VIRGINIA REGISTER OF REGULATIONS

VOL. 28 ISS. 25 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | AUGUST 13, 2012

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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, and notices of public hearings on regulations.

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.

A 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. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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.dls.virginia.gov).

August 2012 through August 2013

Volume: Issue	Material Submitted By Noon*	Will Be Published On
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 **(Tuesday)**	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 **(Tuesday)**	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
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29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Rupal D. Shah.

Nature of Petitioner's Request: To amend 18VAC85-20-140 which requires all parts of the USMLE examination to be completed within 10 years, by allowing an exception in certain circumstances.

Agency's Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations and will be published on August 13, 2012, and posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. Comment on the petition will be received until September 7, 2012.

Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in 18VAC85-20-140. This matter will be on the board's agenda for its meeting on October 25, 2012.

Public Comment Deadline: September 7, 2012.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-32; Filed July 19, 2012, 1:14 p.m.

BOARD OF NURSING

Agency Decision

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Name of Petitioner: Timothy Jankiewicz.

Nature of Petitioner's Request: To amend regulations for nursing education programs to require coursework in organ donation.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on July 17, 2012, the Board of Nursing deliberated on the matter and decided to reject the request for an amendment. While all members support education in organ donation, it was their belief that there were more appropriate channels for such education, such as through staff training in hospitals and other health care entities in accordance with protocols for the institution. Further, educators commented that the subject is usually included in nursing education as part of training on transplant and other topics.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-22; Filed July 17, 2012, 2:21 p.m.

BOARD OF SOCIAL WORK

Agency Decision

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Sarah Carter.

Nature of Petitioner's Request: To amend regulations for licensure by endorsement to allow social workers from other jurisdictions to provide "verification of active practice in another jurisdiction for 36 out of the past 60 months"; or verification of active practice in another jurisdiction for 36 months at any time, plus verification that the applicant has completed 30 contact hours of continuing education in the 12 months preceding the application for licensure.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on July 20, 2012, the board considered the petition and comments. Rather than initiating a new regulatory action, which would necessitate a lengthy process, the board decided to consider the request during the comment period on the proposed regulations that are currently under review in the Governor's office. Since 18VAC140-20-45 on licensure by endorsement has already been amended in the proposal, it would be possible for the board to further amend that section during the adoption of a final regulation.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-21; Filed July 20, 2012, 1:58 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation.** The purpose of the proposed action is to amend the Virginia Pollution Abatement (VPA) permit regulation in order to facilitate consistency with the other regulations that govern the pollutant management activities at Animal Feeding Operations (AFOs). The VPA permit regulation governs the pollutant management activities of animal wastes at AFOs. The VPA permit regulation contains obsolete definitions that are not consistent with the existing general permit for AFOs as well as related federal definitions. The amendments and reissuance of the VPA General Permit Regulation for Animal Feeding Operations (AFOs) will be covered by a concurrent notice of intended regulatory action.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public Comment Deadline: September 12, 2012.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

VA.R. Doc. No. R12-3345; Filed July 23, 2012, 10:49 a.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Final Regulation

Title of Regulation: **2VAC5-318. Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease (amending 2VAC5-318-50).**

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: July 24, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

The amendment adds the counties of Fairfax and Prince William and the independent cities of Fairfax, Falls Church, Manassas, and Manassas Park to the Thousand Cankers Disease Quarantine. The amendments are necessary due to the detection of Thousand Cankers Disease in Fairfax and Prince William counties.

2VAC5-318-50. Regulated areas.

The following areas in Virginia are quarantined for Thousand Cankers Disease:

1. The entire counties of:

Chesterfield

Fairfax

Goochland

Hanover

Henrico

Powhatan

Prince William

2. The entire cities of:

Colonial Heights

Fairfax

Falls Church

Manassas

Manassas Park

Richmond

VA.R. Doc. No. R12-3342; Filed July 24, 2012, 2:04 p.m.

Final Regulation

Title of Regulation: **2VAC5-335. Virginia Emerald Ash Borer Quarantine for Enforcement of the Virginia Pest Law (amending 2VAC5-335-10, 2VAC5-335-30 through 2VAC5-335-60; repealing 2VAC5-335-20, 2VAC5-335-70 through 2VAC5-335-100).**

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: July 26, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

The amendment extends the Emerald Ash Borer quarantine to the entire Commonwealth of Virginia.

2VAC5-335-10. Declaration of quarantine.

A quarantine is hereby established to regulate the movement of certain articles capable of transporting the highly destructive pest of ash (Fraxinus spp.) known as the emerald ash borer, Agrilus planipennis (Fairemaire) ~~into uninfested or unregulated areas of the state unless such articles comply with the conditions specified herein~~.

2VAC5-335-20. ~~Purpose of quarantine.~~ (Repealed.)

~~The emerald ash borer is an introduced beetle that specifically attacks and kills ash trees. It has become established in Fairfax County, Virginia, and has the potential to spread to uninfested counties by both natural means and humans moving infested articles. The purpose of this quarantine is to prevent the artificial spread of the emerald ash borer to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the emerald ash borer.~~

2VAC5-335-30. Definitions.

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

~~"Certificate" means a document issued by an inspector or any other person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.~~

~~"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.~~

"Emerald ash borer" means the live insect known as the emerald ash borer, Agrilus planipennis (Fairemaire), in any life stage (egg, larva, pupa, adult).

~~"Infestation" means the presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the emerald ash borer is present.~~

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine or regulation.

~~"Limited permit (permit)" means a document issued by an inspector or other person operating in accordance with a compliance agreement to allow the movement of regulated articles to a specific destination.~~

"Moved (move, movement)" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

"Virginia Pest Law" means the statute set forth in Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia.

2VAC5-335-40. Regulated articles.

The following articles are regulated under the provisions of this quarantine~~, and shall not be moved out of any regulated area within Virginia, except in compliance with the conditions prescribed in this quarantine~~:

1. The emerald ash borer in any life stage.

2. Firewood of all hardwood (nonconiferous) species.

3. Ash (Fraxinus spp.) nursery stock.

4. Green (nonheat treated) ash lumber.

5. Other living, dead, cut, or fallen material of the genus Fraxinus, including logs, stumps, roots, branches, and composted and uncomposted wood chips.

2VAC5-335-50. Regulated areas.

~~The following areas in Virginia:~~

~~The entire counties of:~~

~~Arlington~~

~~Charlotte~~

~~Clarke~~

~~Fairfax~~

~~Fauquier~~

~~Frederick~~

~~Halifax~~

~~Loudoun~~

~~Lunenburg~~

~~Mecklenburg~~

~~Pittsylvania~~

~~Prince William~~

~~The entire independent cities of:~~

~~Alexandria~~

~~Danville~~

~~Fairfax City~~

~~Falls Church~~

~~Manassas~~

~~Manassas Park~~

~~Winchester~~

The entire Commonwealth of Virginia is a regulated area.

2VAC5-335-60. Conditions governing the intrastate movement of regulated articles.

~~A.~~ Movement of a regulated article solely within the regulated area is allowed without restriction.

~~B. Any regulated article may be moved intrastate from a regulated area only if moved under the following conditions:~~

~~1. With a certificate or limited permit issued and attached in accordance with 2VAC5-335-70 and 2VAC5-335-100 of this quarantine.~~

~~2. Without a certificate or limited permit, if:~~

~~a. The points of origin and destination are indicated on a waybill accompanying the regulated article;~~

~~b. The regulated article, if moved through the regulated area during the period of April 1 through September 30, is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer;~~

~~c. The regulated article is moved directly through the regulated area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the emerald ash borer; and~~

~~d. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.~~

~~3. With a limited permit issued by the Commonwealth if the regulated article is moved:~~

~~a. By a state or federal agency for experimental or scientific purposes;~~

~~b. Under conditions, specified on the permit, which the commissioner has found to be adequate to prevent the spread of the emerald ash borer; and~~

c. With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if the regulated article is not in a container.

2VAC5-335-70. ~~Issuance and cancellation of certificates and limited permits.~~ (Repealed.)

~~A. Certificates may be issued by an inspector or any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:~~

~~1. The articles have been examined by the inspector and found to be apparently free of the emerald ash borer;~~

~~2. The articles have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, their movement does not present a risk of spreading the emerald ash borer;~~

~~3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and~~

~~4. The regulated article is eligible for unrestricted movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated articles.~~

~~B. Limited permits may be issued by an inspector for the movement of regulated articles to specific destinations within Virginia if:~~

~~1. The regulated article is apparently free of emerald ash borer, based on inspection; or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the Virginia Department of Agriculture and Consumer Services, prevents the article from presenting a risk of spreading the emerald ash borer; or~~

~~2. The regulated article is to be moved intrastate to a specified destination under conditions that specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of the emerald ash borer because the life stage(s) of the insect will be destroyed by such specified handling, utilization, processing or treatment; and~~

~~3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and~~

~~4. The regulated article is eligible for interstate movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated article.~~

~~C. Certificates and limited permits for use for intrastate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the intrastate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with subsection A of this section. A person operating under a compliance agreement may issue a limited permit for intrastate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with subsection B of this section.~~

~~D. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally, or in writing, if he determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow.~~

2VAC5-335-80. ~~Compliance agreements and cancellation.~~ (Repealed.)

~~A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this quarantine. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.~~

~~B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow.~~

2VAC5-335-90. ~~Assembly and inspection of regulated articles.~~ (Repealed.)

~~A. Any person (other than a person authorized to issue certificates or limited permits under 2VAC5-335-70) who desires to move a regulated article intrastate accompanied by a certificate or limited permit shall apply for inspection as far in advance as possible, but at least five business days before the services are needed.~~

~~B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and comply with this quarantine. The regulated article shall be safeguarded from infestation.~~

2VAC5-335-100. ~~Attachment and disposition of certificates and limited permits.~~ (Repealed.)

~~A. A certificate or limited permit required for the intrastate movement of a regulated article must be attached at all times during the intrastate movement to the outside of the container containing the regulated article or to the regulated article~~

~~itself if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.~~

~~B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate and/or limited permit must be retained by the sender of the article(s) at the place of origin.~~

VA.R. Doc. No. R12-3346; Filed July 26, 2012, 1:34 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-90, 4VAC20-252-100).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: August 1, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments maintain an 18-inch minimum size limit, a 28-inch maximum size limit, and a two-fish possession limit for striped bass, except one fish of the two-fish possession limit may be greater than 28 inches total length. These measures apply to the Chesapeake Area recreational striped bass fishery and the Virginia tributaries of the Potomac River recreational striped bass fishery from October 4 through December 31.

4VAC20-252-90. Bay fall striped bass recreational fishery.

A. The open season for the bay fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length~~, except as provided in subsection F of this section~~; however, the maximum size limit shall only apply to one fish of the possession limit.

E. The possession limit for this fishery shall be two fish per person.

~~F. The possession limits described in subsection E of this section may consist of only one striped bass 34 inches or greater.~~

4VAC20-252-100. Potomac River tributaries summer/fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries summer/fall striped bass fishery shall correspond to the open summer/fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length~~, except as provided in subsection F of this section~~; however, the maximum size limit shall only apply to one fish of the possession limit.

E. The possession limit for this fishery shall be two fish per person.

~~F. The possession limits described in subsection E of this section may consist of only one striped bass 34 inches or greater.~~

VA.R. Doc. No. R12-3320; Filed July 26, 2012, 4:17 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Titles of Regulations: **9VAC5-10. General Definitions (Rev. J11) (amending 9VAC5-10-20).**

9VAC5-20. General Provisions (Rev. J11) (repealing 9VAC5-20-202).

9VAC5-40. Existing Stationary Sources (Rev. J11) (repealing 9VAC5-40-6000 through 9VAC5-40-6230).

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172, and 182); 40 CFR Parts 51 and 60.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 12, 2012.

Effective Date: September 27, 2012.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

The original purpose of the regulation was to establish emission standards that required the owners of HMIWIs to limit emissions of organics, metals, and acid gases to a specified level necessary to protect public health and welfare. The regulation was promulgated in order for the Commonwealth to meet the requirements of § 111(d) and 129 of the federal Clean Air Act.

Hospital/Medical/Infectious Waste Incinerators (HMIWI) emissions are a "designated" pollutant under § 111(d) of the Act. Designated pollutants are pollutants that are not 108(a) "criteria" pollutants or § 112(b)(1)(A) "hazardous" pollutants, but for which standards of performance for new sources have been established under § 111(b), new source performance standards (NSPSs). When the EPA establishes an NSPS, states are required to develop standards for existing facilities based on EPA emission guidelines. In conjunction of § 111(d), § 129 and its associated standards were promulgated because EPA determined that incinerator emissions cause or contribute significantly to air pollution, which may reasonably be expected to endanger public health and welfare. The intended effect of the standards and guidelines is to form a basis for state action to develop state regulations controlling HMIWI emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements. In order for §§ 111 and 129 to be effected, the specific guidelines are promulgated in the Code of Federal Regulations (CFR) at Subpart Ce of 40 CFR 63. State regulations must be at least as stringent as the guidelines.

The final rule (Subpart Ec of 40 CFR Part 60) was published by EPA in the Federal Register dated September 15, 1997 (62 FR 48348) and applies to existing HMIWIs built on or before June 20, 1996.

Purpose: The Commonwealth of Virginia HMIWI plan and related state rule were approved by EPA in the September 10, 2004, edition of the Federal Register (69 FR 54756) and codified in 40 CFR Part 62, Subpart VV. Since that time, all three designated incinerator facilities in the plan inventory subject to the state rule have been dismantled. On October 6, 2009, EPA promulgated revised HMIWI emission guidelines under 40 CFR Part 60, Subpart Ce, that triggered the need for revised state plan submittals. As a result, on September 13, 2010, the Department of Environmental Quality (DEQ) submitted a negative declaration regarding HMIWI sources within the state and requested EPA's approval of a SIP withdrawal request. In the December 17, 2010, edition of the Federal Register (75 FR 78917), EPA published Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Emissions from Existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) Units, Negative Declaration and Withdrawal of EPA Plan Approval. Subpart VV § 62.11625 was modified to reflect a negative declaration and became effective February 15, 2011. Because there are no sources in the state to control, and because there are no longer HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation. The definition of the term "metropolitan statistical area" in 9VAC5-10-20 and the listing of such areas in 9VAC5-20-202 should also be repealed as the term is only used in Article 44 and in no other regulation of the board.

Rationale for Using Fast-Track Process: Virginia requested a finding of negative declaration for HMIWI on September 13, 2010, as all designated incinerator facilities in the plan inventory subject to Article 44 had been dismantled. On December 17, 2010, EPA approved the negative declaration and modified the Code of Federal Regulations accordingly. Subpart VV § 62.11625 was modified to reflect a negative declaration and became effective on February 15, 2011. Because there are no sources subject to the regulation and no HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation or for the use of the term "metropolitan statistical area" in 9VAC5-10-20 and 9VAC5-20-202. There is no stakeholder group that is likely to object to the repeal of the regulation. The use of the fast-track rulemaking process is, therefore, appropriate.

Substance: Article 44 is repealed in its entirety. 9VAC5-10 and 9VAC5-20 are revised to remove provisions concerning metropolitan statistical areas, which are used only in Article 44.

Issues: The primary advantage to the public is the removal of unusable regulatory requirements. There are no disadvantages to the public. The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Since the initial adoption of the regulation on Hospital/Medical/Infectious Waste Incinerators (HMIWI) (9VAC5-40-6000 et seq.), all three designated incinerator facilities in the Commonwealth have been dismantled. In 2009, the U.S. Environmental Protection Agency (EPA) promulgated revised HMIWI emission guidelines that triggered the need for revised regulations and new state plan submittals. With no facilities in operation in the

Commonwealth, a negative declaration was submitted to EPA and approved in 2010. Since there are no sources in the state to control, and because there are no longer HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation. Thus, the State Air Pollution Control Board (Board) proposes to repeal the Commonwealth's HMIWI regulations (9VAC5-40-6000 et seq.). The Board also proposes to repeal the definition of the term "metropolitan statistical area" in 9VAC5-10-20 and the listing of such areas in 9VAC5-20-202 since the term is only used in the HMIWI regulation and no other regulation of the board.

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

Estimated Economic Impact. Since there are no sources in the state to control, and because there are no longer HMIWI components in the federal rule for Virginia, the proposed repeal of this regulation will not affect any individual, business or other entity beyond potentially reducing confusion amongst the public.

Businesses and Entities Affected. Since the facilities that were subject to this regulation have been dismantled, there are no stakeholders that will be affected by the repeal of this regulation.

Localities Particularly Affected. The proposed repeal of this regulation does not have a disproportionate effect on any particular localities.

Projected Impact on Employment. The proposed repeal of this regulation will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of this regulation will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of this regulation will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of this regulation will not affect small businesses.

Real Estate Development Costs. The proposed repeal of this regulation will not 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 14 (10). 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 Economic Impact Analysis: The State Air Pollution Control Board of has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

Since the initial adoption of Article 44, Hospital/Medical/Infectious Waste Incinerators (HMIWI) (9VAC5-40-6000 et seq.), all three designated incinerator facilities have been dismantled. In 2009, the Environmental Protection Agency (EPA) promulgated revised HMIWI emission guidelines that triggered the need for revised regulations and new state plan submittals. With no facilities in operation in the Commonwealth, a negative declaration was submitted to EPA and approved in 2010. Because there are no sources in the state to control, and because there are no longer HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation. The definition of the term metropolitan statistical area in 9VAC5-10-20 and the listing of such areas in 9VAC5-20-202 are also repealed as the term is only used in Article 44 and no other regulation of the board.

9VAC5-10-20. Terms defined.

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus,

process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in 9VAC5-20-200.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in 9VAC5-30 (Ambient Air Quality Standards).

"Board" means the State Air Pollution Control Board or its designated representative.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9VAC5-30 (Ambient Air Quality Standards).

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable implementation plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emissions limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an emissions limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources

seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. 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.

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

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

6. 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.

7. 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.

8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

9. Individual consent agreements issued pursuant to the legal authority of EPA.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9VAC5-80 (Permits for Stationary Sources),

Hg = 2.5H,

provided the owner produces evidence that this equation was actually relied on in establishing an emissions limitation;

b. For all other stacks,

Hg = H + 1.5L,

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Initial emission test" means the test required by any regulation, permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

~~"Metropolitan statistical area" means any area designated as such in 9VAC5-20-202.~~

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and:

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and

operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111 (d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or

2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9VAC5-50 (New and Modified Stationary Sources) which prescribes an emissions limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to

9VAC5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Total suspended particulate (TSP)" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

d. 1,1,1-trichloroethane (methyl chloroform);

e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);

k. Chloropentafluoroethane (CFC-115);

l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);

m. 1,1,1,2-tetrafluoroethane (HFC-134a);

n. 1,1-dichloro 1-fluoroethane (HCFC-141b);

o. 1-chloro 1,1-difluoroethane (HCFC-142b);

p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

q. Pentafluoroethane (HFC-125);

r. 1,1,2,2-tetrafluoroethane (HFC-134);

s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a);

u. Parachlorobenzotrifluoride (PCBTF);

v. Cyclic, branched, or linear completely methylated siloxanes;

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);

z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);

ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);

gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);

hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);

ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

kk. Chlorofluoromethane (HCFC-31);

ll. 1 chloro-1-fluoroethane (HCFC-151a);

mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);

oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OCH_3$);

pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200);

qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);

rr. Methyl acetate; ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$) (HFE-7000);

tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);

uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);

vv. methyl formate ($HCOOCH_3$);

ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);

xx. propylene carbonate;

yy. dimethyl carbonate; and

zz. Perfluorocarbon compounds which fall into these classes:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. The following compound is a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emission standards, VOC emissions limitations, or VOC content requirements: t-butyl acetate.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

9VAC5-20-202. ~~Metropolitan statistical areas.~~ (Repealed.)

~~Metropolitan Statistical Areas are geographically defined as follows:~~

~~TITLE~~	~~GEOGRAPHICAL AREA~~
~~Bristol MSA~~	~~Bristol City~~ ~~Scott County~~ ~~Washington County~~
~~Charlottesville MSA~~	~~Charlottesville City~~ ~~Albemarle County~~ ~~Fluvanna County~~ ~~Greene County~~
~~Danville MSA~~	~~Danville City~~ ~~Pittsylvania County~~
~~Lynchburg MSA~~	~~Bedford City~~ ~~Lynchburg City~~ ~~Amherst County~~ ~~Bedford County~~ ~~Campbell County~~
~~Norfolk-Virginia Beach-Newport News MSA~~	~~Chesapeake City~~ ~~Norfolk City~~ ~~Portsmouth City~~ ~~Suffolk City~~ ~~Virginia Beach City~~ ~~Hampton City~~ ~~Newport News City~~ ~~Poquoson City~~ ~~Williamsburg City~~ ~~Gloucester County~~ ~~Isle of Wight County~~ ~~James City County~~ ~~Mathews County~~ ~~York County~~
~~Richmond-Petersburg MSA~~	~~Richmond City~~

	Colonial Heights City Hopewell City Petersburg City Charles City County Chesterfield County Goochland County Hanover County Henrico County New Kent County Powhatan County Prince George County Dinwiddie County
Roanoke MSA	Roanoke City Salem City Botetourt County Roanoke County
National Capital MSA	Alexandria City Fairfax City Falls Church City Fredericksburg City Manassas City Manassas Park City Arlington County Clarke County Culpeper County Fairfax County Fauquier County King George County Loudoun County Prince William County Spottsylvania County Stafford County Warren County

Article 44
Emission Standards for Hospital/Medical/Infectious Waste Incinerators (Rule 4-44)

9VAC5-40-6000. Applicability and designation of affected facility. (Repealed.)

