000 annual use payment for colocation on a tower site. This payment does not include equipment mounted to an existing wooden utility pole.

24VAC30-151-740. Exceptions and provisions to the payment of fees and compensation.

A. Pursuant to §§ 56-462 and 56-468.1 of the Code of Virginia, a certificated provider of telecommunication service shall collect and remit to VDOT a Public Right-of-Way Use Fee as full compensation for the use of the right-of-way by those utilities.

B. Pursuant to [~~§ 15.2-2108~~ §§ 15.2-2108.1:1 and 56-468.1] of the Code of Virginia, a cable television operator [subject to the public right-of-way use fee] shall not be charged an annual use payment for the use of public right-of-way [~~in any locality in which the cable television operator is obligated to pay a franchise fee to such locality. The rates for the per mile annual use fee payment for use of right-of-way shall not apply to the applicable cable television facilities~~].

[~~C. Whenever the size of the utility facility to be installed in a longitudinal occupancy requires the use, including separation clearances, of more than a six-foot width of the right-of-way, the longitudinal compensation requirement shall be doubled.~~

~~D.~~ C. Pursuant to § 56-468.1 of the Code of Virginia, certified providers of telecommunications service shall not be charged land use permit application and additive fees or an annual payment under a resource sharing agreement for the use of public right-of-way.

D. Municipal or authority owned sewer and water facilities and renewable energy generation transmission facilities shall not be charged an accommodation fee pursuant to 24VAC30-151-730 of this chapter for the use of public right-of-way.

E.] At VDOT's discretion, under the provisions of resource sharing as defined in 24VAC30-151-30, compensation for the use of the limited access right-of-way may be negotiated and agreed upon through one of the following methods: [~~strictly barter, which includes provision of goods or services; cash only; or a combination of barter and cash~~

1. The mutually agreeable exchange of goods or services only;

2. Cash only; or

3. A combination of both].

VDOT will ensure that the goods or services provided in any [~~barter arrangement~~ mutually agreeable exchange] are equal to the monetary compensation amount established for the use and occupancy of the right-of-way.

[~~E. Whenever a utility owner has provided, either through cash, goods or services, an initial installation payment for the use and occupancy of the right of way, either longitudinal, small site or communication tower, the agreement shall provide for partial reimbursement should the utility be required to relocate, adjust, or remove its facilities as a result of the construction of a transportation project. The agreement shall specify that for the first three years of an occupancy, the utility will be entitled to reimbursement for 100% of the applicable relocation, adjustment, or removal cost as defined in 23 CFR 645.117. For the succeeding three years, the utility will be entitled to reimbursement for 50% of the applicable relocation, adjustment, or removal cost as defined in 23 CFR 645.117. After the end of the sixth year, the utility will be responsible for the cost of all required relocations, adjustments or removals related to the transportation project construction.~~]

24VAC30-151-750. [~~Land use permit application fee and additive fees, communication tower site fees, annual adjustments.~~ (Reserved)]

[~~A. VDOT shall have the option of adjusting the land use permit application fee and additive fees, in which case it shall compile information regarding its costs for the review of permit plans, the inspection of permit work and the administrative processing of the permits during the previous fiscal year, and report this information to the Commonwealth Transportation Commissioner by January 1 of each year VDOT wishes to exercise the option. The Commonwealth Transportation Commissioner may use the report findings to adjust the permit application fee and additive fees by not more than 25% of the fee structure in effect on July 1 of the previous calendar year, but not greater than the VDOT's average direct cost as established in the report.~~

~~B. If the Commonwealth Transportation Commissioner finds that a change in the permit application fee and additive fee structure is warranted, implementation of the change shall be made as follows:~~

~~1. Notice of the adjusted fee structure, including the report on which the adjustment is based or information about where the report may be viewed, will be published in The Virginia Register of Regulations in April of that year, and~~

~~2. The adjusted fee structure shall become effective on July 1 of that year.~~

~~C. VDOT shall have the option of adjusting the communication tower site annual use fee, in which case the VDOT Chief Appraiser shall prepare a report comparing the communication tower site annual use fee to market rates. The Commonwealth Transportation Commissioner may use the report findings to adjust the communication tower site annual use fee by not more than 25% of the fee structure in effect on July 1 of the previous calendar year, but not greater than market rates.~~

~~D. If the Commonwealth Transportation Commissioner finds that a change in the communication tower site annual use fee structure is warranted, implementation of the change shall be made as follows:~~

~~1. Notice of the adjusted fee structure, including the report on which the adjustment is based or information about where the report may be viewed, will be published in The Virginia Register of Regulations in April of that year, and~~

~~2. The adjusted fee structure shall become effective on July 1 of that year.~~]

Part X
Reference Documents

24VAC30-151-760. Listing of documents (publications) incorporated by reference.

Requests for information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document. Requests for documents available from VDOT may be obtained from the department's division and representative indicated; however, department documents may be available over the Internet at www.VirginiaDOT.org. Documents with a Virginia Administrative Code (VAC) number may be accessed from the Internet at: http://leg1.state.va.us/000/srr.htm.