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this article apply is each individual HMIWI for which construction was commenced on or before June 20, 1996.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this article are the following:

1. Combustors during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided the owner:

a. Notifies the board of an exemption claim; and

b. Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned.

2. Any co-fired combustor if the owner of the co-fired combustor:

a. Notifies the board of an exemption claim;

b. Provides an estimate of the relative weight of hospital waste, medical/infectious waste, and other fuels and or wastes to be combusted; and

c. Keeps records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

3. Any combustor required to have a permit under § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

4. Any combustor which meets the applicability requirements under subpart Ea or Eb of 40 CFR Part 60 (standards for certain municipal waste combustors).

5. Any pyrolysis unit.

6. Cement kilns firing hospital waste and medical/infectious waste or both.

D. The provisions of this article do not apply to affected facilities subject to the standards in 9VAC5 Chapter 40, Article 54 (9VAC5-40-7950 et seq.).

E. Physical or operational changes made to an existing HMIWI unit solely for the purpose of complying with this article are not considered a modification and do not result in an existing HMIWI unit becoming subject to the provisions of subpart Ec of 40 CFR Part 60 (see 40 CFR 60.50c).

F. Beginning September 15, 2000, affected facilities subject to this article shall operate pursuant to a federal operating permit.

G. The provisions of 40 CFR Part 60 cited in this article are applicable only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50.

H. The requirement of subdivision C 3 of this section with regard to obtaining a permit under § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.) may be met by obtaining a permit from the department as required by 9VAC20 Chapter 60.

9VAC5-40-6010. Definitions. (Repealed.)

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 meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9VAC5 Chapter 10, unless otherwise required by context.

C. Terms defined.

"Batch HMIWI" means an HMIWI that is designed such that neither waste charging nor ash removal can occur during combustion.

"Biologicals" means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

"Blood products" means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

"Body fluids" means any liquid emanating or derived from humans and not limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

"Bypass stack" means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

"Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

"Co-fired combustor" means a unit combusting hospital waste and medical/infectious waste or both with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10% or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

"Combustor" means any type of stationary equipment in which solid, liquid or gaseous fuels and refuse are burned (including, but not limited to, furnaces, ovens, and kilns) for the primary purpose of destroying matter or reducing the volume, or both, of the waste by removing combustible matter.

"Commenced" means an owner has undertaken a continuous program of construction or modification or that an owner has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

"Compliance schedule" means a legally enforceable schedule specifying a date or dates by which a source must comply with specific emission limits contained in this article or with any increments of progress to achieve such compliance.

"Construction" means fabrication, erection, or installation of an affected facility.

"Continuous emission monitoring system" means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

"Continuous HMIWI" means an HMIWI that is designed to allow waste charging and ash removal during combustion.

"Dioxins/furans" means the combined emissions of tetra- through octa-chlorinated dibenzo-para-dioxins and dibenzofurans, as measured by Reference Method 23.

"Dry scrubber" means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the HMIWI exhaust stream forming a dry powder material.

"Fabric filter" means an add-on air pollution control system that removes particulate matter and nonvaporous metals emissions by passing flue gas through filter bags.

"Facilities manager" means the individual in charge of purchasing, maintaining, and operating the HMIWI or the owner's representative responsible for the management of the HMIWI. Alternative titles may include director of facilities or vice president of support services.

"Federal operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of Part II of 9VAC5 Chapter 80.

"High air phase" means the stage of the batch operating cycle when the primary chamber reaches and maintains maximum operating temperatures.

"Hospital" means any facility which has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

"Hospital/medical/infectious waste incinerator" or "HMIWI" or "HMIWI unit" means any device that combusts any amount of hospital waste and medical/infectious waste or both.

"Hospital/medical/infectious waste incinerator operator" or "HMIWI operator" means any person who operates, controls or supervises the day-to-day operation of an HMIWI.

"Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

"Infectious agent" means any organism (such as a virus or bacteria) that is capable of being communicated by invasion

and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

"Intermittent HMIWI" means an HMIWI that is designed to allow waste charging, but not ash removal, during combustion.

"Large HMIWI" means:

1. Except as provided in subdivision 2 of this definition:

a. An HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;

b. A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

c. A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

2. The following are not large HMIWI:

a. A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

b. A batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

"Low level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low level radioactive waste is not high level radioactive waste, spent nuclear fuel, or by product material as defined by the Atomic Energy Act of 1954 (42 USC § 2014(e)(2)).

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the HMIWI operator shall operate within established parameters as much as possible, and monitoring of all applicable operating parameters shall continue until all waste has been combusted or until the malfunction ceases, whichever comes first.

"Maximum charge rate" means:

1. For continuous and intermittent HMIWI, 110% of the lowest three hour average charge rate measured during the most recent emissions test demonstrating compliance with all applicable emission limits.

2. For batch HMIWI, 110% of the lowest daily charge rate measured during the most recent emissions test demonstrating compliance with all applicable emission limits.

"Maximum design waste burning capacity" means:

1. For intermittent and continuous HMIWI,

$C = P_v \times 15{,}000/8{,}500$

where:

C = HMIWI capacity, lb/hr

P_v = primary chamber volume, ft^3

15,000 = primary chamber heat release rate factor, $Btu/ft^3/hr$

8,500 = standard waste heating value, Btu/lb;

2. For batch HMIWI,

$C = P_v \times 4.5/8$

where:

C = HMIWI capacity, lb/hr

P_v = primary chamber volume, ft^3

4.5 = waste density, lb/ft^3

8 = typical hours of operation of a batch HMIWI, hours.

"Maximum fabric filter inlet temperature" means 110% of the lowest three hour average temperature at the inlet to the fabric filter (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with the dioxin/furan emission limit.

"Maximum flue gas temperature" means 110% of the lowest three hour average temperature at the outlet from the wet scrubber (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with the mercury emission limit.

"Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in subdivisions 1 through 9 of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR Part 261; household waste, as defined in 40 CFR 261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR 261.4(a)(1).

1. Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

2. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

3. Human blood and blood products, regardless of whether containerized, including:

a. Liquid human blood;

b. Products of blood;

c. Items containing unabsorbed or free-flowing blood;

d. Items saturated or dripping or both with human blood; or

c. Items that were saturated or dripping or both with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

4. Regardless of the presence of infectious agents, sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes. Also included are other types of broken or unbroken glassware that may have been in contact with infectious agents, such as used slides and cover slips.

5. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

6. Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

7. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

8. Any waste that is contaminated or mixed with any waste listed in subdivisions 1 through 7 of this definition.

9. Any residue or contaminated soil, waste, or other debris resulting from the cleaning of a spill of any waste listed in subdivisions 1 through 8 of this definition.

"Medium HMIWI" means:

1. Except as provided in subdivision 2 of this definition:

a. An HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;

b. A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

c. A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

2. The following are not medium HMIWI:

a. A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

b. A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

"Minimum dioxin/furan sorbent flow rate" means 90% of the highest three hour average dioxin/furan sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent emissions test demonstrating compliance with the dioxin/furan emission limit.

"Minimum mercury sorbent flow rate" means 90% of the highest three hour average mercury sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent emissions test demonstrating compliance with the mercury emission limit.

"Minimum hydrogen chloride sorbent flow rate" means 90% of the highest three hour average hydrogen chloride sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent emissions test demonstrating compliance with the hydrogen chloride emission limit.

"Minimum horsepower or amperage" means 90% of the highest three hour average horsepower or amperage to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with the applicable emission limits.

"Minimum pressure drop across the wet scrubber" means 90% of the highest three hour average pressure drop across the wet scrubber particulate matter control device (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with the particulate matter emission limit.

"Minimum scrubber liquor flow rate" means 90% of the highest three hour average liquor flow rate at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with all applicable emission limits.

"Minimum scrubber liquor pH" means 90% of the highest three hour average liquor pH at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with the hydrogen chloride emission limit.

"Minimum secondary chamber temperature" means 90% of the highest three hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent emissions test demonstrating compliance with the particulate matter, carbon monoxide, or dioxin/furan emission limits.

"Modification" means any change to an HMIWI unit after March 16, 1998, such that:

1. The cumulative costs of the modifications, over the life of the unit, exceed 50% of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or

2. The change involves a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under § 111 or § 129 of the federal Clean Air Act.

"Operating day" means a 24-hour period between 12:00 midnight and the following midnight during which any amount of hospital waste or medical/infectious waste is combusted at any time in the HMIWI.

"Operation" means the period during which waste is combusted in the incinerator excluding periods of startup or shutdown.

"Particulate matter" means the total particulate matter emitted from an HMIWI as measured by Reference Method 5 or Reference Method 29.

"Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, or tissue, the bags and containers used to collect and transport the waste material, and animal bedding (if applicable).

"Primary chamber" means the chamber in an HMIWI that receives waste material, in which the waste is ignited, and from which ash is removed.

"Pyrolysis" means the endothermic gasification of hospital waste or medical/infectious waste or both using external energy.

"Secondary chamber" means a component of the HMIWI that receives combustion gases from the primary chamber and in which the combustion process is completed.

"Shutdown" means the period of time after all waste has been combusted in the primary chamber. For continuous HMIWI, shutdown shall commence no less than two hours after the last charge to the incinerator. For intermittent HMIWI, shutdown shall commence no less than four hours after the last charge to the incinerator. For batch HMIWI, shutdown shall commence no less than five hours after the high-air phase of combustion has been completed.

"Small HMIWI" means:

1. Except as provided in subdivision 2 of this definition:

a. An HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;

b. A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

c. A batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

2. The following are not small HMIWI:

a. A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour; or

b. A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

"Small, rural HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste. The 2,000 pounds per week limitation does not apply during emissions tests.

"Startup" means the period of time between the activation of the system and the first charge to the unit. For batch HMIWI, startup means the period of time between activation of the system and ignition of the waste.

"Wet scrubber" means an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics), and to absorb and neutralize acid gases, or both.

9VAC5-40-6020. ~~Standard for particulate matter.~~ (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any particulate emissions in excess of the following limits:

1. For small HMIWI: 0.05 grains per dry standard cubic foot (115 milligrams per dry standard cubic meter).

2. For medium HMIWI: 0.03 grains per dry standard cubic foot (69 milligrams per dry standard cubic meter).

3. For large HMIWI: 0.015 grains per dry standard cubic foot (34 milligrams per dry standard cubic meter).

4. For small, rural HMIWI: 0.086 grains per dry standard cubic foot (197 milligrams per dry standard cubic meter).

9VAC5-40-6030. ~~Standard for carbon monoxide.~~ (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any carbon monoxide emissions in excess of the following limits:

1. For small HMIWI: 40 parts per million by volume.

2. For medium HMIWI: 40 parts per million by volume.

3. For large HMIWI: 40 parts per million by volume.

4. For small, rural HMIWI: 40 parts per million by volume.

9VAC5-40-6040. ~~Standard for dioxins/furans.~~ (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any dioxin/furan emissions in excess of the following limits:

1. For small HMIWI: 55 grains per dry billion standard cubic feet (125 nanograms per dry standard cubic meter) total dioxin/furan or 1.0 grains per billion standard cubic meter total TEQ (2.3 nanograms per dry standard cubic meter TEQ).

2. For medium HMIWI: 55 grains per billion dry standard cubic feet (125 nanograms per dry standard cubic meter) total dioxin/furan or 1.0 grains per billion standard cubic meter total TEQ (2.3 nanograms per dry standard cubic meter TEQ).

3. For large HMIWI: 55 grains per billion dry standard cubic feet (125 nanograms per dry standard cubic meter) total dioxin/furan or 1.0 grains per billion standard cubic meter total TEQ (2.3 nanograms per dry standard cubic meter TEQ).

4. For small, rural HMIWI: 350 grains per billion dry standard cubic feet (800 nanograms per dry standard cubic meter) total dioxin/furan or 6.6 grains per billion standard cubic meter total TEQ (15 nanograms per dry standard cubic meter TEQ).

9VAC5-40-6050. Standard for hydrogen chloride. (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any hydrogen chloride emissions in excess of the following limits:

1. For small HMIWI: 100 parts per million by volume or 93% reduction.

2. For medium HMIWI: 100 parts per million by volume or 93% reduction.

3. For large HMIWI: 100 parts per million by volume or 93% reduction.

4. For small, rural HMIWI: 3,100 parts per million by volume.

9VAC5-40-6060. Standard for sulfur dioxide. (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any sulfur dioxide emissions in excess of the following limits:

1. For small HMIWI: 55 parts per million by volume.

2. For medium HMIWI: 55 parts per million by volume.

3. For large HMIWI: 55 parts per million by volume.

4. For small, rural HMIWI: 55 parts per million by volume.

9VAC5-40-6070. Standard for nitrogen oxides. (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any nitrogen oxide emissions in excess of the following limits:

1. For small HMIWI: 250 parts per million by volume.

2. For medium HMIWI: 250 parts per million by volume.

3. For large HMIWI: 250 parts per million by volume.

4. For small, rural HMIWI: 250 parts per million by volume.

9VAC5-40-6080. Standard for lead. (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any lead emissions in excess of the following limits:

1. For small HMIWI: 0.52 grains per thousand dry standard cubic feet (1.2 milligrams per dry standard cubic meter) or 70% reduction.

2. For medium HMIWI: 0.52 grains per thousand dry standard cubic feet (1.2 milligrams per dry standard cubic meter) or 70% reduction.

3. For large HMIWI: 0.52 grains per thousand dry standard cubic feet (1.2 milligrams per dry standard cubic meter) or 70% reduction.

4. For small, rural HMIWI: 4.4 grains per thousand dry standard cubic feet (10 milligrams per dry standard cubic meter).

9VAC5-40-6090. Standard for cadmium. (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any cadmium emissions in excess of the following limits:

1. For small HMIWI: 0.07 grains per thousand dry standard cubic feet (0.16 milligrams per dry standard cubic meter) or 65% reduction.

2. For medium HMIWI: 0.07 grains per thousand dry standard cubic feet (0.16 milligrams per dry standard cubic meter) or 65% reduction.

3. For large HMIWI: 0.07 grains per thousand dry standard cubic feet (0.16 milligrams per dry standard cubic meter).

4. For small, rural HMIWI: 1.7 grains per thousand dry standard cubic feet (4 milligrams per dry standard cubic meter).

9VAC5-40-6100. Standard for mercury. (Repealed.)

No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any mercury emissions in excess of the following limits:

1. For small HMIWI: 0.24 grains per thousand dry standard cubic feet (0.55 milligrams per dry standard cubic meter) or 85% reduction.

2. For medium HMIWI: 0.24 grains per thousand dry standard cubic feet (0.55 milligrams per dry standard cubic meter) or 85% reduction.

3. For large HMIWI: 0.24 grains per thousand dry standard cubic feet (0.55 milligrams per dry standard cubic meter) or 85% reduction.

4. For small, rural HMIWI: 3.3 grains per thousand dry standard cubic feet (7.5 milligrams per dry standard cubic meter).

9VAC5-40-6110. Standard for visible emissions. (Repealed.)

A. The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Visible Emissions) apply except that the provisions in subsection B of this section apply instead of 9VAC5-40-80.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any HMIWI any visible emissions which exhibit greater than 10% opacity, six-minute block average. Failure to meet the requirements of this

section because of the presence of condensed water vapor shall not be a violation of this section.

9VAC5-40-6120. Standard for fugitive dust/emissions. (Repealed.)

The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-40-6130. Standard for odor. (Repealed.)

The provisions of Article 2 (9VAC5-40-130 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Odor, Rule 4-2) apply.

9VAC5-40-6140. Standard for toxic pollutants. (Repealed.)

The provisions of Article 4 (9VAC5-60-200 et seq.) of 9VAC5 Chapter 60 (Emission Standards for Toxic Pollutants, Rule 6-4) apply.

9VAC5-40-6150. HMIWI operator training and qualification. (Repealed.)

A. No owner of an affected facility shall allow the affected facility to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.

B. HMIWI operator training and qualification shall be obtained through a program approved by the board or by completing the requirements included in subsections C through G of this section.

C. Training shall be obtained by completing an HMIWI operator training course that includes, at a minimum, the following provisions:

1. Twenty-four hours of training on the following subjects:

a. Environmental concerns, including pathogen destruction and types of emissions;

b. Basic combustion principles, including products of combustion;

c. Operation of the type of incinerator to be used by the HMIWI operator, including proper startup, waste charging, and shutdown procedures;

d. Combustion controls and monitoring;

e. Operation of air pollution control equipment and factors affecting performance (if applicable);

f. Methods to monitor pollutants (continuous emission monitoring systems and monitoring of HMIWI and air pollution control device operating parameters) and equipment calibration procedures (where applicable);

g. Inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

h. Actions to correct malfunctions or conditions that may lead to malfunction;

i. Bottom and fly ash characteristics and handling procedures;

j. Applicable federal, state, and local regulations;

k. Work safety procedures;

l. Pre-startup inspections; and

m. Recordkeeping requirements.

2. An examination designed and administered by the instructor.

3. Reference material distributed to the attendees covering the course topics.

D. Qualification shall be obtained by:

1. Completion of a training course that satisfies the criteria under subsection C of this section; and

2. Either six months experience as an HMIWI operator, six months experience as a direct supervisor of an HMIWI operator, or completion of at least two burn cycles under the observation of two qualified HMIWI operators.

E. Qualification is valid from the date on which the examination is passed or the completion of the required experience, whichever is later.

F. To maintain qualification, the trained and qualified HMIWI operator shall complete and pass an annual review or refresher course of at least four hours covering, at a minimum, the following:

1. Update of regulations;

2. Incinerator operation, including startup and shutdown procedures;

3. Inspection and maintenance;

4. Responses to malfunctions or conditions that may lead to malfunction; and

5. Discussion of operating problems encountered by attendees.

G. A lapsed qualification shall be renewed by one of the following methods:

1. For a lapse of less than three years, the HMIWI operator shall complete and pass a standard annual refresher course described in subsection F of this section.

2. For a lapse of three years or more, the HMIWI operator shall complete and pass a training course with the minimum criteria described in subsection C of this section.

H. The owner of an affected facility shall maintain documentation at the facility that address the following:

1. Summary of the applicable limits under this article;

2. Description of basic combustion theory applicable to an HMIWI;

3. Procedures for receiving, handling, and charging waste;

4. HMIWI startup, shutdown, and malfunction procedures;

5. Procedures for maintaining proper combustion air supply levels;

6. Procedures for operating the HMIWI and associated air pollution control systems within the limits established under this article;

7. Procedures for responding to periodic malfunction or conditions that may lead to malfunction;

8. Procedures for monitoring HMIWI emissions;

9. Reporting and recordkeeping procedures; and

10. Procedures for handling ash.

I. The owner of an affected facility shall establish a program for reviewing the information listed in subsection H of this section annually with each HMIWI operator.

1. The initial review of the information listed in subsection H of this section shall be conducted by January 1, 2001, or prior to assumption of responsibilities affecting HMIWI operation, whichever date is later.

2. Subsequent reviews of the information listed in subsection H of this section shall be conducted annually.

J. The information listed in subsection H of this section shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by the board.

K. The initial training requirements of this section shall be performed by July 1, 2001.

L. The requirements of subsection B of this section with regard to obtaining operator training qualifications through a program approved by the board may be met by obtaining a license from the Board for Waste Management Facilities Operators. All training and licensing shall be in accordance with Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia, and with 18VAC155 Chapter 20.

M. No owner of an affected facility shall allow the facility to be operated at any time unless a person is on duty who is responsible for the proper operation of the facility and has a license from the Board for Waste Management Facility operators in the correct classification. No provision of this article shall relieve any owner from the responsibility to comply in all respects with the requirements of Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia, and with 18VAC155 Chapter 20.

9VAC5-40-6160. ~~Waste management plans.~~ (Repealed.)

A. The owner of an affected facility shall prepare a waste management plan. The waste management plan shall identify both the feasibility and the approach to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. A waste management plan may include, but is not limited to, elements such as paper, cardboard, plastics, glass, battery, or metal recycling; or purchasing recycled or recyclable products. A waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. It should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other environmental or energy impacts they might have. The American Hospital Association publication entitled "An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities" (see 9VAC5-20-21) shall be considered in the development of the waste management plan.

B. The waste management plan shall be submitted to the board no later than 60 days after the initial emissions test as required under 9VAC5-40-6180.

9VAC5-40-6170. ~~Inspections.~~ (Repealed.)

A. The owner shall conduct an initial equipment inspection of each affected small, rural HMIWI by July 1, 2001. At a minimum, each inspection shall include the following:

1. Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation; clean pilot flame sensor, as necessary;

2. Ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

3. Inspect hinges and door latches, and lubricate as necessary;

4. Inspect dampers, fans, and blowers for proper operation;

5. Inspect HMIWI door and door gaskets for proper sealing;

6. Inspect motors for proper operation;

7. Inspect primary chamber refractory lining; clean and repair or replace lining as necessary;

8. Inspect incinerator shell for corrosion and hot spots;

9. Inspect secondary and tertiary chambers and stack, clean as necessary;

10. Inspect mechanical loader, including limit switches, for proper operation, if applicable;

11. Visually inspect waste bed (grates), and repair or seal, as appropriate;

12. For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

13. Inspect air pollution control device(s) for proper operation, if applicable;

14. Inspect waste heat boiler systems to ensure proper operation, if applicable;

15. Inspect bypass stack components;

16. Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

17. Generally observe that the equipment is maintained in good operating condition.

B. The owner shall conduct an equipment inspection of each affected small, rural HMIWI annually (no more than 12 months following the previous annual equipment inspection), as outlined in subsection A of this section.

C. Within 10 operating days following an equipment inspection all necessary repairs shall be completed unless the owner obtains written approval from the board establishing a date whereby all necessary repairs of the affected facility shall be completed.

9VAC5-40-6180. ~~Compliance, emissions testing, and monitoring.~~ (Repealed.)

A. The provisions governing compliance, emissions testing, and monitoring shall be as follows:

1. With regard to the emissions standards in 9VAC5-40-6120, 9VAC5-40-6130, and 9VAC5-40-6140, the provisions of 9VAC5-40-20 (Compliance), 9VAC5-40-30 (Emission testing) and 9VAC5-40-40 (Monitoring) apply.

2. With regard to the emission limits in 9VAC5-40-6020 through 9VAC5-40-6110, the following provisions apply:

a. 9VAC5-40-20 B, C, D, and E.

b. 40 CFR 60.11.

c. 9VAC5-40-30 D and G.

d. 40 CFR 60.8, with the exception of paragraph (a).

e. 9VAC5-40-40 A and F.

f. 40 CFR 60.13.

g. Subsections B through N of this section.

B. The emission limits under this article apply at all times except during periods of startup, shutdown, or malfunction, provided that no hospital waste or medical/infectious waste is charged to the affected facility during startup, shutdown, or malfunction.

C. Except as provided in subsection L of this section, the owner of an affected facility shall conduct an initial emissions test by December 27, 2001, as required under this section to determine compliance with the emission limits using the procedures and test methods listed in this subsection. The use of the bypass stack during an emissions test shall invalidate the emissions test.

1. All emissions tests shall consist of a minimum of three test runs conducted under representative operating conditions.

2. The minimum sample time shall be one hour per test run unless otherwise indicated.

3. Reference Method 1 shall be used to select the sampling location and number of traverse points.

4. Reference Method 3 or 3A shall be used for gas composition analysis, including measurement of oxygen concentration. Reference Method 3 or 3A shall be used simultaneously with each reference method.

5. The pollutant concentrations shall be adjusted to 7.0% oxygen using the following equation:

$C_{adj} = C_{meas} (20.9-7)/(20.9 - \%O_2)$

where:

C_{adj} = pollutant concentration adjusted to 7.0% oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

(20.9-7) = 20.9% oxygen-7.0% oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

6. Reference Method 5 or 29 be used to measure the particulate matter emissions.

7. Reference Method 9 shall be used to measure stack opacity.

8. Reference Method 10 or 10B shall be used to measure the carbon monoxide emissions.

9. Reference Method 23 shall be used to measure total dioxin/furan emissions. The minimum sample time shall be four hours per test run. If the affected facility has selected the toxic equivalency limits for dioxin/furans, under 9VAC5-40-6040, the following procedures shall be used to determine compliance:

a. Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using Reference Method 23.

b. For each dioxin/furan congener measured in accordance with subdivision 9 a of this subsection, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 4-44A of this article.

TABLE 4-44A.
TOXIC EQUIVALANCY FACTORS.

Dioxon/furan congener	Toxic equivalency factor
2,3,7,8 tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8 pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8 hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9 hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8 heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001

2,3,7,8 tetrachlorinated dibenzofuran	0.1
2,3,4,7,8 pentachlorinated dibenzofuran	0.5
1,2,3,7,8 pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8 hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8 hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9 hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8 hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8 heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9 heptachlorinated dibenzofuran	0.01
Octachlorinated dibenzofuran	0.001

c. Sum the products calculated in accordance with subdivision 9 b of this subsection to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

10. Reference Method 26 shall be used to measure hydrogen chloride emissions. If the affected facility has selected the percentage reduction limits for hydrogen chloride under 9VAC5-40-6050, the percentage reduction in hydrogen chloride emissions (% R_{HCl}) is computed using the following formula:

$$(\%\ R_{HCl}) = \left(\frac{E_i - E_o}{E_i}\right) x\ 100$$

where:

% R_{HCl} = percentage reduction of hydrogen chloride emissions achieved;

E_i = hydrogen chloride emission concentration measured at the control device inlet, corrected to 7.0% oxygen (dry basis); and

E_o = hydrogen chloride emission concentration measured at the control device outlet, corrected to 7.0% oxygen (dry basis).

11. Reference Method 29 shall be used to measure lead, cadmium, and mercury emissions. If the affected facility has selected the percentage reduction limits for metals under 9VAC5-40-6080, 9VAC5-40-6090, or 9VAC5-40-6100, the percentage reduction in emissions (% R_{metal}) is computed using the following formula:

$$(\%\ R_{metal}) = \left(\frac{E_i - E_o}{E_i}\right) x\ 100$$

where:

% R_{metal} = percentage reduction of metal emission (lead, cadmium, or mercury) achieved;

E_i = metal emission concentration (lead, cadmium, or mercury) measured at the control device inlet, corrected to 7.0% oxygen (dry basis); and

E_o = metal emission concentration (lead, cadmium, or mercury) measured at the control device outlet, corrected to 7.0% oxygen (dry basis).

D. Following the date on which the initial emissions test is completed or is required to be completed under this section, whichever date comes first, the owner of an affected facility shall:

1. Determine compliance with the opacity limit by conducting an annual emissions test (no more than 12 months following the previous emissions test) using the applicable procedures and test methods listed in subsection C of this section.

2. Determine compliance with the particulate matter, carbon monoxide, and hydrogen chloride emission limits by conducting an annual emissions test (no more than 12 months following the previous emissions test) using the applicable procedures and test methods listed in subsection C of this section. If all three emissions tests over a three-year period indicate compliance with the emission limit for a pollutant (particulate matter, carbon monoxide, or hydrogen chloride), the owner may forego an emissions test for that pollutant for the subsequent two years. At a minimum, an emissions test for particulate matter, carbon monoxide, and hydrogen chloride shall be conducted every third year (no more than 36 months following the previous emissions test). If an emissions test conducted every third year indicates compliance with the emission limit for a pollutant (particulate matter, carbon monoxide, or hydrogen chloride), the owner may forego an emissions test for that pollutant for an additional two years. If any emissions test indicates noncompliance with the respective emission limit, an emissions test for that pollutant shall be conducted annually until all annual emissions tests over a three year period indicate compliance with the emission limit. The use of the bypass stack during an emissions test shall invalidate the emissions test.

3. Facilities using a continuous emission monitoring system to demonstrate compliance with any of the emission limits under 9VAC5-40-6020 through 9VAC5-40-6100 shall:

a. Determine compliance with the appropriate emission limit(s) using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours (not including startup, shutdown, or malfunction).

b. Operate all continuous emission monitoring systems in accordance with the applicable procedures under Appendices B and F of 40 CFR Part 60.

E. The owner of an affected facility equipped with a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and wet scrubber shall:

1. Establish the appropriate maximum and minimum operating parameters, indicated in Table 4-44B of this article for each control system, as site specific operating parameters during the initial emissions test to determine compliance with the emission limits; and

TABLE 4-44 B.
OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES.

OPERATING PARAMETERS TO BE MONITORED	MINIMUM FREQUENCY		CONTROL SYSTEM		
	DATA MEASUREMENT	DATA RECORDING	DRY SCRUBBER/ FABRIC FILTER	WET SCRUBBER	DRY SCRUBBER/ FABRIC FILTER AND WET SCRUBBER
MAXIMUM OPERATING PARAMETERS					
MAXIMUM CHARGE RATE	1 X CHARGE	1 X CHARGE	X	X	X
MAXIMUM FABRIC FILTER INLET TEMPERATURE	CONTINUOUS	1 X MINUTE	X	-	X
MAXIMUM FLUE GAS TEMP	CONTINUOUS	1 X MINUTE	X	X	-
MINIMUM OPERATING PARAMETERS					
MINIMUM SECONDARY CHAMBER TEMP	CONTINUOUS	1 X MINUTE	X	X	X
MINIMUM DIOXIN/FURAN SORBENT FLOW RATE	HOURLY	1 X HOUR	X	-	X
MINIMUM HCl SORBENT FLOW RATE	HOURLY	1 X HOUR	X	-	X
MINIMUM Hg SORBENT FLOW RATE	HOURLY	1 X HOUR	X	-	X
MINIMUM PRESSURE DROP ACROSS WET SCRUBBER OR MINIMUM HORSEPOWER OR AMPERAGE TO WET SCRUBBER	CONTINUOUS	1 X MINUTE	-	X	X

MINIMUM SCRUBBER LIQUOR FLOW RATE	CONTINUOUS	1 X MINUTE	-	X	X
MINIMUM SCRUBBER LIQUOR pH	CONTINUOUS	1 X MINUTE	-	X	X

2. Following the date on which the initial emissions test is completed or is required to be completed under subsection B of this section, whichever date comes first, ensure that the affected facility does not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in Table 4-44B of this article and measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during emissions tests. Operation above the established maximum or below the established minimum operating parameters shall constitute a violation of established operating parameters.

F. Except as provided in subsection I of this section, for affected facilities equipped with a dry scrubber followed by a fabric filter:

1. Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the carbon monoxide emission limit.

2. Operation of the affected facility above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the dioxin/furan emission limit.

3. Operation of the affected facility above the maximum charge rate and below the minimum hydrogen chloride sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the hydrogen chloride emission limit.

4. Operation of the affected facility above the maximum charge rate and below the minimum mercury sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the mercury emission limit.

5. Use of the bypass stack (except during startup, shutdown, or malfunction) shall constitute a violation of the particulate matter, dioxin/furan, hydrogen chloride, lead, cadmium, and mercury emission limits.

G. Except as provided in subsection I of this section, for affected facilities equipped with a wet scrubber:

1. Operation of the affected facility above the maximum charge rate and below the minimum pressure drop across the wet scrubber or below the minimum horsepower or amperage to the system (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the particulate matter emission limit.

2. Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the carbon monoxide emission limit.

3. Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum scrubber liquor flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the dioxin/furan emission limit.

4. Operation of the affected facility above the maximum charge rate and below the minimum scrubber liquor pH (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the hydrogen chloride emission limit.

5. Operation of the affected facility above the maximum flue gas temperature and above the maximum charge rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the mercury emission limit.

6. Use of the bypass stack (except during startup, shutdown, or malfunction) shall constitute a violation of the particulate matter, dioxin/furan, hydrogen chloride, lead, cadmium, and mercury emission limits.

H. Except as provided in subsection I of this section, for affected facilities equipped with a dry scrubber followed by a fabric filter and a wet scrubber:

1. Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the carbon monoxide emission limit.

2. Operation of the affected facility above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the dioxin/furan emission limit.

3. Operation of the affected facility above the maximum charge rate and below the minimum scrubber liquor pH (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the hydrogen chloride emission limit.

4. Operation of the affected facility above the maximum charge rate and below the minimum mercury sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the mercury emission limit.

5. Use of the bypass stack (except during startup, shutdown, or malfunction) shall constitute a violation of the particulate matter, dioxin/furan, hydrogen chloride, lead, cadmium, and mercury emission limits.

I. The owner of an affected facility may conduct a repeat emissions test within 30 days of violation of applicable operating parameters to demonstrate that the affected facility is not in violation of the applicable emission limits. Repeat emissions tests conducted pursuant to this subsection shall be conducted using the identical operating parameters that indicated a violation under subsection F, G, or H of this section.

J. The owner of an affected facility using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under 9VAC5-40-6020 through 9VAC5-40-6100 shall petition the board for other site-specific operating parameters to be established during the initial emissions test and continuously monitored thereafter. The owner shall not conduct the initial emissions test until after the petition has been approved by the board.

K. The owner of an affected facility may conduct a repeat emissions test at any time to establish new values for the operating parameters. The board may request a repeat emissions test at any time.

L. Small, rural HMIWIs subject to the emission limits under 9VAC5-40-6020 through 9VAC5-40-6100 shall meet the following compliance and emissions testing requirements:

1. Conduct the emissions testing requirements in subdivisions C 1 through 9, C 11 (mercury only), and D 1 of this section. The 2,000 lb/week limitation under 9VAC5-40-6010 does not apply during emissions tests.

2. Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial emissions test to determine compliance with applicable emission limits.

3. Following the date on which the initial emissions test is completed or is required to be completed under subsection C of this section, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during emissions tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

4. Except as provided in subdivision C 5 of this section, operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and dioxin/furan emission limits.

5. The owner of an affected facility may conduct a repeat emissions test within 30 days of violation of applicable operating parameters to demonstrate that the affected facility is not in violation of the applicable emission limits. Repeat emissions tests conducted pursuant to this subsection must be conducted using the identical operating parameters that indicated a violation under subdivision 4 of this subsection.

M. Owners of affected facilities shall perform monitoring as follows, except as provided for under subsection N of this section:

1. The owner of an affected facility shall install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 4-44B of this article such that these devices (or methods) measure and record values for these operating parameters at the frequencies indicated in Table 4-44B of this article at all times except during periods of startup and shutdown.

2. The owner of an affected facility shall install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

3. The owner of an affected facility using something other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under 9VAC5-40-6020 through 9VAC5-40-6100 shall install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to subsection J of this section.

4. The owner of an affected facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75% of the operating hours per day for 90% of the operating days per calendar quarter that the affected

facility is combusting hospital waste and medical/infectious waste or both.

N. Small, rural HMIWI subject to the emission limits under 9VAC5-40-6020 through 9VAC5-40-6100 shall meet the following monitoring requirements:

1. Install, calibrate (to manufacturers' specifications), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.

2. Install, calibrate (to manufacturers' specifications), maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.

3. The owner of an affected facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75% of the operating hours per day for 90% of the operating hours per calendar quarter that the affected facility is combusting hospital waste and medical/infectious waste or both.

9VAC5-40-6190. ~~Recordkeeping and reporting.~~ (Repealed.)

A. The provisions of governing recordkeeping and reporting shall be as follows:

1. With regard to the emissions standards in 9VAC5-40-6120, 9VAC5-40-6130, and 9VAC5-40-6140, the provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

2. With regard to the emission limits in 9VAC5-40-6020 through 9VAC5-40-6110, the following provisions apply:

a. 9VAC5-40-50 F and H.

b. 40 CFR 60.7.

c. Subsections B through G of this section.

B. The owner of an affected facility shall maintain the following information (as applicable) for a period of at least five years:

1. Calendar date of each record;

2. Records of the following data:

a. Concentrations of any pollutant listed in 9VAC5-40-6020 through 9VAC5-40-6100 or measurements of opacity as determined by the continuous emission monitoring system (if applicable);

b. HMIWI charge dates, times, and weights and hourly charge rates;

c. Fabric filter inlet temperatures during each minute of operation, as applicable;

d. Amount and type of dioxin/furan sorbent used during each hour of operation, as applicable;

e. Amount and type of mercury sorbent used during each hour of operation, as applicable;

f. Amount and type of hydrogen chloride sorbent used during each hour of operation, as applicable;

g. Secondary chamber temperatures recorded during each minute of operation;

h. Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable;

i. Horsepower or amperage to the wet scrubber during each minute of operation, as applicable;

j. Pressure drop across the wet scrubber system during each minute of operation, as applicable;

k. Temperature at the outlet from the wet scrubber during each minute of operation, as applicable;

l. pH at the inlet to the wet scrubber during each minute of operation, as applicable;

m. Records indicating use of the bypass stack, including dates, times, and durations; and

n. For affected facilities complying with 9VAC5-40-6180 J and 9VAC5-40-6180 M 3, the owner shall maintain all operating parameter data collected.

3. Identification of calendar days for which data on emission rates or operating parameters specified under subdivision 2 of this subsection have not been obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken.

4. Identification of calendar days, times and durations of malfunctions, a description of the malfunction and the corrective action taken.

5. Identification of calendar days for which data on emission rates or operating parameters specified under subdivision 2 of this subsection exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken.

6. The results of the initial, annual, and any subsequent emissions tests conducted to determine compliance with the emission limits or to establish operating parameters, as applicable.

7. Records showing the names of HMIWI operators who have completed review of the information in 9VAC5-40-6150 H as required by 9VAC5-40-6150 I, including the date of the initial review and all subsequent annual reviews.

8. Records showing the names of the HMIWI operators who have completed the HMIWI operator training requirements, including documentation of training and the dates of the training.

9. Records showing the names of the HMIWI operators who have met the criteria for qualification under 9VAC5-40-6150 and the dates of their qualification.

10. Records of calibration of any monitoring devices as required under 9VAC5-40-6180 M 1, 2 and 3.

C. The owner of an affected facility shall submit the information specified in this subsection no later than 60 days following the initial emissions test. All reports shall be signed by the facilities manager.

1. The initial emissions test data as recorded under 9VAC5-40-6180 C 1 through 11, as applicable.

2. The values for the site specific operating parameters established pursuant to 9VAC5-40-6180 E or J, as applicable.

3. The waste management plan as specified in 9VAC5-40-6150.

D. An annual report shall be submitted one year following the submission of the information in subsection C of this section and subsequent reports shall be submitted no more than 12 months following the previous report (once the unit is subject to a federal operating permit as provided in 9VAC5-40-6000 F, the owner of an affected facility must submit these reports semiannually). The annual report shall include the information specified in this subsection. All reports shall be signed by the facilities manager.

1. The values for the site specific operating parameters established pursuant to 9VAC5-40-6180 E or J, as applicable.

2. The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to 9VAC5-40-6180 E or J, as applicable.

3. The highest maximum operating parameter and the lowest minimum operating parameter, as applicable for each operating parameter recorded pursuant to 9VAC5-40-6180 E or J for the calendar year preceding the year being reported, in order to provide the board with a summary of the performance of the affected facility over a two year period.

4. Any information recorded under subdivisions B 3 through 5 of this section for the calendar year being reported.

5. Any information recorded under subdivisions B 3 through 5 of this section for the calendar year preceding the year being reported, in order to provide the board with a summary of the performance of the affected facility over a two year period.

6. If an emissions test was conducted during the reporting period, the results of that test.

7. If no exceedances or malfunctions were reported under subdivisions B 3 through 5 of this section for the calendar year being reported, a statement that no exceedances occurred during the reporting period.

8. Any use of the bypass stack, the duration, reason for malfunction, and corrective action taken.

E. The owner of an affected facility shall submit semiannual reports containing any information recorded under subdivisions B 3 through 5 of this section no later than 60 days following the reporting period. The first semiannual reporting period ends six months following the submission of information in subsection C of this section. Subsequent reports shall be submitted no later than six calendar months following the previous report. All reports shall be signed by the facilities manager.

F. All records specified under subsection B of this section shall be maintained onsite in either paper copy or computer-readable format, unless an alternative format is approved by the board.

G. The owner of each small, rural HMIWI shall:

1. Maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the board; and

2. Submit an annual report containing information recorded under subdivision 1 of this subsection no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report (once the unit is subject to a federal operating permit as provided in 9VAC5-40-6000 F, the owner must submit these reports semiannually). The report shall be signed by the facilities manager.

9VAC5-40-6200. ~~Compliance schedules.~~ (Repealed.)

A. Except as provided in subsection B of this section, owners shall:

1. Comply with the emission limits in this article as expeditiously as possible but in no case later than July 1, 2001, and

2. Conduct the initial emissions test of the air pollution control device no later than December 27, 2001.

B. Until January 1, 2001, owners of affected facilities may petition the board for an extension to the compliance date in subsection A of this section. This petition shall include the following:

1. Documentation of the analyses undertaken to support the need for an extension, including an explanation of why until September 15, 2002, is needed to comply with this article while compliance by July 1, 2001, is not feasible. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

~~2. Documentation of measurable and enforceable incremental steps of progress to be taken towards compliance with the emission guidelines, including:~~

~~a. If applicable, date for submitting a petition for site-specific operating parameters under 40 CFR 60.56c(i);~~

~~b. Date for submittal of the control plan;~~

~~c. Date for obtaining services of an architectural and engineering firm regarding the air pollution control device(s);~~

~~d. Date for obtaining design drawings of the air pollution control device(s);~~

~~e. Date for ordering the air pollution control device(s);~~

~~f. Date for obtaining the major components of the air pollution control device(s);~~

~~g. Date for initiation of site preparation for installation of the air pollution control device(s);~~

~~h. Date for initiation of installation of the air pollution control device(s);~~

~~i. Date for initial startup of the air pollution control device(s);~~

~~j. Date for initial emissions test(s) of the air pollution control device(s); and~~

~~k. Date for final compliance.~~

9VAC5-40-6210. ~~Registration.~~ (Repealed.)

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

9VAC5-40-6220. ~~Facility and control equipment maintenance or malfunction.~~ (Repealed.)

~~The provisions governing facility and control equipment maintenance or malfunction shall be as follows:~~

~~1. With regard to the emissions standards in 9VAC5-40-6120, 9VAC5-40-6130, and 9VAC5-40-6140, the provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.~~

~~2. With regard to the emission limits in 9VAC5-40-6020 through 9VAC5-40-6110, the following provisions apply:~~

~~a. 9VAC5-20-180 A, B, C, D, H, and I.~~

~~b. 9VAC5-40-6180 B.~~

~~c. 9VAC5-40-6190 B 4, 7 and 8.~~

9VAC5-40-6230. ~~Permits.~~ (Repealed.)

~~A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) and 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.~~

~~1. Construction of a facility.~~

~~2. Reconstruction (replacement of more than half) of a facility.~~

~~3. Modification (any physical change to equipment) of a facility.~~

~~4. Relocation of a facility.~~

~~5. Reactivation (restart-up) of a facility.~~

~~6. Operation of a facility.~~

VA.R. Doc. No. R12-3018; Filed July 23, 2012, 10:15 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (Rev. A12) (repealing 9VAC5-40-5490 through 9VAC5-40-7360).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172, and 182); 40 CFR Parts 51 and 60.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 12, 2012.

Effective Date: September 27, 2012.

Agency Contact: Gary E. Graham, 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 gary.graham@deq.virginia.gov.