[~~A. Road Design Manual (effective January 1, 2005).~~

~~Location and Design Division (VDOT)~~

~~Location and Design Engineer~~

~~1401 E. Broad Street~~

~~Richmond, Virginia 23219~~

~~B. Road and Bridge Specifications (effective 2002).~~

~~Scheduling and Contract Division (VDOT)~~

~~State Contract Engineer~~

~~1401 E. Broad Street~~

~~Richmond, Virginia 23219~~

~~C. Road and Bridge Standards (effective February 1, 2001).~~

~~Location and Design Division (VDOT)~~

~~Location and Design Engineer~~

~~1401 E. Broad Street~~

~~Richmond, Virginia 23219~~

~~The following four documents may be obtained from the following address:~~

~~Department of Conservation and Recreation~~

~~Division of Soil and Water Conservation~~

~~Governor Street, Suite 206~~

~~Richmond, Virginia 23219~~

~~D. Virginia Erosion and Sediment Control Handbook, 3rd edition (effective 1992), a technical guide to The Virginia Erosion and Sediment Control Law and Regulations (4VAC50-30).~~

~~E. Virginia Erosion and Sediment Control Regulations, 4VAC50-30.~~

~~F. Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2, (effective 1999), a technical guide to the Virginia Stormwater Management Program Permit Regulations (4VAC50-60).~~

~~G. Virginia Stormwater Management Program Permit Regulations (4VAC50-60).~~

~~H. VDOT Erosion and Sediment Control and Stormwater Management Program Specifications Manual (effective March 1, 2004).~~

~~Location and Design Division (VDOT)~~

~~Location and Design Engineer~~

~~1401 E. Broad Street~~

~~Richmond, Virginia 23219~~

~~I. The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) (effective December 22, 2003).~~

~~Federal Highway Administration~~

~~Superintendent of Documents~~

~~U.S. Government Printing Office~~

~~P.O. Box 371954~~

~~Pittsburgh, PA 15250-7954~~

~~J. Roadway Lighting, American National Standard Practice for Roadway Lighting~~

~~The Standard Practice Subcommittee of the IESNA Roadway Lighting Committee (effective 2000).~~

~~The Illuminating Engineering Society of North America~~

~~120 Wall Street~~

~~New York, NY 10005~~

~~K. An Informational Guide for Roadway Lighting.~~

~~American Association of State Highway and Transportation Officials (AASHTO)~~

~~444 North Capitol St. N.W., Suite 225~~

~~Washington, D.C. 20001~~

~~L. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites, 9VAC25-120.~~

~~Regulatory Coordinator~~

~~State Water Control Board~~

~~P. O. Box 10009~~

~~Richmond, VA 23240~~

~~M. Rules for Enforcement of the Underground Utility Damage Prevention Act, 20VAC5-309.~~

~~State Corporation Commission~~

~~Department of Energy Regulation~~

~~P. O. Box 1197~~

~~Richmond, VA 23218~~

~~N. Right of Way Utilities Relocation Policies and Procedures Manual (effective November 2003).~~

~~State Right of Way Director (VDOT)~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

~~O. Change of Limited Access Control, 24VAC30-401.~~

~~P. Virginia Supplement to the Manual on Uniform Traffic Control Devices, 24VAC30-310 (includes the Virginia Work Area Protection Manual).~~

~~Traffic Engineering Division (VDOT)~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

~~The following six documents may be obtained from the following address:~~

~~Asset Management Director (VDOT)~~

~~Asset Management Division~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

~~Q. VDOT Tree Trimming and Brush Cutting Policy (effective December 18, 2001).~~

~~R. Rules and Regulations for the Administration of Waysides and Rest Areas, 24VAC30-50.~~

~~S. Comprehensive Roadside Management Program. 24VAC30-121.~~

~~T. Vegetation Control Regulations on State Rights-of-Way, 24VAC30-200.~~

~~U. Outdoor Advertising Manual (effective 2005).~~

~~V. General Rules and Regulations of the Commonwealth Transportation Board, 20VAC30-20.~~

1. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

2. Access Management Regulations: Principal Arterials (24VAC30-72)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

3. Change of Limited Access Control (24VAC30-401)

State Right-of-Way Director (VDOT)

1401 E. Broad St.

Richmond, VA 23219

4. Comprehensive Roadside Management Program (24VAC30-121)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

5. Construction and Professional Services Manual

Department of General Services

Division of Engineering and Buildings

Bureau of Capital Outlay Management (BCOM)

1100 Bank Street, 6th Floor

Richmond, VA 23219

6. Erosion and Sediment Control Regulations (4VAC50-30)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

7. General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-20)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

8. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (9VAC25-120)

Regulatory Coordinator

State Water Control Board

P. O. Box 10009

Richmond, VA 23240

9. Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) (effective December 22, 2003, revised November 2004)

Federal Highway Administration

Superintendent of Documents

U.S. Government Printing Office

P.O. Box 371954

Pittsburgh, PA 15250-7954

10. National Electric Safety Code (2007 edition)

Institute of Electrical and Electronics Engineers, Inc.

10662 Los Vaqueros Circle

P.O. Box 3014

Los Alamitos, CA 90720-1264

11. Policy for Integrating Bicycle and Pedestrian Accommodations (effective 2004)

Transportation and Mobility Planning Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

12. Right-of-Way Utilities Relocation Policies and Procedures Manual (effective November 2003)

State Right of Way Director (VDOT)

1401 E. Broad St.

Richmond, VA 23219

13. Road and Bridge Specifications 2007 (revised 2008)

Scheduling and Contract Division (VDOT)

State Contract Engineer

1401 E. Broad Street

Richmond, VA 23219

14. Road and Bridge Standards (effective 2009)

Location and Design Engineer (VDOT)

1401 E. Broad Street

Richmond, VA 23219

15. Road Design Manual (effective 2005, revised 2009)

Location and Design Engineer (VDOT)

1401 E. Broad Street

Richmond, VA 23219

16. Roadway Lighting, American National Standard Practice for Roadway Lighting (effective 2000, reaffirmed 2005)

The Standard Practice Subcommittee of the IESNA Roadway Lighting Committee

The Illuminating Engineering Society of North America

120 Wall Street

New York, NY 10005

17. Roadway Lighting Design Guide (effective 2005)

American Association of State Highway and Transportation Officials (AASHTO)

444 North Capitol St. N.W., Suite 225

Washington, D.C. 20001

18. Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices (24VAC30-120)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

19. Rules and Regulations for the Administration of Waysides and Rest Areas (24VAC30-50)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

20. Rules and Regulations for Enforcement of the Virginia Pesticide Law (2VAC20-20)

Virginia Department of Agricultural and Consumer Services

Office of Pesticide Services

102 Governor Street, 1st Floor

Richmond, VA 23219

21. Rules for Enforcement of the Underground Utility Damage Prevention Act (20VAC5-309)

State Corporation Commission

Department of Energy Regulation

P. O. Box 1197

Richmond, VA 23218

22. Secondary Street Acceptance Requirements (24VAC30-92)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

23. Vegetation Control Regulations on State Rights-of-Way (24VAC30-200)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

24. VDOT Tree and Brush Trimming Policy (effective 2004)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

25. Virginia Erosion and Sediment Control Handbook, 3rd edition (effective 1992), a Technical Guide to The Virginia Erosion and Sediment Control Law and Regulations (4VAC50-30)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

26. Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2, (effective 1999), a Technical Guide to the Virginia Stormwater Management Program Permit Regulations (4VAC50-60)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

27. Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

28. Virginia Supplement to the Manual on Uniform Traffic Control Devices (24VAC30-310, includes the Virginia Work Area Protection Manual)

Traffic Engineering Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219]

FORMS (24VAC30-151)

[~~LUP-A –~~] Land Use Permit [,] Application [~~(1/05)~~, LUP-A (rev. 3/10)].

[~~LUP-SP – Land Use Permit,~~] Special Provisions [, ~~(~~] Notice of Permittee Liability [~~) (1/05)~~, LUP-SP (rev. 3/10)].

[~~LUP-HM – Land Use Permit,~~] House Movement Application [~~(1/05)~~, LUP-HM (rev. 3/10)].

[~~LUP-CSB – Land Use Permit,~~] Corporate Surety Bond [~~(1/05)~~, LUP-CSB (rev. 3/10)].

[~~LUP-LC – Land Use Permit,~~] Irrevocable Letter of Credit Bank Agreement [~~(1/05)~~, LUP-LC (rev. 3/10)].

[~~LUP-SB – Land Use Permit,~~] Surety Bond [~~(1/05)~~, LUP-SB (rev. 3/10)].

[~~LUP-OC – Special Provisions for Open Cuts (1/05).~~]

[~~LUP-IPP – Land Use Permit,~~] In-Place Permit for Subdivision Street Utility [~~(1/05)~~, LUP-IPP (rev. 1/10)].

[Land Use Permit, Prior-Rights Permit Application, LUP-PRP (rev. 9/09).

Land Use Permit, Special Provision, VDOT Erosion & Sediment Control Contractor Certification, LUP-ESCC (rev. 3/10).

Land Use Permit, Special Provision, VDOT Work Zone Traffic Control Certification Verification, LUP-WZTCV (rev. 3/10).]

VA.R. Doc. No. R10-2046; Filed January 15, 2010, 11:25 a.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Revised Virginia Agricultural Stewardship Act Guidelines

On November 23, 2009, the Department of Agriculture and Consumer Services published for public comment proposed revised Agricultural Stewardship Act Guidelines in the Virginia Register of Regulations (Volume 26, Issue 6, beginning at page 737). The agency received no comment on these proposed revisions. The Commissioner adopted these proposed revised Agricultural Stewardship Guidelines, which will take effect on April 1, 2010.

Contact Information: Roy E. Seward, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3538, or email roy.seward@vdacs.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

Proposed Consent Special Order - Dickens Creek Siteworks, Inc.

Purpose of notice: To seek public comment on a proposed consent special order (order) issued to Dickens Creek Sitework, Inc.

Public comment period: February 15, 2010, through March 16, 2010.

Summary of proposal: The proposed order describes a settlement between the Virginia Soil and Water Conservation Board and Dickens Creek Sitework to resolve alleged past violations of the Virginia Stormwater Management Act and regulations at The Meadows at Prince George construction site located in Prince George County. The proposed order requires payment of a $5,000 civil charge.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received before the end of the comment period. A copy of the proposed order is available on request from the person identified directly below as the contact.