Basis: Chapter 13 of Title 10.1 (§ 10.1-1300 et seq.) of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Identification of Specific Applicable Federal Requirements

Ozone is formed by complex series of reactions between nitrogen oxides (NOx) and volatile organic compounds (VOCs) under the influence of solar ultraviolet radiation (sunlight). Ozone shows a very strong diurnal (daily) and seasonal (April to October) cyclical character. Ozone injures vegetation, has adverse effects on materials (rubber and fabrics), and is a pulmonary irritant that affects respiratory mucous membranes, lung tissues, and respiratory functions.

The original ozone air quality standard that was the focus of air quality planning requirements after the promulgation of the 1990 Amendments to the Clean Air Act was a 1-hour standard. Since then, EPA has promulgated a new 8-hour ozone air quality standard and associated designation of nonattainment areas, which necessitates the initiation of new plans and regulatory actions.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the CAA and the associated nonattainment classification (if any) under § 181 of the CAA or 40 CFR 51.903(a), as applicable. On April 30, 2004 (69 FR 23858), EPA published its final decision as to the 8-hour nonattainment areas and associated classifications. The new

designations are effective June 15, 2004. The Commonwealth of Virginia designations are in 40 CFR 81.347.

40 CFR Part 51, Subpart X, contains the provisions for the implementation of the 8-hour ozone NAAQS, along with the associated planning requirements. On April 30, 2004 (69 FR 23951), EPA published phase 1 of its final rule adding Subpart X to 40 CFR Part 51. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81. The remainder of the planning requirements (phase 2) were published on November 29, 2005 (70 FR 71612).

On March 27, 2008 (73 FR 16436), EPA published revised primary and secondary ozone NAAQS, revising both downward to 0.075 ppm. EPA has yet to publish implementation guidance for the change. States have until March 12, 2009, to recommend new nonattainment areas under the new standards.

The state regulations established VOC and NOx emissions control areas to provide the legal mechanism to define the geographic areas in which Virginia implements control measures to attain and maintain the air quality standards for ozone. The emissions control areas may or may not coincide with the nonattainment areas, depending on the necessity of the planning requirements.

General Federal Requirements

Sections 109 (a) and (b) of the Clean Air Act (CAA) require EPA to prescribe primary and secondary air quality standards to protect public health and welfare, respectively, for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires the U.S. Environmental Protection Agency (EPA) to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under § 108.

Once the NAAQS are promulgated pursuant to § 109, § 107(d) sets out a process for designating those areas that are in compliance with the standards (attainment or unclassifiable) and those that are not (nonattainment). Governors provide the initial recommendations but EPA makes the final decision. Section 107(d) also sets forth the process for redesignations once the nonattainment areas are in compliance with the applicable NAAQS.

Section 110(a) of the CAA mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish schedules for compliance;

(3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

(4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (its precursors are nitrogen oxides and volatile organic compounds), nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

(1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

(2) enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

(4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

(5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require

record-keeping and to make inspections and conduct tests of air pollution sources;

(6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

(7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D describes how nonattainment areas are established, classified, and required to meet attainment.

Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

(1) the implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;

(2) the requirement of reasonable further progress;

(3) a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

(4) an identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

(5) the requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

(6) the inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

(7) if applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

(8) the inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Section 107(d)(3)(D) provides that a state may petition EPA to redesignate a nonattainment area as attainment and EPA may approve the redesignation subject to certain criteria being met. Section 107(d)(3)(E) stipulates one of these criteria, that EPA must fully approve a maintenance plan that meets the requirements of § 175A.

According to § 175A(a), the maintenance plan must be part of a SIP submission, and must provide for maintenance of the NAAQS for at least 10 years after the redesignation. The plan must contain any additional measures, as needed, to ensure maintenance. Section 175A(b) further requires that 8 years after redesignation, a maintenance plan for the next 10 years must then be submitted. As stated in § 175A(c), nonattainment requirements continue to apply until the SIP submittal is approved. Finally, § 175A(d) requires that the maintenance plan contain contingency provisions which will be implemented should the area fail to maintain the NAAQS as provided for in the original plan.

Under Part D, Subpart 2, § 181 sets forth the classifications and nonattainment dates for 1-hour ozone nonattainment areas once they are designated as such under § 107(d).

Section 182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. EPA has published control technology guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in § 182(b)(2)(A)

require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

Section 182(d) requires stationary sources in severe nonattainment areas to comply with the requirements for sources in marginal, moderate and serious nonattainment areas.

Section 182(f) extends the requirements for the control of VOC emissions to emissions of NOx.

Section 184 establishes an Ozone Transport Region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia. The Ozone Transport Commission is to assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and to recommend control measures to ensure that the plans for the relevant States meet the requirements of the Act.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the CAA and the associated nonattainment classification (if any) under § 181 of the CAA or 40 CFR 51.903(a), as applicable.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 55621 (Nov. 25, 1992) (guidance on NOx RACT requirements in ozone nonattainment areas). For this subject, the guidance provides little more than a summary and reiteration of the provisions of the Act.

On June 21, 2001, EPA issued formal guidelines for the "Ozone Flex Program." These guidelines set out eligibility requirements, what measures may be taken and how, and how localities, states and EPA are to develop and implement early reduction plans. On November 14, 2002, EPA issued a schedule for 8-hour ozone designations and its effect on early action compacts for potential 8-hour nonattainment areas.

40 CFR Part 51, Subpart X, contains the provisions for the implementation of the 8-hour ozone NAAQS, along with the associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81.

State Requirements

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A of the Code of Virginia). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300 of the Code of Virginia).

The Air Pollution Control Law (§ 10.1-1308 B of the Code of Virginia) specifically requires that any regulation that prohibits the selling of a consumer product not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

Purpose: The purpose of Articles 39, 42, 49, and 50 of 9VAC5-40 was to require owners to limit emissions of VOC, a precursor of ambient air ozone, from portable fuel containers, certain consumer products, architectural and industrial maintenance coatings, and paving operations to the level necessary for (i) the protection of public health and welfare and (ii) the attainment and maintenance of the air quality standards in Virginia and in the northern Virginia nonattainment area.

On November 20, 2009, the board adopted revised consumer and commercial product regulations in a new chapter, 9VAC5-45, which became effective on March 17, 2010. These regulations were adopted to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 8-hour ozone standard and to implement contingency measures within former nonattainment areas that have been redesignated as ozone maintenance areas. The purpose of adopting new regulations in a new chapter was to consolidate the consumer and commercial product regulations to make it easier for the regulated entities and the public to locate and use the applicable regulations.

The purpose of repealing the original four consumer product regulations in 9VAC5-40 is to remove the outdated, less restrictive requirements in Chapter 40 that duplicate and conflict with the corresponding updated articles that were consolidated into the new Chapter 45. Repealing the earlier regulations will complete the process of consolidation.

Rationale for Using Fast Track Process: There are more comprehensive and more restrictive consumer product requirements in 9VAC5-45 (that correspond to Articles 39, 42, 49, and 50 of 9VAC5-40) that are effective and have

already been federally approved. Therefore, no objections to the repeal of the 9VAC5-40 consumer products requirements in Articles 39, 42, 49, and 50 are anticipated and the fast-track process is appropriate.

Substance: Article 39 (Emission Standards for Asphalt Paving Operations) of 9VAC5-40 is repealed in its entirety. It has been replaced by Article 7 of 9VAC5-45, which contains updated provisions for controlling emissions from asphalt paving operations.

Article 42 (Emission Standards for Portable Fuel Container Spillage) of 9VAC5-40 is repealed in its entirety. It has been replaced by Articles 1 and 2 of 9VAC5-45, which contain revised provisions for controlling emissions from portable fuel containers.

Article 49 (Emissions Standards for Architectural and Industrial Maintenance Coatings) of 9VAC5-40 is repealed in its entirety. It has been replaced by Article 5 of 9VAC5-45, which contains updated provisions for controlling emissions from architectural and industrial maintenance coatings.

Article 50 (Emissions Standards for Consumer Products) of 9VAC5-40 is repealed in its entirety. It has been replaced by Articles 3 and 4 of 9VAC5-45, which contain revised provisions for controlling emissions from consumer products.

The provisions of 9VAC5-45, Consumer and Commercial Products, are not affected by this repeal.

Issues: The primary advantage to the public is the removal of duplicative and conflicting regulatory regulations, which improves the public's ability to understand and comply with the most effective regulatory requirements. There are no disadvantages to the public.

The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to repeal the consumer product portion (Article 39, Article 42, 49, and Article 50) of these regulations since those provisions have been duplicated and updated in the new chapter, 9VAC5-45 (Consumer and Commercial Products).

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

Estimated Economic Impact. The regulatory language in question has been superseded by provisions in the newly promulgated 9VAC5-45 (Consumer and Commercial Products). Thus the proposed repeal of Article 39, Article 42, 49, and Article 50 in 9VAC540 will have no impact beyond perhaps reducing potential confusion amongst the public.

Businesses and Entities Affected. Since the regulatory language proposed for repeal has been superseded by provisions in the newly promulgated 9VAC5-45, there are no businesses or entities which are affected by the proposed repeal. The subject matter of the regulations applies to: 1) companies and members of the public who provide asphalt paving services, 2) companies and members of the public that use or consume portable fuel containers, architectural coatings, or consumer products, 3) companies that manufacture or supply asphalt paving products, portable fuel containers, architectural coatings, or consumer products, and 4) businesses that apply asphalt pavement surfaces and coatings or architectural coatings. The Department of Environmental Quality estimates that there are as many as 3250 small businesses that might have an interest in the proposed repeal, but none would be affected in any significant way due to the promulgation of 9VAC5-45.

Localities Particularly Affected. The proposed repeal of the regulatory language does not have a disproportionate effect on any particular localities.

Projected Impact on Employment. The proposed repeal of the regulatory language will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of the regulatory language will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of the regulatory language will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulatory language will not significantly affect small businesses.

Real Estate Development Costs. The proposed repeal of the regulatory language will not 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 14 (10). 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 Economic Impact Analysis: The State Air Pollution Control Board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The provisions of Articles 39, 42, 49, and 50 of 9VAC5-40 have been duplicated and updated in a new chapter, 9VAC5-45, Consumer and Commercial Products. This regulatory action repeals the older, outdated consumer product regulations in 9VAC5-40, Existing Stationary Sources.

~~Article 39~~

~~Emission Standards for Asphalt Paving Operations (Rule 4-39)~~

9VAC5-40-5490. ~~Applicability and designation of affected facility.~~ (Repealed.)

~~A. The affected facility to which the provisions of this article apply is each asphalt paving operation.~~

~~B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206.~~

9VAC5-40-5500. ~~Definitions.~~ (Repealed.)

~~A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.~~

~~B. As used in this article, all terms not defined here shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), 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 occur in nature as such or which are obtained as residue in refining petroleum.~~

~~"Cutback asphalt" means asphalt cement which 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 which 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.~~

~~"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.~~

9VAC5-40-5510. ~~Standard for volatile organic compounds.~~ (Repealed.)

~~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% of volatile organic compounds by volume.~~

9VAC5-40-5520. ~~Standard for visible emissions.~~ (Repealed.)

~~The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.~~

9VAC5-40-5530. ~~Standard for fugitive dust/emissions.~~ (Repealed.)

~~The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.~~

9VAC5-40-5540. ~~Standard for odor.~~ (Repealed.)

~~The provisions of Article 2 (9VAC5-40-130 et seq.) of this chapter (Emission Standards for Odor, Rule 4-2) apply.~~

9VAC5-40-5550. ~~Standard for toxic pollutants.~~ (Repealed.)

~~The provisions of Article 3 (9VAC5-40-160 et seq.) of this chapter (Emission Standards for Toxic Pollutants, Rule 4-3) apply.~~

9VAC5-40-5560. ~~Compliance.~~ (Repealed.)

~~The provisions of 9VAC5-40-20 (Compliance) apply.~~

9VAC5-40-5570. ~~Test methods and procedures.~~ (Repealed.)

~~The provisions of 9VAC5-40-30 (Emission Testing) apply.~~

9VAC5-40-5580. ~~Monitoring.~~ (Repealed.)

~~The provisions of 9VAC5-40-40 (Monitoring) apply.~~

9VAC5-40-5590. ~~Notification, records and reporting.~~ (Repealed.)

~~The provisions of 9VAC5-40-50 (Notification, Records and Reporting) apply.~~

~~Article 42~~
~~Emission Standards for Portable Fuel Container Spillage (Rule 4-42)~~

9VAC5-40-5700. ~~Applicability.~~ (Repealed.)

~~A. Except as provided in subsections C through H of this section, the provisions of this article apply to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts.~~

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

~~C. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas.~~

~~D. This article does 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 9VAC5-40-5720, 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 Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas; and (ii) that the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.~~

~~E. This article does not apply to safety cans meeting the requirements of 29 CFR Part 1926 Subpart F.~~

~~F. This article does not apply to portable fuel containers with a nominal capacity less than or equal to one quart.~~

~~G. This article does not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided such devices are designed either (i) to be used in officially sanctioned off-highway motorcycle competitions, (ii) to create a leak-proof seal against a stock target fuel tank, or (iii) to operate in conjunction with a receiver permanently installed on the target fuel tank.~~

~~H. This article does 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.~~

~~I. 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 business/governmental entities/individuals.~~

9VAC5-40-5710. ~~Definitions.~~ (Repealed.)

~~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 meanings given them in subsection C of this section.~~

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

~~C. Terms defined.~~

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

~~"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.~~

~~"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels 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 or used primarily for receiving, transporting, storing, and dispensing fuel.~~

~~"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.~~

~~"Spill proof spout" means any spout that complies with the standards specified in 9VAC5-40-5720 B.~~

~~"Spill proof system" means any configuration of portable fuel container and firmly attached spout that complies with the standards in 9VAC5-40-5720 A.~~

~~"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.~~

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

9VAC5-40-5720. ~~Standard for volatile organic compounds.~~ (Repealed.)

~~A. No person shall sell, supply, offer for sale, or manufacture for sale any portable fuel container that at the time of sale or manufacture does not meet 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. Provides a fuel flow rate and fill level of:~~

~~a. Not less than one half gallon per minute for portable fuel containers with a nominal capacity of:~~

~~(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or~~

~~(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill proof system or label affixed thereto and on the accompanying package, if any; or~~

~~b. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or~~

~~c. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.~~

~~5. Does not exceed a permeation rate of 0.4 grams per gallon per day.~~

~~6. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.~~

~~B. No person shall sell, supply, offer for sale, or manufacture for sale any spout that at the time of sale or manufacture does not meet 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. Provides a fuel flow rate and fill level of:~~

~~a. Not less than one half gallon per minute for portable fuel containers with a nominal capacity of:~~

~~(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or~~

~~(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill proof spouts sold without packaging, on either the spill proof spout or a label affixed thereto; or~~

~~b. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or~~

~~c. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.~~

~~4. 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 9VAC5-40-5760. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9VAC5-40-5760 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. 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 9VAC5-40-5750 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.

9VAC5-40-5730. Administrative requirements. (Repealed.)

A. Each manufacturer of a portable fuel container subject to and complying with 9VAC5-40-5720 A shall clearly display on each spill-proof system:

1. The phrase "Spill-Proof System";

2. A date of manufacture or representative date; and

3. A representative code identifying the portable fuel container as subject to and complying with 9VAC5-40-5720 A.

B. Each manufacturer of a spout subject to and complying with 9VAC5-40-5720 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; and

3. A representative code identifying the spout as subject to and complying with 9VAC5-40-5720 B.

C. Each manufacturer subject to subsection A or B of this section 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 subject to subsection A or B of this section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

E. 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 9VAC5-40-5720 A on the accompanying package, or for spill proof spouts sold without packaging on either the spill-proof spout or a label affixed thereto.

F. Manufacturers of portable fuel containers not subject to or not in compliance with 9VAC5-40-5720 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.

G. Each manufacturer of a portable fuel container or spout subject to and complying with 9VAC5-40-5720 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.

9VAC5-40-5740. Compliance. (Repealed.)

The provisions of subsections B, D, F, and J of 9VAC5-40-20 (Compliance) apply. The other provisions of 9VAC5-40-20 do not apply.

9VAC5-40-5750. Compliance schedules. (Repealed.)

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 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;

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.

9VAC5-40-5760. Test methods and procedures. (Repealed.)

A. The provisions of subsection G of 9VAC5-40-30 (Emission testing) apply. The other provisions of 9VAC5-40-30 do not apply.

B. Testing to determine compliance with 9VAC5-40-5720 B of this article shall be performed by using the following test procedures:

1. California Air Resources Board (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.

3. CARB Determination of Fuel Flow Rate for Spill Proof Systems and Spill Proof Spouts.

C. Testing to determine compliance with 9VAC5-40-5720 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. These test methods are incorporated by reference in 9VAC5-20-21.

9VAC5-40-5770. Notification, records and reporting. (Repealed.)

The provisions of subsections D, E, F, and H of 9VAC5-40-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-40-50 do not apply.

Article 49

Emission Standards for Architectural and Industrial Maintenance Coatings (Rule 4-49)

9VAC5-40-7120. Applicability. (Repealed.)

A. Except as provided in subsection C of this section, the provisions of this article apply to any person who supplies, sells, offers for sale, or manufactures any architectural coating for use, as well as any person who applies or solicits the application of any architectural coating.

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

C. 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 Emission 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.

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.

9VAC5-40-7130. Definitions. (Repealed.)

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 meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10), 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 the Virginia Pesticide Control Act (Chapter 14.1 (§ 3.1-249.27 et seq.) of Title 3.1 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, that are intended exclusively for application by brush and that are labeled as specified in subdivision 5 of 9VAC5-40-7150.~~

~~"Clear wood coatings" means clear and semi transparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.~~

~~"Coating" means 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. An exempt compound's 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).~~

~~"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) 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 degrees Centigrade (400 degrees Fahrenheit).

"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 9VAC5-40-7150:

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 degrees Centigrade (250 degrees Fahrenheit);

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 (one 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).

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

"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 five 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 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 9VAC5-40-7150 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 degrees Centigrade (60 and 80 degrees Fahrenheit);

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 9VAC5-40-7150.

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

"Sealer" means 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 9VAC5-40-7150 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, semi-transparent, 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 degrees Centigrade (400 degrees Fahrenheit).~~

~~"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 to 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 9VAC5-40-7220 B.~~

~~"Waterproofing sealer" means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.~~

~~"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.~~

~~"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 the Virginia Pesticide Control Act (Chapter 14.1 (§ 3.1-249.27 et seq.) of the Code of Virginia).~~

9VAC5-40-7140. ~~Standard for volatile organic compounds.~~ (Repealed.)

~~A. Except as provided in this section, no 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 4-49A.~~

~~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 4-49A, 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 4-49A.

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

C. A coating manufactured prior to the applicable compliance date specified in 9VAC5-40-7210, 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 9VAC5-40-7210, 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 9VAC5-40-7150.

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 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 4-49A.

F. No person shall apply or solicit the application of any rust preventive coating for industrial use, unless such a rust preventive coating complies with the industrial maintenance coating VOC limit specified in Table 4-49A.

G. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 4-49A, 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 9VAC5-40-7130 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 degrees Fahrenheit, 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.

[‡]Conversion factor: one pound of VOC per gallon (U.S.) = 119.95 grams per liter.

9VAC5-40-7150. Container labeling requirements. (Repealed.)

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 9VAC5-40-7220 C. The equations in 9VAC5-40-7220 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 a, b, and c of 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 a through e of 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."

9VAC5-40-7160. Standard for visible emissions. (Repealed.)

The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) do not apply.

9VAC5-40-7170. Standard for fugitive dust/emissions. (Repealed.)

The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-40-7180. Standard for odor. (Repealed.)

The provisions of Article 2 (9VAC5-40-130 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Odor, Rule 4-2) apply.

9VAC5-40-7190. Standard for toxic pollutants. (Repealed.)

The provisions of Article 4 (9VAC5-60-200 et seq.) of 9VAC5 Chapter 60 (Emission Standards for Toxic Pollutants from Existing Sources, Rule 6-4) do not apply.

9VAC5-40-7200. Compliance. (Repealed.)

The provisions of subsections B, D, F, and J of 9VAC5-40-20 (Compliance) apply. The other provisions of 9VAC5-40-20 do not apply.

9VAC5-40-7210. Compliance schedules. (Repealed.)

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.

9VAC5-40-7220. Test methods and procedures. (Repealed.)

A. The provisions of subsection G of 9VAC5-40-30 (Emission testing) apply. The other provisions of 9VAC5-40-30 do not apply.

B. For the purpose of determining compliance with the VOC content limits in Table 4-49A, 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 equation 1 as follows:

$$\text{Equation 1: VOC Content} = \frac{(Ws - Ww - Wec)}{(Vm - Vw - Vec)}$$

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 equation 2 as follows:

$$\text{Equation 2: VOC Content (ls)} = \frac{(Ws - Ww - Wec)}{(Vm)}$$

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 9VAC5-40-20 A 2.

J. Analysis of methacrylate multi-components used as traffic marking coatings shall be conducted according to a modification of Reference Method 24 (40 CFR Part 59, Subpart D, Appendix A; see 9VAC5-20-21). This method has not been approved for methacrylate multicomponent coatings used for purposes other than as traffic marking coatings or for other classes of multicomponent coatings.

9VAC5-40-7230. Notification, records and reporting. (Repealed.)

A. The provisions of subsections D, E, F, and H of 9VAC5-40-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-40-50 do not apply.

B. Each manufacturer of clear brushing lacquers shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the board. The report shall specify the number of gallons of clear brushing lacquers sold during the preceding calendar year, and shall describe the method used by the manufacturer to calculate sales.

C. Each manufacturer of rust preventive coatings shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the board. The report shall specify the number of gallons of rust preventive coatings sold during the preceding calendar year, and shall describe the method used by the manufacturer to calculate sales.

D. Each manufacturer of specialty primers, sealers, and undercoaters shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the board. The report shall specify the number of gallons of specialty primers, sealers, and undercoaters sold during the preceding calendar year, and shall describe the method used by the manufacturer to calculate sales.

E. For each architectural coating that contains perchloroethylene or methylene chloride, the manufacturer shall, on or before April 1 of each calendar year beginning with the year 2006, report to the board 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 4-49A to which the coating belongs;

3. The total sales during the calendar year to the nearest gallon;

4. The volume percent, to the nearest 0.10%, of perchloroethylene and methylene chloride in the coating.

F. Manufacturers of recycled coatings shall submit a letter to the board certifying their status as a Recycled Paint Manufacturer. The manufacturer shall, on or before April 1 of each calendar year beginning with the year 2006, submit an annual report to the board. The report shall include, for all recycled coatings, the total number of gallons distributed during the preceding year, and shall describe the method used by the manufacturer to calculate distribution.

G. Each manufacturer of bituminous roof coatings or bituminous roof primers shall, on or before April 1 of each calendar year beginning with the year 2006, submit an annual report to the board. The report shall specify the number of gallons of bituminous roof coatings or bituminous roof primers sold during the preceding calendar year, and shall describe the method used by the manufacturer to calculate sales.

Article 50

Emission Standards for Consumer Products (Rule 4-50)

9VAC5-40-7240. Applicability. (Repealed.)

A. Except as provided in 9VAC5-40-7250, the provisions of this article apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds (VOCs) as defined in 9VAC5-10-20.

B. The provisions of this article apply throughout the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

C. For purposes of this article, the term "supply" or "supplied" does not include internal transactions within a business or governmental entity. The term only applies to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-40-7250. Exemptions. (Repealed.)

A. This article shall not apply to any consumer product manufactured in the applicable volatile organic compound

emissions control areas designated in 9VAC5-40-7240 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 9VAC5-40-7270 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 9VAC5-40-7240, 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 9VAC5-40-7270 A for antiperspirants or deodorants shall not apply to ethanol.

D. The VOC limits specified in 9VAC5-40-7270 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 9VAC5-40-7270 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 degrees Centigrade.

F. The VOC limits specified in 9VAC5-40-7270 A shall not apply to any LVP-VOC.

G. The VOC limits specified in 9VAC5-40-7270 A shall not apply to air fresheners that are composed entirely of fragrance, less compounds not defined as VOCs or exempted under subsection F of this section.

H. The VOC limits specified in 9VAC5-40-7270 A shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

I. The VOC limits specified in 9VAC5-40-7270 A shall not apply to adhesives sold in containers of one fluid ounce or less.

J. The VOC limits specified in 9VAC5-40-7270 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 9VAC5-40-7270 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 9VAC5-40-7270 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 9VAC5-40-7270 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. 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 may be claimed as confidential, and such information will be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9VAC5-170-60. The board may consider such confidential information in reaching a decision on an exemption 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 9VAC5-40-7270 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 contaminants which 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 9VAC5-40-7270 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 9VAC5-40-7270. 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 9VAC5-40-7300 A shall not apply to consumer products registered under FIFRA.

9VAC5-40-7260. Definitions. (Repealed.)

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 given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10), 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:

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

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

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:

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

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 9VAC5-40-7250.

2. For charcoal lighter material products only:

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

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:

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

where

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

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 9VAC5-40-7270 A, except those products that have been exempted as innovative products under 9VAC5-40-7290.

"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 9VAC5-40-7270 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 9VAC5-40-7270 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:

$$\text{VOC Standard} = \frac{(0.020 \text{ pound VOC per start} \times 100)}{\text{Certified Use Rate}}$$

where

0.020 = the certification emissions level for the product, as specified in 9VAC5-40-7270 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 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, which consist of 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 exclusively for the removal of adhesives, caulk, and other bonding materials from either a specific substrate or a variety of substrates.

"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 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 or 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. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

3. "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.

4. "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.

"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, 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 which 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, preoperative 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 specifically designed to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product designed 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" 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 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 9VAC5-40-7270 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 9VAC5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, 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 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.~~

~~"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.~~

~~"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 which 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 that feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.~~

~~"Date code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.~~

~~"Deodorant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.~~

~~"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 bacteria, virus, or other microorganism on or in living human 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 products that consist entirely of compressed gases for use in electronic or other specialty areas.

"Electronic cleaner" means a product designed specifically 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 9VAC5-40-7240 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 9VAC5-40-7240 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 which 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 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.

"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.

"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 designed 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 which 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 9VAC5-40-7240 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 9VAC5-40-7240; 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 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.

"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.

"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 degrees Centigrade.

"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 which requires a structural pest control license under applicable state laws or regulations; or

3. Restricted materials that require a permit 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 designed primarily to be used in household lawn and garden areas to protect plants from 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 which 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 degrees Centigrade, 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 degrees Centigrade, as determined by CARB Method 310 (see 9VAC5-20-21); or

4. Is the weight percent of a chemical mixture that boils above 216 degrees Centigrade, 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 degrees Centigrade.

"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 which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-purpose dry lubricant" means 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.

"Multi-purpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multi-purpose lubricant does not include multi-purpose dry lubricants, penetrants, or silicone based multi-purpose lubricants.

"Multi-purpose 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. Multi-purpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multi-purpose 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 9VAC5-40-7240:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9VAC5-40-7270; or

2. Only one distinct ACP product line subject to the requirements of 9VAC5-40-7270, 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 which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means 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 multi-purpose 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 multi-purpose 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.

"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.

"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 9VAC5-40-7280 B 1 g (10).

"Responsible party" means the company, firm, or establishment which 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 which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by," as noted on the label.

"Restricted materials" means pesticides established as restricted materials under the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. 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.

"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" 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" 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 gels, pastes, and greases.

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor or other wet shaving system, in the removal of facial or other bodily hair.

"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 multi-purpose 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 multi-purpose 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 which 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 which, 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%, 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 degrees Fahrenheit 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 which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275 degrees Fahrenheit.

"Spot remover" means a product designed 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, carpet and upholstery cleaner, or multi-purpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means 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 Part 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 9VAC5-40-7280 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 inflation" 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:

$$TMHE = (MHE)_1 + (MHE)_2 + \ldots + (MHE)_N$$

$$MHE = \frac{\text{(Highest VOC Content x Highest Sales) x Missing Data Days}}{100 \times 365}$$

where

Highest VOC content = the maximum VOC content which 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 = (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 propellent 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 which 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 9VAC5-40-7340 B and C.

For charcoal lighter material products only,

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

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 which 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.

9VAC5-40-7270. ~~Standard for volatile organic compounds.~~ (Repealed.)

A. Except as provided in 9VAC5-40-7250, 9VAC5-40-7280, and 9VAC5-40-7290, no person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after the applicable compliance date specified in 9VAC5-40-7330, or (ii) manufacture for sale a consumer product on or after the applicable compliance date specified in 9VAC5-40-7330, that contains volatile organic compounds in excess of the limits specified in Table 4-50A.

TABLE 4-50A

Product Category: Percent VOC by Weight
Adhesives
Aerosol
Mist spray: 65%
Web spray: 55%
Special purpose spray adhesives
Mounting, automotive engine compartment, and flexible vinyl: 70%
Polystyrene foam and automotive headliner: 65%
Polyolefin and laminate repair/Edgebanding: 60%
Contact: 80%
Construction, panel, and floor covering: 15%
General purpose: 10%
Structural waterproof: 15%
Air fresheners
Single phase aerosols: 30%
Double phase aerosols: 25%
Liquids/Pump sprays: 18%
Solids/Gels: 3%
Antiperspirants
Aerosol: 40% HVOC/10% MVOC
Nonaerosol: 0% HVOC/0% MVOC
Automotive brake cleaners: 45%

~~Automotive rubbing or polishing compound: 17%~~

~~Automotive wax, polish, sealant, or glaze~~
~~Hard paste waxes: 45%~~
~~Instant detailers: 3%~~
~~All other forms: 15%~~

~~Automotive windshield washer fluids: 35%~~

~~Bathroom and tile cleaners~~
~~Aerosols: 7%~~
~~All other forms: 5%~~

~~Bug and tar remover: 40%~~

~~Carburetor or fuel injection air intake cleaners: 45%~~

~~Carpet and upholstery cleaners~~
~~Aerosols: 7%~~
~~Nonaerosols (dilutables): 0.1%~~
~~Nonaerosols (ready-to-use): 3.0%~~

~~Charcoal lighter material: see subsection E of this section.~~

~~Cooking spray, aerosols: 18%~~

~~Deodorants~~
~~Aerosol: 0% HVOC/10% MVOC~~
~~Nonaerosol: 0% HVOC/0% MVOC~~

~~Dusting aids~~
~~Aerosols: 25%~~
~~All other forms: 7%~~

~~Engine degreasers~~
~~Aerosol: 35%~~
~~Nonaerosol: 5%~~

~~Fabric protectants: 60%~~

~~Floor polishes/Waxes~~
~~Products for flexible flooring materials: 7%~~
~~Products for nonresilient flooring: 10%~~
~~Wood floor wax: 90%~~

~~Floor wax strippers, nonaerosol: see 9VAC5-40-7270 C~~

~~Furniture maintenance products~~
~~Aerosols: 17%~~

~~All other forms except solid or paste: 7%~~

~~General purpose cleaners~~
~~Aerosols: 10%~~
~~Nonaerosols: 4%~~

~~General purpose degreasers~~
~~Aerosols: 50%~~
~~Nonaerosols: 4%~~

~~Glass cleaners~~
~~Aerosols: 12%~~
~~Nonaerosols: 4%~~

~~Hair mousses: 6%~~

~~Hair shines: 55%~~

~~Hair sprays: 55%~~

~~Hair styling gels: 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%~~
~~Foggers: 45%~~
~~Lawn and garden (all other forms): 20%~~
~~Lawn and garden (nonaerosol): 3%~~
~~Wasp and hornet: 40%~~

~~Laundry prewash~~
~~Aerosols/Solids: 22%~~
~~All other forms: 5%~~

~~Laundry starch products: 5%~~

~~Metal polishes and cleansers: 30%~~

~~Multi purpose lubricant (excluding solid or semi solid products): 50%~~

~~Nail polish remover: 75%~~

~~Nonselective terrestrial herbicide, nonaerosols: 3%~~

~~Oven cleaners~~
~~Aerosols/Pump sprays: 8%~~
~~Liquids: 5%~~

~~Paint remover or strippers: 50%~~

~~Penetrants: 50%~~

~~Rubber and vinyl protectants~~
~~Nonaerosols: 3%~~
~~Aerosols: 10%~~

~~Sealants and caulking compounds: 4%~~

~~Shaving creams: 5%~~

~~Silicone based multi purpose lubricants (excluding solid or semi solid products): 60%~~

~~Spot removers~~
~~Aerosols: 25%~~
~~Nonaerosols: 8%~~

~~Tire sealants and inflators: 20%~~

~~Undercoatings, aerosols: 40%~~

~~B. No 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 4-50A 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 4-50A 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 is one year after the applicable compliance date specified in 9VAC5-40-7330.~~

~~E. The following requirements shall apply to all charcoal lighter material products:~~

~~1. Effective as of the applicable compliance date specified in 9VAC5-40-7330, no 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 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 9VAC5-40-7250 F and 9VAC5-40-7260 C shall not apply to a charcoal lighter material subject to the requirements of 9VAC5-40-7270 A and E.

b. The board may approve alternative test procedures which 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 which 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 which 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 which 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 9VAC5-40-7250 and 9VAC5-40-7290, no person shall sell, supply, offer for sale, use or manufacture for sale an aerosol adhesive which, 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 specified in 9VAC5-40-7260 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9VAC5-40-7260 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 9VAC5-40-7260 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 9VAC5-40-7270 A.

3. Effective as of the applicable compliance date specified in 9VAC5-40-7330, 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 9VAC5-40-7300 D.

G. Effective as of the applicable compliance date specified in 9VAC5-40-7330, no 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.

H. For a consumer product for which standards are specified under subsection A of this section, no person shall sell, supply, offer for sale, or manufacture for sale a consumer product which 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 4-50A or an existing product formulation that is reformulated to meet Table 4-50A, 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.

9VAC5-40-7280. ~~Alternative control plan (ACP) for consumer products.~~ (Repealed.)

A. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L 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 which 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 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 is composed of enforceable sales;

(5) Determine which ACP products have enforceable sales which 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 which 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 which 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 9VAC5-40-7260 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") which 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, which 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 which 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 9VAC5-40-7270 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;

(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 act to approve or disapprove a complete application within 90 working days after the application is deemed complete.

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 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 which 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 9VAC5-40-7260 C;

(2) For the remaining portion of the compliance period which 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 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:

$$NEV = \frac{(\text{ACP Emissions} - \text{ACP limit})}{40 \text{ pounds}}$$

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 which 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 9VAC5-40-7270 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 which is selling surplus reductions and the responsible ACP party which 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;

(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 which is reformulated to result in a reduction in the product's VOC content, and which 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 which 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 9VAC5-40-7270 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;

(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:

$$SR = \frac{\text{Enforceable Sales} \times ((\text{VOC Content})_{initial} - (\text{VOC Content})_{final})}{100}$$

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.

$\text{VOC content}_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-40-7270 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

$\text{VOC content}_{final}$ = 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 not be used for another purpose;

(2) Limited use surplus reduction credits shall not be transferred to, or used by, another responsible ACP party;

(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 preapproval 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 preapproval. 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 which 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, or (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 9VAC5-40-7270 A are modified by the board in a future rule making, 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 9VAC5-40-7270 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;

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 Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP which 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 9VAC5-40-7270 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 information submitted to the board to meet the requirements of this article shall be handled in accordance with the procedures specified in §§

~~10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9VAC5-170-60.~~

~~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, §§ 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 4-50A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products within the CARB ACP agreement are contained in Table 4-50A. 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 9VAC5-40-7240 B.~~

9VAC5-40-7290. ~~Innovative products.~~ (Repealed.)

~~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 9VAC5-40-7270 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 9VAC5-40-7270 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 9VAC5-40-7270 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 4-50A.~~

~~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 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 9VAC5-40-7270 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 which 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 submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law 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 9VAC5-40-7270 A will be permitted. The applicant and the board may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The 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 which would alter the emissions estimates submitted to the board in support of the exemption application.

8. If the VOC limits specified in 9VAC5-40-7270 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, § 94511, or Subchapter 8.5, Article 1, § 94503.5 of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 4-50A 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 4-50A. A manufacturer claiming such an exemption on this basis must submit to the board a copy of the CARB 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 9VAC5-40-7240 B.

9VAC5-40-7300. Administrative requirements. (Repealed.)

A. Each manufacturer of a consumer product subject to 9VAC5-40-7270 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. The date or 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 disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in 9VAC5-40-7270 A. No person shall erase, alter, deface, or otherwise remove or make illegible a date or code from a regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9VAC5-40-7270, an explanation of the code must be filed with the board upon request by the board.

C. Notwithstanding the definition of "product category" in 9VAC5-40-7260 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 9VAC5-40-7270 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant or deodorant products.

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 9VAC5-40-7360, 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 which is manufactured on or after the applicable compliance date specified in 9VAC5-40-7330.

a. The aerosol adhesive category as specified in 9VAC5-40-7270 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9VAC5-40-7270 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 9VAC5-40-7280;

(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 9VAC5-40-7270 A, the product shall be labeled with the term "ACP" or "ACP product";

(3) 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;

(4) 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.

9VAC5-40-7310. ~~Standard for toxic pollutants.~~ (Repealed.)

~~The provisions of Article 4 (9VAC5-60-200 et seq.) of 9VAC5 Chapter 60 (Emission Standards for Toxic Pollutants from Existing Sources, Rule 6-4) do not apply.~~

9VAC5-40-7320. ~~Compliance.~~ (Repealed.)

~~The provisions of subsections B, D, F, and J of 9VAC5-40-20 (Compliance) apply. The other provisions of 9VAC5-40-20 do not apply.~~

9VAC5-40-7330. ~~Compliance schedules.~~ (Repealed.)

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

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

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

9VAC5-40-7340. ~~Test methods and procedures.~~ (Repealed.)

~~A. The provisions of 9VAC5-40-30 (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 9VAC5-40-20 A 2.~~

~~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 may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9VAC5-170-60.~~

~~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:~~

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

~~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 9VAC5-40-7250.~~

~~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.

9VAC5-40-7350. ~~Monitoring.~~ (Repealed.)

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-7360. ~~Notification, records and reporting.~~ (Repealed.)

A. The provisions of subsections D, E, F, and H of 9VAC5-40-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-40-50 do not 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 name of the responsible party and the party's address, telephone number, and designated contact person;

2. A claim of confidentiality made pursuant to 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 which 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

(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 propellent for each product;

12. If applicable, an identification of the type of propellent.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percent by weight of each ozone-depleting compound which is:

1. Listed in 9VAC5-40-7270 H; and

2. Contained in a product subject to registration under subsection A of this section in an amount greater than 1.0% by weight.

D. All information submitted by responsible parties pursuant to this section shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9VAC5-170-60.

E. Provisions follow concerning special 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 9VAC5-40-7270 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 report the following information for products sold during each calendar year, beginning with the year of the applicable compliance date specified in 9VAC5-40-7330, 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 percent, to the nearest 0.10%, of perchloroethylene and methylene chloride in the consumer product;~~

~~3. The information specified in subdivision 2 of this subsection shall be reported for each calendar year by March 1 of the following year. The first report shall be due on March 1 of the calendar year following the year of the applicable compliance date specified in 9VAC5-40-7330. A new report is due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.~~

VA.R. Doc. No. R12-3114; Filed July 23, 2012, 10:47 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (Rev. K11) (repealing 9VAC5-140-5010 through 9VAC5-140-5750).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; federal Clean Air Act (§§ 108, 109, 110, and 302); 40 CFR Part 51.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 12, 2012.

Effective Date: September 27, 2012.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution to protect public health and welfare. Section 10.1-1328 C of the Code of Virginia requires that the board adopt a "state model rule" or "state trading rule" that will allow the state to implement the Environmental Protection Agency (EPA) Clean Air Mercury Rule (CAMR) and facilitate the trading of Hg allowances within the United States.

On May 18, 2005 (70 FR 28606), EPA published the CAMR, a rule designed to significantly reduce mercury emissions from coal-fired power plants across the country and to reduce the regional deposition of mercury and its subsequent entry into the food chain. CAMR was effective July 11, 2005. On June 9, 2006 (71 FR 33388), and December 22, 2006 (71 FR 77121), EPA published amendments to the CAMR.

EPA assigned each state an emissions "budget" for mercury, and each state was required to submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR included emissions guidelines for the affected coal-fired utility units. States had some flexibility in how to implement the program but, at a minimum, regulations must be at least as stringent as the guidelines.

Purpose: The Virginia State Air Pollution Control Board adopted its final regulation to implement the federal CAMR program on January 16, 2007. The regulation was published in the Virginia Register on March 5, 2007, and became effective on April 4, 2007.

On February 8, 2008, the District of Columbia Circuit Court of Appeals, in a unanimous decision, vacated CAMR and the associated New Source Performance Standard (NSPS). In the decision, the court found that EPA's action to remove oil- and coal-fired electric generating units (EGUs) from the list of source categories to be regulated under the Clean Air Act § 112 did not comply with the requirements of the statute. CAMR was vacated because the court determined that EGUs must be regulated under CAA § 112 standards, rather than the § 111-based standards (NSPS). The vacatur was mandated by the court on March 14, 2008, and the associated mercury rules were no longer effective at the federal level. Because the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program.

Rationale for Using Fast-Track Process: As explained in the Purpose statement above, the underlying federal rule has been vacated, rendering the state rule unnecessary and inconsistent with the federal program. There is no stakeholder group that is likely to object to repeal of the regulation. The use of the fast-track rulemaking process is, therefore, appropriate.

Substance: This action repeals all provisions of Part VI of 9VAC5-140 (Hg Budget Trading Program for Coal-Fired Electric Steam Generating Units).

Issues: The primary advantage to the public is the removal of unusable regulatory requirements. There are no disadvantages to the public. The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia State Air Pollution Control Board adopted this regulation to implement the federal Clean Air Mercury Rule (CAMR) program on January 16, 2007. The regulation was published in the Virginia Register on March 5, 2007, and became effective on April 4, 2007.

On February 8, 2008, the District of Columbia Circuit Court of Appeals, in a unanimous decision, vacated CAMR and the associated New Source Performance Standard (NSPS). In the decision, the DC Circuit Court found that EPA's action to remove oil and coal-fired electric generating units (EGUs) from the list of source categories to be regulated under the Clean Air Act § 112 did not comply with the requirements of the statute. CAMR was vacated because the court determined that EGUs must be regulated under CAA § 112 standards, rather than the § 111-based standards (NSPS). The vacatur was mandated by the Court on March 14, 2008 and the associated mercury rules are no longer effective at the federal level. Since the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program.

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

Estimated Economic Impact. Since the underlying federal rule has been vacated, there is no longer an applicable program to regulate. Thus the proposed repeal of this regulation will not affect any individual, business or other entity beyond potentially reducing confusion amongst the public.

Businesses and Entities Affected. Coal-fired electric generating units with a nameplate capacity greater than 25 megawatts were subject to this regulation. Such entities would not be affected by the repeal of this regulation since the underlying federal rule has been vacated and thus there is no longer an applicable program to regulate.

Localities Particularly Affected. The proposed repeal of this regulation does not have a disproportionate effect on any particular localities.