Contact for documents or additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 19, 2010

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. BFI-2009-00344

STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting
rules for the conduct of other business
in payday lending offices

ORDER GRANTING RECONSIDERATION

On December 29, 2009, the State Corporation Commission ("Commission") entered an Order Adopting a Regulation in this matter. On January 19, 2010, F & L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans filed a Motion to Reconsider and to Delay the Effective Date of a Regulation until July 1, 2010.

NOW THE COMMISSION, upon consideration of this Motion, grants reconsideration for the purpose of continuing our jurisdiction over this matter and considering the merits of the above-referenced Motion.

Accordingly, IT IS ORDERED THAT:

(1) Reconsideration is granted for the purpose of continuing our jurisdiction over this matter and considering the above-referenced Motion.

(2) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Roy A. Hutcheson, Jr., Vice President, Title Cash of Virginia Inc., 513 Sparkman Drive, NW, Suite C, Huntsville, Alabama 35801; Patricia Dauterman, Director of Employee Development & Compliance, Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance, P.O. Box 2038, Cleveland, Tennessee 37320-2038; Carla Stone Witzel, Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC, 233 East Redwood Street, Baltimore, Maryland 21202-3332; Jennifer Johnson, Senior Legislative Council, Center for Responsible Lending, P.O. Box 3638, Durham, North Carolina 27702-3638; James W. Speer, Executive Director, Virginia Poverty Law Center, 700 East Franklin Street, Suite 14T1, Richmond, Virginia 23219; Helen O'Beirne, Housing Opportunities Made Equal of Virginia, Inc., 700 East Franklin Street, Suite 3A, Richmond, Virginia 23219; David W. Clarke, Eckert Seamans, 707 East Main Street, Suite 1450, Richmond, Virginia 23219; Tommy Moore, Executive Vice President, Community Financial Services Association of America, 515 King Street, Suite 300,

Alexandria, Virginia 22314-3137; Douglas W. Densmore, P.O. Box 40013, Roanoke, Virginia 24022-0013; Theodore F. Adams, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; and to the Commissioner of Financial Institutions, who shall mail a copy of this Order to all licensed payday lenders and other interested parties designated by the Bureau of Financial Institutions.

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AT RICHMOND, JANUARY 25, 2010

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. BFI-2009-00344

STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting
rules for the conduct of other business
in payday lending offices

ORDER ON RECONSIDERATION

On December 29, 2009, the State Corporation Commission ("Commission") issued an Order Adopting a Regulation in this matter. Thereafter, on January 19, 2010, F & L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans ("F & L Marketing Enterprises") filed a Motion to Reconsider and to Delay the Effective Date of a Regulation until July 1, 2010 ("Motion"). In its Motion, F & L Marketing Enterprises requested that the Commission reconsider and delay the effective date of the amended regulation until July 1, 2010. In support of its Motion, F & L Marketing Enterprises stated that the February 1, 2010, effective date (i) does not leave adequate time for affected parties to implement the required changes affecting motor vehicle title lending in an orderly manner, and (ii) will result in a disruption of motor vehicle title loan services available to customers. On January 19, 2010, the Commission issued an Order Granting Reconsideration for the purpose of continuing our jurisdiction over this matter and considering the merits of the Motion.

NOW THE COMMISSION, upon consideration of the Motion and the record in this proceeding, is of the opinion and finds that companies currently engaged in open-end auto title lending business from one or more payday lending offices pursuant to a prior Commission approval order should be given some additional time to comply with the two additional conditions set forth in subdivisions F 6 and F 7 of 10 VAC 5-200-100. However, we are not persuaded by the Motion or the affidavit that was attached thereto that F & L Marketing Enterprises needs an additional five months to implement these two conditions. Furthermore, we do not believe that it is either necessary or appropriate to extend the effective date of the amended regulation, which would impact a multitude of other provisions that are unrelated to auto title lending, in order to accommodate the concerns raised in the Motion. Accordingly, we believe it is reasonable and in the public interest to give licensees and third parties who are currently offering open-end auto title loans from payday lending offices pursuant to a prior Commission approval order until March 1, 2010, to comply with the conditions set forth in subdivisions F 6 and F 7 of 10 VAC 5-200-100.

Accordingly, IT IS ORDERED THAT:

F & L Marketing Enterprises' Motion is granted in part. The effective date of the amended regulation shall remain February 1, 2010, but licensees and third parties who are currently offering open-end auto title loans from payday lending offices pursuant to a prior Commission approval order shall have until March 1, 2010, to comply with the conditions set forth in subdivisions F 6 and F 7 of 10 VAC 5-200-100.

(1) This case is dismissed.

(2) The papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Roy A. Hutcheson, Jr., Vice President, Title Cash of Virginia Inc., 513 Sparkman Drive, N.W., Suite C, Huntsville, Alabama 35801; Patricia Dauterman, Director of Employee Development & Compliance, Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance, P.O. Box 2038, Cleveland, Tennessee 37320-2038; Carla Stone Witzel, Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC, 233 East Redwood Street, Baltimore, Maryland 21202-3332; Jennifer Johnson, Senior Legislative Council, Center for Responsible Lending, P.O. Box 3638, Durham, North Carolina 27702-3638; James W. Speer, Executive Director, Virginia Poverty Law Center, 700 East Franklin Street, Suite 14T1, Richmond, Virginia 23219; Helen O'Beirne, Housing Opportunities Made Equal of Virginia, Inc., 700 East Franklin Street, Suite 3A, Richmond, Virginia 23219; David W. Clarke, Eckert Seamans, 707 East Main Street, Suite 1450, Richmond, Virginia 23219; Tommy Moore, Executive Vice President, Community Financial Services Association of America, 515 King Street, Suite 300, Alexandria, Virginia 22314-3137; Douglas W. Densmore, P.O. Box 40013, Roanoke, Virginia 24022-0013; Theodore F. Adams, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; and to the Commissioner of Financial Institutions, who shall mail a copy of this Order to all licensed payday lenders and other interested parties designated by the Bureau of Financial Institutions.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Special Order for Glenwood South, L.L.C.

An enforcement action has been proposed for Glenwood South, L.L.C., for alleged violations in Virginia Beach, Virginia. A consent order describes a settlement to resolve unpermitted wetland impacts that occurred on Flyfisher Court in the Indian River Road Subdivision. The order requires corrective action and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel J. Van Orman will accept comments by email at daniel.vanorman@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462 from February 15, 2010, to March 17, 2010.

Proposed Consent Special Order for Summit Development Company, L.L.C.

An enforcement action has been proposed for Summit Development Company, L.L.C., for violations in the City of Radford, Virginia. The Special Order by Consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from February 16, 2010, to March 17, 2010.

Notice of Draft Report of Study to Restore Water Quality for Portions of Assamoosick Swamp

Public meetings: A public meeting will be held on Thursday, March 4, 2010, at 2 p.m. at the Newsome Human Services Building located at 20103 Princeton Road, Sussex, VA 23884.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the draft report of a study to restore water quality for portions of Assamoosick Swamp, unnamed tributary to Assamoosick Swamp, Seacorrie, unnamed tributary to Seacorrie Swamp, Black Swamp, and German Swamp located within Sussex and Southampton Counties. This notice also announces the final public meeting and a public comment opportunity. The draft report will be available on DEQ's website the day of the meetings at https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jspx.

Meeting description: Final public meetings on a study to restore the recreational use areas of portions of Assamoosick Swamp and tributaries (mentioned above) that are impaired due to bacterial violations.

Description of study: Virginia agencies have been working to identify sources of bacterial contamination of portions of the Assamoosick Swamp and its tributaries. These impairements span approximately 34 river miles. These waterways are impaired for failure to meet the recreational (swimming) designated use due to exceedances of the bacterial water quality standard.

Waterbody	Location	Impaired Length (mi)	Impairment
Assamoosick Swamp	Sussex	15.76	Recreational Use (Swimming)
Tributary to Assamoosick Swamp	Southampton	2.06	
Seacorrie Swamp	Sussex	6.91	
Tributary to Seacorrie Swamp	Sussex	1.46	
German Swamp	Sussex	3.65	
Black Swamp	Sussex	3.76	
Total Impaired Length		33.60	

The draft study reports on the current status of the waterbodies via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacteria levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period that expires April 3, 2010.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Notice of Draft Report of Study to Restore Water Quality for Blackwater Swamp, Blackwater River, Tributary to Coppahaunk Swamp, Warwick Swamp, Second Swamp, and Otterdam Swamp

Public meetings: Public meetings will be held on Wednesday, March 3, 2010, at 2 p.m. and 6 p.m. at the Appomattox Regional Library (in the HMA Room) located at 209 East Cawson Street in Hopewell, VA 23860.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the draft report of a study to restore water quality for portions of Blackwater Swamp, Blackwater River, tributary to Coppahaunk Swamp, Warwick Swamp, Second Swamp, and Otterdam Swamp located within the City of Petersburg, and Prince George, Dinwiddie, Surry, and Sussex Counties. This notice announces the draft report, final public meetings for the study, and a public comment opportunity. The draft report will be available on DEQ's website the day of the meetings at https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jspx.

Meeting description: Final public meetings on a study to restore the recreational use areas of portions of the Blackwater and its tributaries (mentioned above) that are impaired due to bacterial violations.

Description of study: Virginia agencies have been working to identify sources of bacterial contamination of portions of the Blackwater and its tributaries. These impairements span approximately 82 river miles. These waterways are impaired for failure to meet the recreational use due to exceedances of the bacterial water quality standard.

Waterbody	Location	Impaired Length (miles)	Impairment
Blackwater Swamp	Petersburg, Prince George, Surry, Sussex	22.53	Recreational Use (Swimming)
Blackwater River	Sussex, Surry	24.59	
Warwick Swamp	Dinwiddie, Prince George	12.89	
Second Swamp	Petersburg, Prince George	15.24	
Otterdam Swamp	Surry	5.57	
Tributary to Coppahaunk Swamp	Sussex	0.89	
Total Impairment Length		81.71	

The draft study reports on the current status of the waterbodies via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs), for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacteria levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period that expires April 2, 2010.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Notice to Discuss a Study to Restore Water Quality for Jackson River Watershed

Public meeting: Alleghany County Governmental Complex, Board of Supervisors Room, 9212 Winterberry Avenue, located near Low Moor, VA, on Thursday, March 4, 2010, from 6:30 p.m. to 8:30 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) announces a public meeting to discuss a study to restore water quality in the Jackson River watershed.