Projected Impact on Employment. The proposed repeal of this regulation will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of this regulation will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of this regulation will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of this regulation will not affect small businesses.

Real Estate Development Costs. The proposed repeal of this regulation will not 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 14 (10). 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 Economic Impact Analysis: The State Air Pollution Control Board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This action repeals the Hg Budget Trading Program for Coal-Fired Electric Steam Generating Units (Part VI of 9VAC5-140). The federal Clean Air Mercury Rule, which was the underlying federal rule for this program, has been vacated and the associated mercury rules are no longer effective at the federal level. Therefore, the state rule is repealed as it is unnecessary and inconsistent with the federal program.

~~Part VI~~

~~Hg Budget Trading Program For Coal-Fired Electric Steam Generating Units~~

~~Article 1~~

~~Hg Budget Trading Program General Provisions~~

9VAC5-140-5010. ~~Purpose.~~ (Repealed.)

~~This part establishes the general provisions and the designated representative, permitting, allowance, and monitoring provisions for the Mercury (Hg) Budget Trading Program, under § 111 of the Clean Air Act (CAA) and 40 CFR 60.24(h)(6), as a means of reducing Hg emissions. The board authorizes the administrator to assist the board in implementing the Hg Budget Trading Program by carrying out the functions set forth for the administrator in this part.~~

9VAC5-140-5020. ~~Definitions.~~ (Repealed.)

~~A. As used in this part, all words or terms not defined here shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10), unless otherwise required by context.~~

~~B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.~~

"Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means, with regard to Hg allowances, the determination by a permitting authority or the administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit, a new unit set-aside, a new energy efficiency/renewable energy unit set-aside, or other entity.

"Allowance transfer deadline" means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such control period in accordance with 9VAC5-140-5540.

"Alternate Hg designated representative" means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-5100 et seq.) of this part, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program. If the Hg Budget source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the Hg Budget source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the Hg Budget source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

"Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under Article 8 (9VAC5-140-5700 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required under Article 8 (9VAC5-140-5700 et seq.) of this part.

"Biomass energy" means energy derived from the combustion or electro-chemical reaction (as with a fuel cell) of hydrocarbon materials of a biogenic origin using a solid, liquid or gaseous fuel. Biomass fuel materials include, but are not limited to, animal wastes (e.g., manure) and clean plant materials (e.g., wood chips, waste paper and crop wastes). Biomass fuels exclude products that have emissions that include heavy metals and other neurotoxins (e.g., municipal solid wastes). Biomass fuel materials may be converted to a gaseous fuel, such as landfills (i.e., landfill gas) or waste treatment facilities (i.e., digester gas), or to liquid fuels (e.g., biodiesel). To be considered a biomass facility, the facility must (i) employ maximum achievable control technology and continuous emission stack monitors for all chemical emissions of concern to human health and (ii) be listed in one of the following categories: anaerobic digestion systems operating on animal or plant wastes, methane gas, combustion of clean wood, bark or other plant material; or on combustion of fuels derived entirely from processing of clean wood, bark, or other plant or animal material, including processing by gasification, pyrolysis, fermentation, distillation, or densification.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

"CAIR NO_X Annual Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part II (9VAC5-140-1010 et seq.) of this chapter and 40 CFR 51.123(o)(1) or (2) or established by the administrator in accordance with Part II (9VAC5-140-1010 et seq.) of this chapter and 40 CFR 51.123(p) and 40 CFR 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

"CAIR NO_X Ozone Season source" means a source that is subject to the CAIR NO_X Ozone Season Trading Program.

"CAIR NO_X Ozone Season Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part III (9VAC5-140-2010 et seq.) of this chapter and 40 CFR 51.123(aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or established by the administrator in accordance with Part III (9VAC5-140-2010 et seq.) of this chapter and 40 CFR 51.123(ee) and 40 CFR 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

"CAIR NO_X source" means a source that is subject to the CAIR NO_X Annual Trading Program.

"CAIR SO_2 source" means a source that is subject to the CAIR SO_2 Trading Program.

"CAIR SO_2 Trading Program" means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the administrator in accordance

with Part IV (9VAC5-140-3010 et seq.) of this chapter and 40 CFR 51.124(o)(1) or (2) or established by the administrator in accordance with Part IV (9VAC5-140-3010 et seq.) of this chapter and 40 CFR 51.124(r) and 40 CFR 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

"Clean Air Act" or "CAA" means the Clean Air Act, 42 USC 7401 et seq.

"Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) "Standard Classification of Coals by Rank" (see 9VAC5-20-21).

"Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

"Coal-fired" means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

"Cogeneration unit" means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:

1. Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

2. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

a. For a topping-cycle cogeneration unit,

(1) Useful thermal energy not less than 5.0% of total energy output; and

(2) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5% of total energy input, if useful thermal energy produced is 15% or more of total energy output, or not less than 45% of total energy input, if useful thermal energy produced is less than 15% of total energy output.

b. For a bottoming-cycle cogeneration unit, useful power not less than 45% of total energy input.

"Combustion turbine" means:

1. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2. If the enclosed device under subdivision 1 of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

"Commence commercial operation" means, with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 9VAC5-140-5050.

a. For a unit that is a Hg Budget unit under 9VAC5-140-5040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit that is a Hg Budget unit under 9VAC5-140-5040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

2. Notwithstanding subdivision 1 of this definition and except as provided in 9VAC5-140-5050, for a unit that is not a Hg Budget unit under 9VAC5-140-5040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a Hg Budget unit under 9VAC5-140-5040.

a. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

"Commence operation" means:

1. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

2. For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in

subdivision 1 of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

3. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the replaced unit's date of commencement of operation and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subdivision 1 of this definition, as appropriate.

"Common stack" means a single flue through which emissions from 2 or more units are exhausted.

"Compliance account" means a Hg Allowance Tracking System account, established by the administrator for a Hg Budget source under Article 6 (9VAC5-140-5500 et seq.) of this part, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with 9VAC5-140-5540.

"Continuous emission monitoring system" or "CEMS" means the equipment required under Article 8 (9VAC5-140-5700 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under Article 8 (9VAC5-140-5700 et seq.) of this part:

1. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

2. A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in micrograms per dry standard cubic meter (µg/dscm);

3. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O.

4. A carbon dioxide monitoring system, consisting of a CO_2 concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

5. An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" means the period beginning January 1 of a calendar year, except as provided in 9VAC5-140-5060 C 2, and ending on December 31 of the same year, inclusive.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the Hg designated representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part.

"EERE proponent" means any person who owns, leases, operates or controls an energy efficiency unit or a renewable energy unit, or an EERE representative.

"EERE representative" means a party that aggregates one or more energy efficiency units or renewable energy units. An EERE representative may include, without limitation, a common owner of projects, an energy service company, an emission trading broker or a state or municipal entity.

"Energy efficiency unit" means an end-use energy efficiency project implemented after January 1, 2001, that reduces electricity consumption at a building or facility located in Virginia according to an energy efficiency verification protocol acceptable to the permitting authority. Projects resulting in energy savings at a Hg Budget unit are not encompassed within this definition.

"Excess emissions" means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.

"General account" means a Hg Allowance Tracking System account, established under 9VAC5-140-5510, that is not a compliance account.

"Generator" means a device that produces electricity.

"Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Heat input" means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the Hg designated representative and determined by the administrator in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Heat input rate" means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

"Hg allowance" means a limited authorization issued by a permitting authority or the administrator under Article 5 (9VAC5-140-5400 et seq.) of this part, or under 40 CFR 62.15940 through 62.15943, to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under Article 5 (9VAC5-140-5400 et seq.) of this part or or under 40 CFR 62.15940 through 62.15943 shall not be a Hg allowance. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under 9VAC5-140-5040 B or 9VAC5-140-5050 and no provision of law shall be construed to limit the authority of the United States or board to terminate or limit such authorization, which does not constitute a property right.

"Hg allowance deduction" or "deduct Hg allowances" means the permanent withdrawal of Hg allowances by the administrator from a compliance account, e.g., in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part, or to account for excess emissions. No provision of the Hg Budget Trading Program, the Hg permit application, the Hg permit, or an exemption under 9VAC5-140-5040 B or 9VAC5-140-5050 and no provision of law shall be construed to limit the authority of the United States or state to terminate or limit such authorization, which does not constitute a property right.

"Hg allowances held" or "hold Hg allowances" means the Hg allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9VAC5-140-5500 et seq.) and Article 7 (9VAC5-140-5600 et seq.) of this part, in a Hg Allowance Tracking System account.

"Hg Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

"Hg Allowance Tracking System account" means an account in the Hg Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.

"Hg authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with Article 2 (9VAC5-140-5100 et seq.) and Article 6 (9VAC5-140-5500 et seq.), to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.

"Hg Budget emissions limitation" means, for a Hg Budget source, the equivalent, in ounces of Hg emissions in a control period, of mercury of the Hg allowances available for deduction for the source under 9VAC5-140-5540 A and B for the control period.

"Hg Budget permit" means the terms and conditions in a title V operating permit or state operating permit, issued by the permitting authority under Article 3 (9VAC5-140-5200 et seq.) of this part, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.

"Hg Budget source" means a source that includes one or more Hg Budget units.

"Hg Budget Trading Program" means a multi-state Hg air pollution control and emission reduction program approved and administered by the administrator in accordance with this part and 40 CFR 60.24(h)(6) or established by the administrator in accordance with Subpart LLL of 40 CFR Part 62, 40 CFR 60.24(h)(9), and 40 CFR 62.13(f), as a means of reducing national Hg emissions.

"Hg Budget unit" means a unit that is subject to the Hg Budget Trading Program under 9VAC5-140-5040.

"Hg core trading budget" means the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg trading budget for the control period minus the new unit set aside budget and the new energy efficiency/renewable energy unit set aside budget.

"Hg designated representative" means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-5100 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program. If the Hg Budget source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the Hg Budget source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the Hg Budget source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

"Hg Trading Budget" means the total number of mercury pounds set forth in 9VAC5-140-5400 and apportioned to all

Hg Budget units and energy efficiency/renewable energy units in accordance with the Hg Trading Budget Program, for use in a given control period.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the CAA, or promulgated under § 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the CAA and which implements the relevant requirements of the CAA.

"Life of the unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period no less than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Lignite" means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) "Standard Classification of Coals by Rank" (see 9VAC5-20-21).

"Maximum design heat input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-5700 et seq.) of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

"Municipal waste" means municipal waste as defined in § 129(g)(5) of the Clean Air Act.

"Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

"New energy efficiency/renewable energy unit set aside budget" means the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg trading budget for each control period in 2010 and thereafter multiplied by 1.0%, rounded to the nearest whole allowance as appropriate.

"New unit set aside budget" means the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg trading budget for the control period to which the new unit set aside applies multiplied by the new unit set aside percentage, rounded to the nearest whole allowance as appropriate.

"New unit set aside percentage" means 4.0% for each control period in 2010 through 2014, or 1.0% for each control period in 2015 and thereafter.

"Operator" means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

"Ounce" means 2.84×10^{7} micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.

"Owner" means any of the following persons:

1. With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:

a. Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;

b. Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or

c. Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life of the unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or

2. With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.

"Permitting authority" means the state air pollution control agency, local agency, other State agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the Hg Budget Trading Program or, if no such agency has been so authorized, the administrator. For the Commonwealth of Virginia, the permitting authority shall be the State Air Pollution Control Board.

"Potential electrical output capacity" means 33% of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

"Receive" or "receipt of" means, when referring to the permitting authority or the administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the administrator in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to Hg allowances, the movement of Hg allowances by the administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

"Renewable energy unit" means an electric generator that began commercial operation after January 1, 2001 and is powered by (i) wind, solar, ocean thermal, wave, tidal, geothermal, or biomass energy, or (ii) fuel cells powered by hydrogen generated by a renewable energy source. Renewable energy does not include energy derived from: (i) material that has been treated or painted or derived from demolition or construction material; (ii) municipal, industrial or other multiple source solid waste; and (iii) co-firing of biomass with fossil fuels or solid waste.

"Replacement," "replace," or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

"Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magnetohydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. As determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 1 through 5 of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.24(h)(6) in accordance with § 111(d)(1) of the Clean Air Act, or promulgated under 40 CFR 60.24(h)(6) in accordance with § 111(d)(2) of the Clean Air Act, and which implements the relevant requirements of the Clean Air Act.

"Sequential use of energy" means:

1. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

2. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

"Serial number" means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the administrator.

"Solid waste incineration unit" means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine that is a "solid waste incineration unit" as defined in § 129(g)(1) of the Clean Air Act.

"Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5 Chapter 80.

"State operating permit regulations" means the regulations codified in Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5 Chapter 80.

"Subbituminous" means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) "Standard Classification of Coals by Rank" (see 9VAC5-20-21).

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of Part II of 9VAC5 Chapter 80.

"Title V operating permit regulations" means the regulations codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of 9VAC5 Chapter 80.

"Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

"Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

"Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

"Unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

"Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

2. Used in a heating application (e.g., space heating or domestic hot water heating); or

3. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

9VAC5-140-5030. Measurements, abbreviations, and acronyms. (Repealed.)

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.

CO_2-carbon dioxide.

H_2O-water.

Hg-mercury.

hr-hour.

kW-kilowatt electrical.

kWh-kilowatt hour.

lb-pound.

MMBtu-million Btu.

MWe-megawatt electrical.

MWh-megawatt hour.

NO_x-nitrogen oxides.

O_2-oxygen.

ppm-parts per million.

scfh-standard cubic feet per hour.

SO_2-sulfur dioxide.

yr-year.

9VAC5-140-5040. Applicability. (Repealed.)

A. Except as provided in subsection B of this section:

1. The following units shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this part: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under subdivision 1 of this subsection, is not a Hg Budget unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a Hg Budget unit as provided in subdivision 1 of this subsection on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

B. The units that meet the requirements set forth in subdivision 1 a or 2 of this subsection shall not be Hg Budget units:

1. a. Any unit that is a Hg Budget unit under subdivision A 1 or 2 of this section:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

b. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subdivision 1 a of this subsection for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an Hg Budget unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subdivision 1 a (2) of this subsection.

2. Any unit that is an Hg Budget unit under subdivision A 1 or 2 of this section, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of:

a. Article 54 (9VAC5-40-7950 et seq.) of Part II of 9VAC5 Chapter 40 (emission standards for large municipal waste combustors);

b. Subpart Eb in 9VAC5-50-410 (standards of performance for large municipal waste combustors);

c. Subpart AAAA in 9VAC5-50-410 (standards of performance for small municipal waste combustors); or

d. Article 46 (9VAC5-40-6550) of Part II of 9VAC5 Chapter 40 (emission standards for small municipal waste combustors).

9VAC5-140-5050. Retired unit exemption. (Repealed.)

A. 1. Any Hg Budget unit that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, 9VAC5-140-5020, 9VAC5-140-5030, 9VAC5-140-5040, 9VAC5-140-5060 C 4 through 7, 9VAC5-140-5070, 9VAC5-140-5080, Article 2 (9VAC5-10-5100 et seq.) of this part, and 9VAC5-140-5400.

2. The exemption under subdivision 1 of this subsection shall become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative shall submit a statement to the permitting authority and shall submit a copy of the statement to the administrator. The statement shall state, in a format acceptable to the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of subsection B of this section.

3. After receipt of the statement under subdivision 2 of this subsection, the permitting authority will amend any permit under Article 3 (9VAC5-140-5200 et seq.) of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection B of this section.

B. Special provisions for exempt units shall be as follows.

1. A unit exempt under subsection A of this section shall not emit any mercury, starting on the date that the exemption takes effect.

2. The permitting authority will allocate Hg allowances under Article 5 (9VAC5-140-5400 et seq.) of this part to a unit exempt under subsection A of this section.

3. For a period of five years from the date the records are created, the owners and operators of a unit exempt under subsection A of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

4. The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under subsection A of this section shall comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

5. A unit exempt under subsection A of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under 9VAC5-140-5220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010, or the date on which the unit resumes operation.

6. On the earlier of the following dates, a unit exempt under subsection A of this section shall lose its exemption:

a. The date on which the Hg designated representative submits a Hg Budget permit application for the unit under subdivision 5 of this subsection;

b. The date on which the Hg designated representative is required under subdivision 5 of this subsection to submit a Hg Budget permit application for the unit; or

c. The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.

7. For the purpose of applying monitoring, reporting, and recordkeeping requirements under Article 8 (9VAC5-140-5700 et seq.) of this part, a unit that loses its exemption under subsection A of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

9VAC5-140-5060. ~~Standard requirements.~~ (Repealed.)

~~A. Permit requirements shall be as follows:~~

~~1. The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:~~

~~a. Submit to the permitting authority a complete Hg Budget permit application under 9VAC5-140-5220 in accordance with the deadlines specified in 9VAC5-140-5210; and~~

~~b. Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.~~

~~2. The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority under Article 3 (9VAC5-140-5200 et seq.) of this part for the source and operate the source and the unit in compliance with such Hg Budget permit.~~

~~3. The owners and operators of a Hg Budget source that is not otherwise required to have a title V operating permit and each Hg Budget unit that is not otherwise required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under Article 3 (9VAC5-140-5200 et seq.) of this part for such Hg Budget source and such Hg Budget unit.~~

~~B. Monitoring, reporting, and recordkeeping shall be performed as follows:~~

~~1. The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of Article 8 (9VAC5-140-5700 et seq.) of this part.~~

~~2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under subsection C of this section.~~

~~C.~~ Mercury emission requirements shall be as follows:

~~1. As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under 9VAC5-140-5540 A in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part.~~

~~2. A Hg Budget unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of January 1, 2010, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-5700 C 1 or 2 and for each control period thereafter.~~

~~3. A Hg allowance shall not be deducted, for compliance with the requirements under subdivision 1 of this subsection, for a control period in a calendar year before the year for which the Hg allowance was allocated.~~

~~4. Hg allowances shall be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with Article 6 (9VAC5-140-5500 et seq.) and Article 7 (9VAC5-140-5600 et seq.) of this part.~~

~~5. A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under 9VAC5-140-5050 and no provision of law shall be construed to limit the authority of the board or the United States to terminate or limit such authorization.~~

~~6. A Hg allowance does not constitute a property right.~~

~~7. Upon recordation by the administrator under Article 5 (9VAC5-140-5400 et seq.), Article 6 (9VAC5-140-5500 et seq.) and Article 7 (9VAC5-140-5600 et seq.) of this part, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget source's compliance account is incorporated automatically in any Hg Budget permit of the source.~~

~~D. If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation:~~

~~1. The owners and operators of the source and each Hg Budget unit at the source shall surrender the Hg allowances required for deduction under 9VAC5-140-5540 D 1 and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or the Virginia Air Pollution Control Law; and~~

~~2. Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this part, the Clean Air Act, and the Virginia Air Pollution Control Law.~~

~~E. Recordkeeping and reporting shall be performed as follows:~~

~~1. Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the permitting authority or the administrator.~~

~~a. The certificate of representation under 9VAC5-140-5130 for the Hg designated representative for the source~~

and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five year period until such documents are superseded because of the submission of a new certificate of representation under 9VAC5-140-5130 changing the Hg designated representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part, provided that to the extent that Article 8 (9VAC5-140-5700 et seq.) of this part provides for a three-year period for recordkeeping, the three-year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

d. Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

2. The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under Article 8 (9VAC5-140-5700 et seq.) of this part.

F. Liability shall be assigned as follows.

1. Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.

2. Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.

3. Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.

G. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under 9VAC5-140-5050 shall be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved implementation plan, a federally enforceable permit, the Virginia Air Pollution Control Law or the Clean Air Act.

9VAC5-140-5070. ~~Computation of time.~~ (Repealed.)

A. Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

B. Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

C. Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

9VAC5-140-5080. ~~Appeal procedures.~~ (Repealed.)

The appeal procedures for decisions of the administrator under the Hg Budget Trading Program are set forth in 40 CFR Part 78.

9VAC5-140-5090. ~~[Reserved]~~ (Repealed.)

~~Article 2~~

~~Hg Designated Representative for Hg Budget Sources~~

9VAC5-140-5100. ~~Authorization and responsibilities of Hg designated representative.~~ (Repealed.)

A. Except as provided under 9VAC5-140-5110, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

B. The Hg designated representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and shall act in accordance with the certification statement in 9VAC5-140-5130 A 4 d.

C. Upon receipt by the administrator of a complete certificate of representation under 9VAC5-140-5130, the Hg designated representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg designated representative by the permitting authority, the administrator, or a court regarding the source or unit.

D. No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the administrator has received a complete certificate of representation under 9VAC5-140-5130 for a Hg designated representative of the source and the Hg Budget units at the source.

E. 1. Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement

by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. The permitting authority and the administrator will accept or act on a submission made on behalf of owners or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with subdivision 1 of this subsection.

9VAC5-140-5110. Alternate Hg designated representative. (Repealed.)

A. A certificate of representation under 9VAC5-140-5130 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

B. Upon receipt by the administrator of a complete certificate of representation under 9VAC5-1140-5130, any representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

C. Except in this section and 9VAC5-140-5020, 9VAC5-140-5100 A and D, 9VAC5-140-5120, 9VAC5-140-5130, 9VAC5-140-5150, and 9VAC5-140-5510, whenever the term "Hg designated representative" is used in this part, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.

9VAC5-140-5120. Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators. (Repealed.)

A. The Hg designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 9VAC5-140-5130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

B. The alternate Hg designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 9VAC5-140-5130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

C. Changes in owners and operators shall be established as follows.

1. In the event an owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under 9VAC5-140-5130, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the permitting authority, the administrator, or a court, as if the owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under 9VAC5-140-5130 amending the list of owners and operators to include the change.

9VAC5-140-5130. Certificate of representation. (Repealed.)