Description of study: Virginia agencies have been working to identify sources of pollution causing low dissolved oxygen levels and biological impairment (general standard) in the Jackson River watershed. Dissolved oxygen levels periodically fall below the minimum water quality standard, which decreases the suitability of the water to support aquatic life. The general standard violation means that water quality does not support a natural aquatic community.

The following is a list of the "impaired" waters, the length of the impaired segment, their location, and the reason for the impairment: Jackson River (I04R–11.21 miles), Alleghany, Botetourt, Covington, dissolved oxygen; Jackson River (I04R–24.21 miles), Alleghany, Botetourt, Covington, aquatic life.

During the study, the state agencies developed a Total Maximum Daily Load (TMDL) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by close of business on April 5, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Jason R. Hill, Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6725, or email jason.hill@deq.virginia.gov. Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Notice of Draft Report of Study to Restore Water Quality for Lower Mattaponi and Lower Pamunkey Rivers

Public meeting: March 2, 2010, at the West Point Downtown Business Center, 621 Main Street, West Point, VA 23181. An afternoon public meeting will be held at 2 p.m. and the evening public meeting at 6 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are announcing the draft report of a study to restore water quality for a shellfish growing area and recreational use areas, as well as a public comment opportunity and two public meetings. The draft report will be available on DEQ's website the day of the meetings at https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jspx.

Meeting description: Final public meetings on a study to restore the recreational use areas of the Lower Mattaponi and Lower Pamunkey Rivers and the recreational use and shellfish growing area of the Upper York River near West Point. These waterways are impaired due to bacterial violations.

List of Shellfish Waterbodies Requiring TMDL Development

Cause Group Code	Shellfish Condemnation Area	Waterbody Name	Impairment	Estuary Area (mi^2)
F26E-20-SF	049-004A (08/25/2005)	York River	Fecal Coliform	7.218

List of Recreation Waterbodies Requiring TMDL Development

Cause Group Code	Waterbody Name	Impairment	Estuary Area (mi2)
F26E-05-BAC	York River	Enterococcus	6.966
F14E-03-BAC	Pamunkey River	Enterococcus	4.368
F25E-01-BAC	Mattaponi River	Enterococcus	2.535
		Total	13.899

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination of the Lower Mattaponi and Lower Pamunkey Rivers and the recreational use and shellfish growing area of the Upper York River near West Point. All impairments lie within portions of King and Queen, King William, and New Kent Counties. These streams are impaired for failure to meet the designated use of shellfish consumption or recreational use because of bacterial water quality standard violations.

The draft study reports the current status of the waterbodies via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitation, and DEQ, and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period that expires on April 1, 2010.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Total Maximum Daily Load Studies for Chuckatuck Creek, Kings Creek, and Ballard Marsh Creek in Isle of Wight and Suffolk Counties

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for Chuckatuck Creek, Kings Creek, and Ballard Marsh Creek located in Isle of Wight and Suffolk Counties on Wednesday, February 24, 2010.

The meeting will start at 2 p.m. at the City of Suffolk Public Works Conference Room located at 440 Market Street, 2nd Floor, Suffolk VA. The purpose of the meeting is to provide information and discuss the final study with interested local community members and local government.

Chuckatuck Creek (VAT-G11E-16) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 62 (062-080) imposed by the Virginia Department of Health, Division of Shellfish Sanitation.

Kings and Ballard Marsh Creeks (VAT-G11E-17) were also identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 62 (062-164) imposed by the Virginia Department of Health, Division of Shellfish Sanitation.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop Total Maximum Daily Loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for each impaired water. A TMDL is the total amount of a pollutant a

water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 25, 2010, to March 26, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study for the Elizabeth River and Several Tributaries

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for the Elizabeth River mainstem, branches, and several tributaries, on Tuesday, February 23, 2010.

The meeting will start at 7 p.m. in the Hampton Roads Planning District Commission Board Room located at 723 Woodlake Drive, Chesapeake, VA. The purpose of the study will be to review sources of bacteria identified in the watershed and to present the reductions in bacteria loadings needed to allow streams in the watershed to meet water quality goals.

The affected streams were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report and Virginia's 2002 § 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. These streams are therefore not supporting the primary contact recreation (swimmable) designated use. The impairments include the Mainstem, Eastern Branch, Southern Branch, Western Branch, Lafayette River, Broad Creek, Indian River, and Paradise Creek.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop Total Maximum Daily Loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 24, 2010, to March 25, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study for Lawnes Creek in Isle of Wight and Surry Counties

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for Lawnes Creek, located in both Isle of Wight and Surry Counties, on Wednesday, February 17, 2010.

The meeting will start at 7:30 p.m. in the Blackwater Regional Library, Smithfield Branch located at 255 James St., Smithfield, VA. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Lawnes Creek (VAT-G11E-14) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 60-206 imposed by the Virginia Department of Health, Division of Shellfish Sanitation.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop Total Maximum Daily Loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 18, 2010, through March 19, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study for Pettit Branch, Accomack County

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for Pettit Branch, located in Accomack County, on Tuesday, February 23, 2010.

The meeting will start at 1 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomac, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Pettit Branch (VAT-D02R-01) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the aquatic life use. The impairment is based on biological monitoring data of the stream's benthic community. Virginia agencies are working to identify the stressors that are affecting the benthic communities in this creek.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop Total Maximum Daily Loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 24, 2010, through March 25, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Extension of Public Comment Period for Draft Total Maximum Daily Load for Powell River including the North Fork Powell River, the South Fork Powell River, Butcher Fork, Wallen Creek, Bailey's Trace, Ely Creek, Gin Creek, Lick Branch, Puckett Creek, and Stone Creek in Lee and Wise Counties, Virginia

Purpose of notice: To extend the public comment period for the draft report for the Powell River and tributaries in southwest Virginia.

Description of study: The Department of Environmental Quality (DEQ) has identified sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of the Powell River including the North Fork Powell River, the South Fork Powell River, Butcher Fork, Wallen Creek, Bailey's Trace, Ely Creek, Gin Creek, Lick Branch, Puckett Creek, and Stone Creek in Lee and Wise Counties, Virginia. The stream is impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations, as well as violating of the E. coli standard.

The draft study identifies the pollutants impairing the aquatic community and total maximum daily loads (TMDLs), have been developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ also determined the sources of bacteria contamination and developed a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, January 29, 2010, to March 15, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review the draft TMDL report: The draft TMDL report on the impaired waters is available from the contact below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley Williams, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

Total Maximum Daily Load for Spout Run Watershed in Clarke County

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) for the Spout Run watershed in Clarke County. Spout Run was listed on the 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria and violations of the state's general (benthic) standard for aquatic life. The benthic and bacteria impairments on the South Fork Shenandoah extend for 3.7 miles from the confluence of Page Brook and Roseville Run downstream to the confluence with the Shenandoah River. In addition, Page Brook was listed on the 2004 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. This impairment extends for 8.78 miles from the headwaters downstream to the confluence with Roseville Run.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The final public meeting on the development of these TMDLs will be held on Wednesday February 24, 2010, 7 p.m. at the Boyce Fire Hall, 1 South Greenway Ave., Boyce, VA. The TMDL document will be available on the DEQ website the day of the meeting for public comment and review: https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jspx.

The public comment period for the final public meeting and TMDL document will end on March 29, 2010, at 11:59 p.m. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

Public Comment Period on Updates to Enforceable Policies of the Virginia Coastal Resources Management Program

Notice of intended action: This public notice is to inform interested parties of the Virginia Coastal Zone Management Program's intention to update the enforceable polices incorporated into the program and to invite the public to comment on this change.

Purpose of the notice: The Coastal Zone Management Act (15 CFR § 923.84) requires state Coastal Zone Management Programs to formally incorporate changes made to the laws and policies that are used for federal consistency. The changes discussed here have already been made to each statute and regulation; the purpose of this action is to incorporate these changes into the Virginia Coastal Zone Management Program. These changes are considered to be routine program changes, and therefore do not significantly affect the (i) uses subject to management; (ii) special management areas; (iii) boundaries; (iv) authorities and organization; or (v) coordination, public involvement, and national interest components of the Virginia Coastal Zone Management Program. Upon concurrence by the National Oceanic and Atmospheric Administration (NOAA), the policies discussed below will be incorporated into the program.

Public Comment Period: January 22, 2010, to February 16, 2010.

How to comment: Comments on these proposed changes should be submitted in writing directly to the National Oceanic and Atmospheric Administration by February 16, 2010, at the following address: John King, NOAA, SSMC4, N/ORM3, 1305 East West Highway, Silver Spring, MD 20910.

If paper copies are required of any of the documents provided in PDF format above, please contact April Bahen as indicated in the contact information listed directly below.

Contact Information: April Bahen, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4005, or email april.bahen@deq.virginia.gov.

Additional information is available at: http://www.deq.virginia.gov/coastal/pubnotice.html.

Virginia Coastal and Estuarine Land Conservation Program (CELCP) Funding Opportunity FY 2011

State program name: Virginia Coastal Zone Management (CZM) Program.

Federal funding source: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

Application deadline: Applications must be received electronically by March 1, 2010. Email applications to Beth Polak at the Virginia CZM Program at beth.polak@deq.virginia.gov.

Funding opportunity description: The purpose of this announcement is to advise eligible applicants (requirements described below) that the Virginia CZM Program is soliciting coastal and estuarine land conservation (acquisitions or easements) project proposals for competitive funding under the CELCP. Funding is contingent upon the availability of FY 2011 federal appropriations. It is anticipated that projects funded under this announcement will have a grant start date between June 1, 2011, and October 1, 2011.

Program Objectives: The Coastal and Estuarine Land Conservation Program (CELCP) was authorized "for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses." This announcement solicits proposals for land acquisition projects (fee simple interest or conservation easements) that can be completed within 18 months from the start date of the award (anticipated between June 1, 2011, and October 1, 2011) and that have the purpose of protecting important coastal and estuarine areas. NOAA may extend the performance period for project grants up to an additional 18 months (for a maximum total performance period of three years) if circumstances warrant and if progress on the project is being demonstrated.