A. A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the administrator:

1. Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

2. The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative.

3. A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

4. The following certification statements by the Hg designated representative and any alternate Hg designated representative:

a. "I certify that I was selected as the Hg designated representative or alternate Hg designated representative,

as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source."

b. "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

c. "I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the administrator, the permitting authority, or a court regarding the source or unit."

d. "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a utility or industrial customer purchases power from a Hg Budget unit under a life of the unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the %31Hg designated representative' or %31alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract."

5. The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

B. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-5140. ~~Objections concerning Hg designated representative.~~ (Repealed.)

A. Once a complete certificate of representation under 9VAC5-140-5130 has been submitted and received, the permitting authority and the administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under 9VAC5-140-5130 is received by the administrator.

B. Except as provided in 9VAC5-140-5120 A or B, no objection or other communication submitted to the permitting authority or the administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the permitting authority or the administrator under the Hg Budget Trading Program.

C. Neither the permitting authority nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative, including private legal disputes concerning the proceeds of Hg allowance transfers.

9VAC5-140-5150. ~~Delegation by Hg designated representative and alternate Hg designated representative.~~ (Repealed.)

A. A Hg designated representative may delegate, to one or more natural persons, his authority to make an electronic submission to the administrator provided for or required under this part.

B. An alternate Hg designated representative may delegate, to one or more natural persons, his authority to make an electronic submission to the administrator provided for or required under this part.

C. In order to delegate authority to make an electronic submission to the administrator in accordance with subsection A or B of this section, the Hg designated representative or alternate Hg designated representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

1. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg designated representative or alternate Hg designated representative;

2. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an "agent");

3. For each such natural person, a list of the type or types of electronic submissions under subsection A or B of this section for which authority is delegated to him or her; and

4. The following certification statements by such Hg designated representative or alternate Hg designated representative:

a. "I agree that any electronic submission to the administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg designated representative or alternate Hg designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation

under 9VAC5-140-5150 D shall be deemed to be an electronic submission by me."

b. "Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-5150 D, I agree to maintain an e-mail account and to notify the administrator immediately of any change in my e-mail address, unless all delegation of authority by me under 9VAC5-140-5150 is terminated."

D. A notice of delegation submitted under subsection C of this section shall be effective, with regard to the Hg designated representative or alternate Hg designated representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such Hg designated representative or alternate Hg designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

E. Any electronic submission covered by the certification in subdivision C 4 a of this section and made in accordance with a notice of delegation effective under subsection D of this section shall be deemed to be an electronic submission by the Hg designated representative or alternative Hg designated representative submitting such notice of delegation.

9VAC5-140-5160 to 9VAC5-140-5190. [Reserved] (Repealed.)

Article 3
Permits

9VAC5-140-5200. General Hg Budget Trading Program permit requirements. (Repealed.)

A. For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permit regulations, except as provided otherwise by subsection B of this section, 9VAC5-140-5050, and 9VAC5-140-5210 through 9VAC5-140-5240.

B. Each Hg Budget permit shall contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and shall be a complete and separable portion of the title V operating permit.

9VAC5-140-5210. Submission of Hg Budget permit applications. (Repealed.)

A. The Hg designated representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under 9VAC5-140-5220 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010, or the date on which the Hg Budget unit commences commercial operation.

B. For a Hg Budget source required to have a title V operating permit, the Hg designated representative shall submit a complete Hg Budget permit application under 9VAC5-140-5220 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

9VAC5-140-5220. Information requirements for Hg Budget permit applications. (Repealed.)

A complete Hg Budget permit application shall include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the permitting authority:

1. Identification of the Hg Budget source;

2. Identification of each Hg Budget unit at the Hg Budget source; and

3. The standard requirements under 9VAC5-140-5060.

9VAC5-140-5230. Hg Budget permit contents and term. (Repealed.)

A. Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under 9VAC5-140-5220.

B. Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under 9VAC5-140-5020 and, upon recordation by the administrator under Article 5 (9VAC5-140-5400 et seq.), Article 6 (9VAC5-140-5500 et seq.) and Article 7 (9VAC5-140-5600 et seq.) of this part, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.

C. The term of the Hg Budget permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.

9VAC5-140-5240. Hg Budget permit revisions. (Repealed.)

Except as provided in 9VAC5-140-5230 B, the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

9VAC5-140-5250 to 9VAC5-140-5290. ~~[Reserved]~~ (Repealed.)

~~Article 4~~
~~(Reserved.)~~

9VAC5-140-5300 to 9VAC5-140-5390. ~~[Reserved]~~ (Repealed.)

~~Article 5~~
~~Hg Allowance Allocations~~

9VAC5-140-5400. ~~Hg trading budgets.~~ (Repealed.)

~~The Hg trading budgets for annual allocations of Hg allowances apportioned to all Hg Budget units and energy efficiency units and renewable energy units for the control periods are as follows:~~

~~1. For use in each control period in 2010-2017, the total number of Hg pounds is 1,184.~~

~~2. For use in each control period in 2018 and thereafter, the total number of Hg pounds is 468.~~

9VAC5-140-5410. ~~Timing requirements for Hg allowance allocations.~~ (Repealed.)

~~A. By November 17, 2006, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-5420 A and B, for the control periods in 2010, 2011, 2012, 2013, and 2014.~~

~~B. By October 31, 2009, and October 31 of each year thereafter, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-5420 A and B, for the control period in the sixth year after the year of the applicable deadline for submission under this section.~~

~~C. By October 31, 2010, and October 31 of each year thereafter, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-5420 A, C, and D, for the control period in the year of the applicable deadline for submission under this section.~~

9VAC5-140-5420. ~~Hg allowance allocations.~~ (Repealed.)

~~A. 1. The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under subsection B of this section for each Hg Budget unit will be:~~

~~a. For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's control period heat input for 2000 through 2004.~~

~~b. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.~~

~~2. a. A unit's control period heat input for a calendar year under subdivision 1 a of this subsection, and a unit's total ounces of Hg emissions during a calendar year under subdivision C 3 of this section, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year. The unit's types and amounts of fuel combusted, under subdivision 1 a of this subsection, will be based on the best available data reported to the permitting authority for the unit.~~

~~b. A unit's converted control period heat input for a calendar year specified under subdivision 1 b of this subsection equals:~~

~~(1) Except as provided in subdivision 2 b (2) of this subsection, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by two or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;~~

~~(2) For a unit that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the unit multiplied by 7,900 Btu/kWh, plus the useful thermal energy (in Btu) produced during the control period, divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.~~

~~B. 1. For each control period in 2010 and thereafter, the permitting authority will allocate to all Hg Budget units that have a baseline heat input (as determined under subsection A of this section) a total amount of Hg allowances equal to the Hg core trading budget (except as provided in subsection D of this section).~~

~~2. The permitting authority will allocate Hg allowances to each Hg Budget unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of Hg allowances allocated under subdivision 1 of this subsection by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units and rounding to the nearest whole allowance as appropriate.~~

~~C. For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units that are not allocated Hg allowances under subsection B of this section because the units do not yet have a baseline heat input under subsection A of this section or because the units have a baseline heat input but all Hg allowances available under subsection B of this section for~~

the control period are already allocated, in accordance with the following procedures:

1. The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated Hg allowances equal to the new unit set-aside budget.

2. The Hg designated representative of such a Hg Budget unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under subsection B of this section. A separate Hg allowance allocation request for each control period for which Hg allowances are sought must be submitted on or before May 1 of such control period and after the date on which the Hg Budget unit commences commercial operation.

3. In a Hg allowance allocation request under subdivision 2 of this subsection, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the calendar year immediately before such control period.

4. The permitting authority will review each Hg allowance allocation request under subdivision 2 of this subsection and will allocate Hg allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 2 and 3 of this subsection.

b. On or after May 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under subdivision 4 a of this subsection) in all allowance allocation requests accepted under subdivision 4 a of this subsection for the control period.

c. If the amount of Hg allowances in the new unit set-aside for the control period is greater than or equal to the sum under subdivision 4 b of this subsection, then the permitting authority will allocate the amount of Hg allowances requested (as adjusted under subdivision a of this subdivision) to each Hg Budget unit covered by an allowance allocation request accepted under subdivision 4 a of this subsection.

d. If the amount of Hg allowances in the new unit set-aside for the control period is less than the sum under subdivision 4 b of this subsection, then the permitting authority will allocate to each Hg Budget unit covered by an allowance allocation request accepted under subdivision 4 a of this subsection the amount of the Hg allowances requested (as adjusted under subdivision 4 a of this subsection), multiplied by the amount of Hg allowances in the new unit set-aside for the control period, divided by the sum determined under subdivision 4 b of this subsection, and rounded to the nearest whole allowance as appropriate.

e. The permitting authority will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.

D. If, after completion of the procedures under subdivision C 4 of this section for a control period, any unallocated Hg allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each Hg Budget unit that was allocated Hg allowances under subsection B of this section an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under subsection B of this section, divided by the Hg core trading budget, and rounded to the nearest whole allowance as appropriate.

E. For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances not to exceed the new energy efficiency/renewable energy unit set-aside budget to qualifying energy efficiency units and renewable energy units in accordance with the following procedures:

1. The EERE proponent of an energy efficiency unit or a renewable energy unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the energy efficiency unit is implemented or the renewable energy unit commences commercial operation. The Hg allowance allocation request must be submitted on or before July 1 of each control period for which the Hg allowances are requested and after the date on which the energy efficiency unit is implemented or the renewable energy unit commences commercial operation.

2. EERE proponents may submit an application that aggregates two or more energy efficiency units or renewable energy units. The permitting authority will not allocate Hg allowances for energy efficiency units or renewable energy units totaling less than one whole allowance or any fraction thereof. If more than one proponent submits an application for allowances for the same energy efficiency unit or renewable energy unit for the same calendar year, the permitting authority, at its discretion, may refuse to accept the applications.

3. In a Hg allowance allocation request under subdivisions 1 and 2 of this subsection, the EERE proponent may

request for a control period Hg allowances in an amount not exceeding:

a. For a renewable energy unit, the control period gross electrical output of the facility during the calendar year immediately before such control period multiplied by $20x10^{-6}$ lb/MWh and multiplied by 16 and rounded to nearest whole allowance as appropriate.

b. For an energy efficiency unit, the control period verified reduction in electricity consumption during the calendar year immediately before such control period multiplied by $20x10^{-6}$ lb/MWh and multiplied by 16 and rounded to the nearest whole allowance as appropriate.

4. The permitting authority will review each Hg allowance allocation request under subdivisions 1 and 2 of this subsection and will allocate Hg allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 1, 2 and 3 of this subsection.

b. On or after October 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under subdivision 4 a of this subsection) in all allowance allocation requests accepted under subdivision 4 a of this subsection for the control period.

c. If the amount of Hg allowances in the new energy efficiency/renewable energy unit set aside budget for the control period is greater than or equal to the sum under subdivision 4 b of this subsection, the permitting authority will allocate the amount of Hg allowances requested (as adjusted under subdivision 4 a of this subsection) to each energy efficiency unit or renewable energy unit covered by an allowance allocation request accepted under subdivision 4 a of this subsection.

d. If the amount of Hg allowances in the new energy efficiency/renewable energy unit set aside budget for the control period is less than the sum under subdivision 4 b of this subsection, the permitting authority will allocate to each energy efficiency unit or renewable energy unit covered by an allowance allocation request accepted under subdivision 4 a of this subsection the amount of the Hg allowances requested (as adjusted under subdivision 4 a of this subsection), multiplied by the amount of Hg allowances in the new energy efficiency/renewable energy unit set aside budget for the control period, divided by the sum determined under subdivision 4 b of this subsection, and rounded to the nearest whole allowance as appropriate.

5. By October 31, 2009, and October 31 of each year thereafter, the permitting authority will notify each EERE proponent that submitted an allowance allocation request under subdivisions 1 and 2 of this subsection of the amount of Hg allowances (if any) allocated under subdivision 4 of this subsection for the control period to the energy efficiency unit or renewable energy unit covered by the request.

6. If, after completion of the procedures under subdivisions 4 and 5 of this subsection for a control period, any unallocated Hg allowances have remained in the new energy efficiency/renewable energy unit set-aside budget for more than three control periods, the permitting authority will permanently retire those allowances, and they will not be available for compliance for any Hg budget unit.

7. The permitting authority will not submit to the administrator the Hg allowance allocations under subdivision 4 of this subsection.

8. Hg allowances allocated under subdivision 4 of this subsection (i) shall be retired permanently by the EERE proponent making the request under subdivision 2 of this subsection, (ii) shall not be considered valid or capable of being lawfully traded under the Hg Budget Trading Program, and (iii) shall not be available for compliance for any Hg budget unit.

9VAC5-140-5430 to 9VAC5-140-5490. ~~[Reserved]~~ (Repealed.)

~~Article 6~~
~~Hg Allowance Tracking System~~

9VAC5-140-5500. ~~[Reserved]~~ (Repealed.)

9VAC5-140-5510. ~~Establishment of accounts.~~ (Repealed.)

A. Upon receipt of a complete certificate of representation under 9VAC5-140-5130, the administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

B. General accounts shall be established as follows.

1. Applications for general accounts shall be submitted as follows.

a. Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

b. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

(1) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

(2) Organization name and type of organization, if applicable;

(3) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the Hg allowances held in the general account;

(4) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: "I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Hg allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account."

(5) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

c. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Hg authorized account representatives and alternate Hg authorized account representatives shall be authorized as follows.

a. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection:

(1) The administrator will establish a general account for the person or persons for whom the application is submitted.

(2) The Hg authorized account representative and any alternate Hg authorized account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person shall be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the administrator or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission shall include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

c. The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Hg authorized account representatives, alternate Hg authorized account representatives, and persons with ownership interest shall be changed as follows.

a. The Hg authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

b. The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete

application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

c. (1) In the event a person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the administrator or a court, as if the person were included in such list.

(2) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of a new person, the Hg authorized account representative or any alternate Hg authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

4. Objections concerning Hg authorized account representative and alternate Hg authorized account representative are subject to the following.

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the administrator.

b. Except as provided in subdivision 3 a or b of this subsection, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative or the finality of any decision or order by the administrator under the Hg Budget Trading Program.

c. The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

5. Delegation by Hg authorized account representative and alternate Hg authorized account representative shall be accomplished as follows.

a. A Hg authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the administrator provided for or required under Article 6 (9VAC5-140-5500 et seq.) and Article 7 (9VAC5-140-5600 et seq.) of this part.

b. An alternate Hg authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the administrator provided for or required under Article 6 (9VAC5-140-5500 et seq.) and Article 7 (9VAC5-140-5600 et seq.) of this part.

c. In order to delegate authority to make an electronic submission to the administrator in accordance with subdivision 5 a or b of this subsection, the Hg authorized account representative or alternate Hg authorized account representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg authorized account representative or alternate Hg authorized account representative;

(2) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(3) For each such natural person, a list of the type or types of electronic submissions under subdivision 5 a or b of this subsection for which authority is delegated to him;

(4) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: "I agree that any electronic submission to the administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg authorized account representative or alternate Hg authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-5510 B 5 d shall be deemed to be an electronic submission by me."; and

(5) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-5510 B 5 d, I agree to maintain an

email account and to notify the administrator immediately of any change in my e-mail address unless all delegation of authority under 9VAC5-140-5510-B-5 is terminated."

d. A notice of delegation submitted under subdivision 5 c of this subsection shall be effective, with regard to the Hg authorized account representative or alternate Hg authorized account representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such Hg authorized account representative or alternate Hg authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

e. Any electronic submission covered by the certification in subdivision 5 c (4) of this subsection and made in accordance with a notice of delegation effective under subdivision 5 d of this subsection shall be deemed to be an electronic submission by the Hg designated representative or alternate Hg designated representative submitting such notice of delegation.

C. The administrator will assign a unique identifying number to each account established under subsection A or B of this section.

9VAC5-140-5520. Responsibilities of Hg authorized account representative. (Repealed.)

Following the establishment of a Hg Allowance Tracking System account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, shall be made only by the Hg authorized account representative for the account.

9VAC5-140-5530. Recordation of Hg allowance allocations. (Repealed.)

A. By December 1, 2007, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-5410-A, for the control periods in 2010, 2011, 2012, 2013, and 2014.

B. By December 1, 2009, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-5410-B, for the control period in 2015.

C. By December 1, 2010, and December 1 of each year thereafter, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-5410-B, for the control period in the sixth year after the year of the applicable deadline for recordation under this section.

D. By December 1, 2010, and December 1 of each year thereafter, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-5410-C, for the control period in the year of the applicable deadline for recordation under this section.

E. When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.

9VAC5-140-5540. Compliance with Hg Budget emissions limitation. (Repealed.)

A. The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:

1. Were allocated for the control period in the year or a prior year; and

2. Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under 9VAC5-140-5600 and 9VAC5-140-5610 by the allowance transfer deadline for the control period.

B. Following the recordation, in accordance with 9VAC5-140-5610, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the administrator will deduct from the compliance account Hg allowances available under subsection A of this section in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:

1. Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with Article 8 (9VAC5-140-5700 et seq.) of this part, from all Hg Budget units at the source for the control period; or

2. If there are insufficient Hg allowances to complete the deductions in subdivision 1 of this subsection, until no more Hg allowances available under subsection A of this section remain in the compliance account.

C. 1. The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subsection B or D of this section. Such request shall be submitted to the administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the administrator, the

identification of the Hg Budget source and the appropriate serial numbers.

2. The administrator will deduct Hg allowances under subsection B or D of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under subdivision 1 of this subsection, on a first in, first out accounting basis in the following order:

a. Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then

b. Any Hg allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to 9VAC5-140-5600 and 9VAC5-140-5610, in the order of recordation.

D. Deductions for excess emissions shall meet the following:

1. After making the deductions for compliance under subsection B of this section for a control period in a calendar year in which the Hg Budget source has excess emissions, the administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to three times the number of ounces of the source's excess emissions.

2. Any allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or the Virginia Air Pollution Control Law.

E. The administrator will record in the appropriate compliance account all deductions from such an account under subsections B and D of this section.

F. The administrator's action on submissions may include the following:

1. The administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 1 of this subsection, and record such deductions and transfers.

9VAC5-140-5550. ~~Banking.~~ (Repealed.)

A. Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subsection B of this section.

B. Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under 9VAC5-140-5540, 9VAC5-140-5560, or Article 7 (9VAC5-140-5600 et seq.) of this part.

9VAC5-140-5560. ~~Account error.~~ (Repealed.)

The administrator may, at his sole discretion and on his own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the administrator will notify the Hg authorized account representative for the account.

9VAC5-140-5570. ~~Closing of general accounts.~~ (Repealed.)

A. The Hg authorized account representative of a general account may submit to the administrator a request to close the account, which shall include a correctly submitted allowance transfer under 9VAC5-140-5600 and 9VAC5-140-5610 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.

B. If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the administrator may notify the Hg authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20 day period unless, before the end of the 20-day period, the administrator receives a correctly submitted transfer of Hg allowances into the account under 9VAC5-140-5600 and 9VAC5-140-5610 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

9VAC5-140-5580 to 9VAC5-140-5590. ~~[Reserved]~~ (Repealed.)

~~Article 7~~
~~Hg Allowance Transfers~~

9VAC5-140-5600. ~~Submission of Hg allowance transfers.~~ (Repealed.)

A Hg authorized account representative seeking recordation of a Hg allowance transfer shall submit the transfer to the administrator. To be considered correctly submitted, the Hg allowance transfer shall include the following elements, in a format specified by the administrator:

1. The account numbers for both the transferor and transferee accounts;

2. The serial number of each Hg allowance that is in the transferor account and is to be transferred; and

3. The name and signature of the Hg authorized account representative of the transferor account and the date signed.

9VAC5-140-5610. ~~EPA recordation.~~ (Repealed.)

A. Within five business days (except as provided in subsection B of this section) of receiving a Hg allowance transfer, the administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to

the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9VAC5-140-5600; and

2. The transferor account includes each Hg allowance identified by serial number in the transfer.

B. A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the administrator completes the deductions under 9VAC5-140-5540 for the control period immediately before such allowance transfer deadline.

C. Where a Hg allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the administrator will not record such transfer.

9VAC5-140-5620. ~~Notification.~~ (Repealed.)

A. Within five business days of recordation of a Hg allowance transfer under 9VAC5-140-5610, the administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of 9VAC5-140-5610 A, the administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

1. A decision not to record the transfer; and

2. The reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a Hg allowance transfer for recordation following notification of nonrecordation.

9VAC5-140-5630 to 9VAC5-140-5690. ~~[Reserved]~~ (Repealed.)

~~Article 8~~
~~Monitoring and Reporting~~

9VAC5-140-5700. ~~General requirements.~~ (Repealed.)

A. The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this article and subpart I of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in 9VAC5-140-5020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system (CEMS)" in 40 CFR Part 75 shall be deemed to refer to the terms "Hg Budget unit," "Hg designated representative," and "continuous emission monitoring system (CEMS)" respectively, as defined in 9VAC5-140-5020. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under 40 CFR 75.82(b)(2)(i) shall comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.

B. The owner or operator of each Hg Budget unit shall:

1. Install all monitoring systems required under this article for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO_2 or O_2 concentration, as applicable, in accordance with 40 CFR 75.81 and 75.82);

2. Successfully complete all certification tests required under 9VAC5-140-5710 and meet all other requirements of this article, and subpart I of 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection; and

3. Record, report, and quality assure the data from the monitoring systems under subdivision 1 of this subsection.

C. Except as provided in subsection F of this section, the owner or operator shall meet the monitoring system certification and other requirements of subdivisions B 1 and 2 of this section on or before the following dates. The owner or operator shall record, report, and quality assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates.