Eligible Projects: In order to be eligible to compete, a project must:

1. Be located in a coastal and estuarine area included within the Coastal Zone boundary, as identified in the Virginia CELCP plan;

2. Match federal CELCP funds with non-federal funds at a ratio of 1:1;

3. Be held in public ownership by the grant recipient (please note: If the grant recipient is a state agency that does not have authority to hold title to lands, the property may be held by another state agency that has the authority and mission to own and manage land for conservation purposes in a manner consistent with CELCP. If the project includes lands being contributed as in-kind match, the match properties may be held either in public ownership or by a qualified nongovernmental organization);

4. Provide conservation in perpetuity;

5. Provide for public access or other public benefit, as appropriate and consistent with resource protection;

6. Be consistent with Virginia's CZM Program approved under the Coastal Zone Management Act (CZMA);

7. Be acquired from a willing seller; and

8. Complement working waterfront needs, to the extent practicable.

To meet the CELCP's national criteria, projects should:

1. Protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses;

2. Give priority to lands that can be effectively managed and protected, have significant ecological value, have a demonstrated need for protection, and have the ability to successfully leverage funds; and

3. Directly advance the goals, objectives, and implementation of the Virginia CELCP plan, which necessarily includes goals and objectives that relate to the coastal management plan or program, NERR management plans approved under the CZMA, national objectives of the CZMA, or a regional or state watershed protection plan for states and territories with approved coastal management plans.

For complete information regarding the Virginia CELCP application process visit the Virginia Coastal Zone Management Program website http://www.deq.virginia.gov/coastal/celcp.html or contact Beth Polak, Coastal Planner, Virginia CZM Program, telephone (804) 698-4260, or email beth.polak@deq.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Building and Fire Regulation Change Proposals

The Virginia Board of Housing and Community Development (board) seeks written comment from interested persons on proposals received in response to proposed regulations published on September 28, 2009, in Volume 26, Issue 2 of the Virginia Register for the Virginia Uniform Statewide Building Code, the Virginia Statewide Fire Prevention Code, the Virginia Industrialized Building Safety Regulations, and the Virginia Amusement Device Regulations.

The board has developed a "compilation document" containing all proposed changes and supporting documentation received during the comment period on the proposed regulations. The compilation document is available on the Department of Housing and Community Development's website at http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/2009CodeChangeCycle.htm.

Comments on code change proposals will be received through March 22, 2010, and should be submitted to Paula Eubank, Associate Director of Technical Assistance Services Office (TASO), Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7140, FAX (804) 371-7092 or email taso@dhcd.virginia.gov. For additional information or assistance in obtaining the compilation document, please contact the department's Division of Building and Fire Regulation at (804) 371-7150.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 18, 2010, and January 26, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Final Rules for Game Operation:

Director's Order Number Three (10)

Virginia's Instant Game Lottery 1162; "Casino Doubler" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Four (10)

Virginia's Instant Game Lottery 1101; "Bingo Tripler" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Five (10)

Virginia's Instant Game Lottery 1164; "Hit $1,000" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Six (10)

Virginia's Instant Game Lottery 1167; "IGT Slots" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Seven (10)

Virginia's Instant Game Lottery 1169; "American Idol" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Eight (10)

Virginia's Instant Game Lottery 1171; "Super Lucky 8's" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Nine (10)

Virginia's Instant Game Lottery 1172; "$100,000 Payout" Final Rules for Game Operation (effective 1/14/10)

Director's Order Number Eleven (10)

Virginia Lottery's "American Idol ™ Sweepstakes" Final Rules for Game Operation (effective 1/25/10)

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at http://register.dls.virginia.gov/cumultab.htm.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

DEPARTMENT OF GENERAL SERVICES

Title of Regulation: **1VAC30-40. Regulations for the Certification of Laboratories Analyzing Drinking Water.**

Publication: 26:9 VA.R. 1188-1209 January 4, 2010.

Correction to Final Regulation:

Page 1191, 1VAC30-40-240 A, the cross reference to "1VAC30-40-85 B 6 for secondary maximum contaminant levels" was unintentionally omitted from the end of subsection A. The text should read:

"A. Laboratories shall meet the sampling and analytical methodology requirements incorporated by reference at 1VAC30-40-85 B 1 for primary inorganic contaminants, 1VAC30-40-85 B 2 for primary organic contaminants, 1VAC30-40-85 B 5 for alternative testing methods, and 1VAC30-40-85 B 6 for secondary maximum contaminant levels."

VA.R. Doc. No. R10-2189; Filed January 25, 2010.

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-260. Water Quality Standards.**

Publication: 25:12 VA.R. 2133-2247 February 16, 2009.

Correction to Final Regulation:

Page 2147, 9VAC25-260-140, subsection B, Table of Parameters, row 3, after "Diazinon" insert "(µg/l)"

Page 2208, 9VAC25-260-430, SEC. 12a, fourth row from bottom should read:

[***]	[hh]	[Hays Creek from its confluence with the Maury River to Brownsburg (9.5 miles).]

VA.R. Doc. No. R06-344; Filed January 26, 2010, 1:56 p.m.