1. For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009.

2. For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

a. January 1, 2009; or

b. Ninety unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

3. For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under subdivision 1 or 2 of this subsection, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

D. The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other

parameters required to determine Hg mass emissions and heat input in accordance with 40 CFR 75.80(g).

E. The following prohibitions shall apply:

1. No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this article without having obtained prior written approval in accordance with 9VAC5-140-5750.

2. No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article, and subpart I of 40 CFR Part 75.

3. No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article, and subpart I of 40 CFR Part 75.

4. No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this article, except under any one of the following circumstances:

a. During the period that the unit is covered by an exemption under 9VAC5-140-5050 that is in effect;

b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article, and subpart I of 40 CFR Part 75, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

c. The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with 9VAC5-140-5710 C 3 a.

F. The owner or operator of a Hg Budget unit is subject to the applicable provisions of 40 CFR Part 75 concerning units in long-term cold storage.

9VAC5-140-5710. Initial certification and recertification procedures. (Repealed.)

A. The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9VAC5-140-5700 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality assurance and quality control requirements of 40 CFR 75.21 and appendix B to 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9VAC5-140-5700 B 1 exempt from initial certification requirements under subsection A of this section.

C. Except as provided in subsection A of this section, the owner or operator of a Hg Budget unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system (sorbent trap monitoring system) under 40 CFR 75.15) under 9VAC5-140-5700 B 1. The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under 40 CFR 75.81(b) or that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall comply with the procedures in subsection D or E of this section respectively.

1. The owner or operator shall ensure that each continuous monitoring system under 9VAC5-140-5700 B 1 (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in 9VAC5-140-5700 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorbent trap monitoring system) under 40 CFR 75.15, under 9VAC5-140-5700 B 1 that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality assurance and quality control requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each excepted monitoring system (sorbent trap monitoring system) under 40 CFR 75.15, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

3. Subdivisions 3 a through d of this subsection apply to both initial certification and recertification of a continuous monitoring system under 9VAC5-140-5700 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with the word "recertified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in subdivision 3 e of this subsection.

a. The Hg designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the administrator written notice of the dates of certification testing, in accordance with 9VAC5-140-5730.

b. The Hg designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

c. The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

d. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the permitting authority does not issue such a notice within such 120 day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(2) If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative shall submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under subdivision 3 d (3) of this subsection. The 120 day review period shall not begin before receipt of a complete certification application.

(3) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system that is disapproved for initial certification.

(4) The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-5720.

e. If the permitting authority issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (4) of this subsection, then:

(1) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii) or 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i):

(a) For a disapproved Hg pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to 40 CFR Part 75.

(b) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR Part 75.

(c) For a disapproved excepted monitoring system (sorbent trap monitoring system) under 40 CFR 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum

potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to 40 CFR Part 75.

(2) The Hg designated representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and b of this subsection.

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

D. The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under 40 CFR 75.81(b) shall meet the applicable certification and recertification requirements in 40 CFR 75.81(c) through (f).

E. The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator under subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9VAC5-140-5720. Out of control periods. (Repealed.)

A. Whenever any monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in subpart D of 40 CFR Part 75.

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9VAC5-140-5710 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this section, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in 9VAC5-140-5710 for each disapproved monitoring system.

9VAC5-140-5730. Notifications. (Repealed.)

The Hg designated representative for a Hg Budget unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61.

9VAC5-140-5740. Recordkeeping and reporting. (Repealed.)

A. The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements of 40 CFR 75.84, and the requirements of 9VAC5-140-5100 E 1.

B. The owner or operator of a Hg Budget unit shall comply with requirements of 40 CFR 75.84(e).

C. The Hg designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under 9VAC5-140-5710, including the information required under 40 CFR 75.63.

D. The Hg designated representative shall submit quarterly reports, as follows:

1. The Hg designated representative shall report the Hg mass emissions data and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the administrator, for each calendar quarter beginning with:

a. For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009, through March 31, 2009; or

b. For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under 9VAC5-140-5700 C, unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009, through March 31, 2009.

2. The Hg designated representative shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.84(f).

3. For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_X Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of 40 CFR Part 75 as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, 9VAC5-140-5700 through 9VAC5-140-5730, and 9VAC5-140-5750.

E. The Hg designated representative shall submit to the administrator a compliance certification (in a format prescribed by the administrator) in support of each quarterly

~~report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:~~

~~1. The monitoring data submitted were recorded in accordance with the applicable requirements of this section, 9VAC5-140-5700 through 9VAC5-140-5730, 9VAC5-140-5750, and 40 CFR Part 75, including the quality assurance procedures and specifications; and~~

~~2. For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours where Hg data are substituted in accordance with 40 CFR 75.34(a)(1),~~

~~a. (1) The Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to 40 CFR Part 75; or~~

~~(2) With regard to a flue gas desulfurization system or a selective catalytic reduction system, quality-assured SO_2 emission data recorded in accordance with 40 CFR Part 75 document that the flue gas desulfurization system was operating properly, or quality-assured NO_x emission data recorded in accordance with 40 CFR Part 75 document that the selective catalytic system was operating properly, as applicable, and~~

~~b. The substitute data values do not systematically underestimate Hg emissions.~~

9VAC5-140-5750. ~~Petitions.~~ (Repealed.)

~~The Hg designated representative of a Hg Budget unit may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of 9VAC5-140-5700 through 9VAC5-140-5740. Application of an alternative to any requirement of 9VAC5-140-5700 through 9VAC5-140-5740 is in accordance with this section and 9VAC5-140-5700 through 9VAC5-140-5740 only to the extent that the petition is approved in writing by the administrator, in consultation with the permitting authority.~~

VA.R. Doc. No. R12-3019; Filed July 11, 2012, 4:44 p.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Extension of Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130, 12VAC30-50-226).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-61, 12VAC30-60-143).

12VAC30-130. Amount, Duration and Scope of Selected Services (adding 12VAC30-130-2000).

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Dates: July 18, 2011, through January 16, 2013.

On July 16, 2012, the Governor approved the Department of Medical Assistance Services' (DMAS) request to extend the expiration date of the above-referenced emergency regulation as provided in § 2.2-4011 D of the Code of Virginia. The emergency regulation was published in 27:24 VA.R. 2608-2628 August 1, 2011 (http://register.dls.virginia.gov/vol27/iss24/v27i24.pdf). The extension allows DMAS to continue enforcing the legislative mandate set out in Item 297 YY of Chapter 890 of the 2011 Acts of the Assembly, which implements the requirement to review intensive in-home services and community mental health services for appropriate utilization and cost efficiency. This regulatory action is essential to curtailing loss of tax dollars through pervasive provider fraud and questionable practices in community mental health services. The expiration date of the emergency regulation is extended to January 16, 2013.

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. R11-2790; Filed July 13, 2012, 2:59 p.m.

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TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Withdrawal of Proposed Regulation

Title of Regulation: **13VAC5-21. Virginia Certification Standards (amending 13VAC5-21-51).**

Statutory Authority: § 36-137 of the Code of Virginia.

Notice is hereby given that the Board of Housing and Community Development has WITHDRAWN the proposed regulation entitled 13VAC5-21, Virginia Certification Standards, which was published in 27:11 VA.R. 1152-1154 January 31, 2011. The provisions will be reevaluated for the 2012 codes cycle currently underway.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000,

FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1897; Filed July 23, 2012, 2:22 p.m.

Withdrawal of Proposed Regulation

Title of Regulation: **13VAC5-95. Virginia Manufactured Home Safety Regulations (amending 13VAC5-95-10 through 13VAC5-95-60, 13VAC5-95-80, 13VAC5-95-90, 13VAC5-95-100; repealing 13VAC5-95-70).**

Statutory Authority: § 36-85.7 of the Code of Virginia.

Notice is hereby given that the Board of Housing and Community Development has WITHDRAWN the proposed regulation entitled 13VAC5-95, Virginia Manufactured Home Safety Regulations, which was published in 27:11 VA.R. 1154-1159 January 31, 2011. The provisions will be reevaluated for the 2012 codes cycle currently underway.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1896; Filed July 23, 2012, 2:25 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing 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 Board of Nursing will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC90-50. Regulations Governing the Certification of Massage Therapists (amending 18VAC90-50-40).**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: September 12, 2012.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Sutie 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendment adds the Licensing Examination of the Federation of State Massage Therapy Boards as an acceptable examination for initial certification and deletes the requirement that an exam acceptable to the board leads to national certification. The amendments conform the regulation to changes in the Code of Virginia enacted by Chapter 764 of the 2012 Acts of Assembly.

Part II
Requirements for Certification

18VAC90-50-40. Initial certification.

A. An applicant seeking initial certification shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;

2. Has successfully completed a minimum of 500 hours of training from a massage therapy program certified or approved by the State Council of Higher Education or an agency in another state, the District of Columbia or a United States territory that approves educational programs, notwithstanding the provisions of § 22.1-320 of the Code of Virginia;

3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork, the National Certification Exam for Therapeutic Massage, the Licensing Examination of the Federation of State Massage Therapy Boards, or an exam deemed acceptable to the board ~~leading to national certification~~; and

4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90.

B. No application for certification under provisions of § 54.1-3029 B of the Code of Virginia shall be considered unless submitted prior to July 1, 1998.

C. An applicant who has been licensed or certified in another country and who, in the opinion of the board, meets the educational requirements shall take and pass the national certifying examination as required in subsection A of this section in order to become certified.

VA.R. Doc. No. R12-3341; Filed July 25, 2012, 9:05 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, navy, or police functions.

Title of Regulation: **19VAC30-220. Virginia Methamphetamine Precursor Information System (adding 19VAC30-220-10, 19VAC30-220-20, 19VAC30-220-30).**

Statutory Authority: §§ 18.2-265.8 and 18.2-265.12 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Lt. Colonel Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

Chapters 160 and 252 of the 2012 Acts of Assembly require all pharmacies and retailers in the Commonwealth of Virginia that sell over-the-counter cold and allergy medications containing ephedrine and/or pseudoephedrine products (PSE) to participate in a statewide, real-time electronic PSE monitoring program for the purpose of tracking illegal PSE purchases. The Virginia Methamphetamine Precursor Information System is a web-accessed database available at no charge to pharmacies and retailers. Pursuant to the Combat Methamphetamine Epidemic Act of 2005 (CMEA) (Title VII of Pub. L. 109-177) pharmacies and retailers are currently required to capture certain data regarding PSE sales. This system enables pharmacies to easily enter the same PSE sales data currently being gathered online rather than recording the information into a manual log or in-store computer system. Data will be stored in a secure, central repository that treats the data collected as if it were HIPAA data. Furthermore, the collected data will be viewable at no cost by authorized city, state, and federal law enforcement in keeping with CMEA, the Code of Virginia, and these regulations.

CHAPTER 220
VIRGINIA METHAMPHETAMINE PRECURSOR INFORMATION SYSTEM

19VAC30-220-10. Purpose and authority.

Section 18.2-265.8 of the Code of Virginia requires all pharmacies and retailers in the Commonwealth of Virginia that sell over-the-counter cold and allergy medications containing ephedrine and/or pseudoephedrine products (PSE) to participate in a statewide, real-time electronic PSE monitoring program for the purpose of tracking illegal PSE purchases. The Virginia Methamphetamine Precursor Information System is a web-accessed database available at no charge to pharmacies and retailers. Pursuant to the Combat Methamphetamine Epidemic Act of 2005 (CMEA) (Title VII of Pub. L. 109-177) pharmacies and retailers are currently required to capture certain data regarding PSE sales. This system enables pharmacies to easily enter the same PSE sales data currently being gathered online rather than recording the information into a manual log or in-store computer system. Data will be stored in a secure, central repository that treats the data collected as if it were HIPAA data. Furthermore, the collected data will be viewable (at no cost) by authorized city, state, and federal law enforcement in keeping with CMEA, the Code of Virginia, and these regulations.

19VAC30-220-20. Exemptions from electronic reporting.

A. Pharmacies are exempt from entering purchase information into the methamphetamine precursor tracking system when the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts or isomers, or salts of isomers is sold pursuant to a prescription written by a licensed authorized practitioner.

B. A pharmacy or retail distributor pursuant to § 18.2-265.8 of the Code of Virginia that lacks broadband access or maintains a sales volume of less than 72 grams of ephedrine or related compounds in a 30-day period may be temporarily exempt from the requirement to report transactions to the electronic system if an exemption is granted by the Department of State Police pursuant to § 18.2-265.8 C of the Code of Virginia.

1. In order to be granted an exemption, a pharmacy or retail distributor must submit a written request on the Electronic Reporting Exemption Application provided by the Department of State Police that shall include the following information:

a. The reason for the exemption; and

b. The anticipated duration for which the exemption will be required.

2. An exemption from electronic reporting may not exceed one year.

3. A retailer may request additional exemptions by submitting the form defined in subdivision 1 of this subsection at least 30 days before the current exemption expires.

4. For all sales transactions involving the sale or attempted sale of a restricted product occurring during the period of an exemption at the time of the sale or attempted sale, the retailer shall record into a written logbook, the information required under § 18.2-265.8 A 6 of the Code of Virginia.

5. The written logbook of each sale or attempted sale shall be available for inspection by any law-enforcement officer or board inspector during normal business hours.

6. A pharmacy or retail distributor exempt from electronic reporting shall comply with the provisions of § 18.2-265.10 of the Code of Virginia unless exempted pursuant to § 18.2-265.11 of the Code of Virginia.

C. The Department of State Police will respond in writing to all exemption requests. The response will contain a determination if the exemption is granted or denied and either the duration of the exemption or the reason for denial.

19VAC30-220-30. Maintenance of and access to retail sales records of restricted products.

A. The retail sales records required under §§ 18.2-265.8 and 18.2-265.10 of the Code of Virginia shall be confidential pursuant to § 18.2-265.13 of the Code of Virginia. The department or other law-enforcement agency of the Commonwealth or any federal agency conducting a criminal investigation involving the manufacture of methamphetamine consistent with state or federal law may access data, records, and reports regarding the sale of ephedrine or related compounds.

B. The chief law-enforcement officer of an agency of the Commonwealth or a federal agency within the Commonwealth seeking access shall appoint and register an agency administrator with the system.

C. The chief law-enforcement officer and agency administrator shall ensure:

1. Only authorized employees with law enforcement need have access to the databases.

2. Each employee shall use only his unique password or access code to access the databases. Passwords and access codes shall not be used by other employees.

3. Each employee shall adhere to all state and federal laws regarding confidentiality.

4. Records related to accessing system logs are kept and retained for a minimum of two years.

5. Data, records, and reports must be destroyed in a manner that renders the record unidentifiable and nonretrievable.

6. The department is to be notified in writing within 30 days from the date when an authorized employee with access to the data, records, and reports regarding the sale of ephedrine or related compounds leaves the agency or when their duties no longer require access to the system.

D. Failure to strictly comply with the provisions of this section may result in loss of individual or agency access privileges.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (19VAC30-220)

Virginia Methamphetamine Precursor Information System Electronic Reporting Exemption Instructions and Application (eff. 07/12).

VA.R. Doc. No. R12-3242; Filed July 24, 2012, 9:51 a.m.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services is conducting a periodic review of **6VAC20-240, Regulations Relating to School Security Officers**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 13, 2012, and ends on September 11, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Stephanie L. Morton, Department of Criminal Justice Services, Law Enforcement Program Coordinator, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or email stephanie.morton@dcjs.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for GEI Stratford, LLC and Stratford-Bethany, LLC

An enforcement action has been proposed for GEI Stratford, LLC and Stratford-Bethany, LLC for alleged violations at the Stratford Hills Apartments on 2517 W. Tremont Court, Richmond, VA. The action requires corrective action and payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5093, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 13, 2012, to September 13, 2012.

Notice of Bacteria TMDL Modification of Lower Mattaponi, Lower Pamunkey, and Upper York Rivers in King William, New Kent, and King and Queen Counties and the Town of West Point

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on 21 proposed modifications of the total maximum daily loads (TMDLs) developed for impaired segments of the Lower Mattaponi River (VAP-F25E-01), Lower Pamunkey River (VAP-F14E-03), and the Upper York River (VAP-F26E-05 and VAP-F26E-20). The TMDL was approved by the Environmental Protection Agency on July 28, 2010, and is available at: http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/yorkrvr/yorkpamunkmatta.pdf.

Changes 1-4 are with regard to the Lower Mattaponi River Enterococci TMDL segment (VAP-F25E-01).

1. The Mickens domestic discharger is a Single Family Home - General Permit (VAG404212) that discharges ≤1000 gallons per day (GPD) to a nontidal tributary of the Lower Pamunkey River, Unnamed Tributary (UT) to Olssen's Pond. This permit was mistakenly given a waste load allocation (WLA) based on 60 GPD (or 0.00006 million gallons per day (MGD)) in the Lower Mattaponi River Enterococci (recreational use) TMDL, but should have been allocated in the Lower Pamunkey River Enterococci TMDL. DEQ proposes to correct the Lower Mattaponi TMDL by removing the daily waste load allocation for Enterococci. The details regarding the reallocation of the WLA for this permittee for Enterococci and how the facility will maintain compliance with the Lower Pamunkey River TMDL are noted in the section below.

2. The Hampton Roads Sanitation District (HRSD) West Point Sewage Treatment Plant (STP) (VA0075434) is a VPDES minor municipal plant with a design flow of 0.60 million gallons per day (MGD) that discharges to the Lower Mattaponi River. The WLA in the TMDL was based on the Single Sample Instantaneous Maximum Standard of 104 (cfu/100mL) Enterococci, when it should have been based on the Geometric Mean (GM) Standard of 35 (cfu/100mL) Enterococci. DEQ proposes to correct the Lower Mattaponi River Enterococci TMDL by revising the facility's daily WLA to accommodate this facility at a maximum design flow of 0.60 MGD and an Enterococci concentration of 35 N/mL.

3. The original Future Growth was equal to five times the daily load of the single municipal discharger, HRSD West Point (VA0075434) at the Single Sample Instantaneous Maximum Standard of 104 N/mL Enterococci. This was equal to 0.01% of the TMDL. DEQ proposes to increase the daily Future Growth value to 0.76% of the TMDL.

4. The revisions noted in 1-3 above result in an increase in the daily Total WLA and a decrease in the daily Load Allocation (LA) values.

Changes 5-9 are with regard to the Lower Pamunkey River Enterococci TMDL segment (VAP-F14E-03).

5. The Mickens domestic discharger is a Single Family Home - General Permit (VAG404212) that discharges ≤1000 gallons per day (GPD) to a nontidal tributary of the Lower Pamunkey River, Unnamed Tributary (UT) to Olssen's Pond. This permit was mistakenly given a waste load allocation (WLA) based on 60 GPD (or 0.00006 million gallons per day (MGD)) in the Lower Mattaponi River Enterococci (recreational use) TMDL, but should have been allocated in the Lower Pamunkey River Enterococci TMDL. DEQ proposes to allocate a daily WLA for this facility in the Lower Pamunkey Enterococci TMDL. This is a facility that uses chlorination in a contact tank, followed by dechlorination, meets Virginia's Single Family Home - General Permit limits for discharges to nontidal freshwater, and the facility outfall is greater than 2.75 miles upstream of the Enterococci impairment. Compliance of this facility with the daily WLA for Enterococci will be met through compliance with existing E. coli permit limit protections. Compliance of this facility with the existing permit limits will not cause or contribute to the downstream Enterococci bacteria impairment in the Lower Pamunkey River.

6. Parham Landing Waste Water Treatment Plant (WWTP) (VA0088331) is a VPDES major municipal plant with a design flow of 2 MGD. However, the daily WLA in the Lower Pamunkey River Enterococci TMDL was based on the Single Sample Instantaneous Maximum Standard of 104 (cfu/100mL) Enterococci, when it should have been based on the GM Standard of 35 (cfu/100mL) Enterococci. The WLA was also allocated at the incorrect design flow of 0.568 MGD. DEQ proposes to revise the Lower Pamunkey Enterococci TMDL by correcting the facility's daily WLA to accommodate this facility at a maximum design flow of 2 MGD and an Enterococci concentration of 35 N/mL.

7. The Rock-Tenn West Point Mill (VA0003115) is a VPDES major industrial facility with a design flow of 23 MGD that discharges to the Lower Pamunkey River. This facility was recently identified as a source of bacteria in the Lower Pamunkey River and should receive an allocation in the Enterococci TMDL. DEQ proposes to correct the Lower Pamunkey River Enterococci TMDL by allocating a daily WLA to accommodate this facility at a maximum design flow of 23 MGD and the Enterococci GM Standard of 35 N/mL.

8. The original Future Growth allocated was equal to five times the daily load of the single municipal discharger, Parham Landing WWTP (VA0088331) at the Single Sample Instantaneous Maximum Standard of 104 N/mL Enterococci, equal to 0.01% of the TMDL. DEQ proposes to increase the daily Future Growth to 0.74% of the TMDL.

9. The revisions noted in 5-8 above result in an increase in the daily Total WLA and a decrease in the daily Load Allocation (LA) values.

Changes 10-15 are with regard to the Upper York River Enterococci TMDL segment (VAP-F26E-05).

10. The Mickens domestic discharger is a Single Family Home - General Permit (VAG404212) that discharges ≤1000 gallons per day (GPD) to a nontidal tributary of the Lower Pamunkey River, Unnamed Tributary (UT) to Olssen's Pond. The facility should have received a WLA in the Upper York River Enterococci TMDL. DEQ proposes to allocate a daily WLA for this facility in the Upper York Enterococci TMDL. This is a facility that uses chlorination in a contact tank, followed by dechlorination, meets Virginia's Single Family Home - General Permit limits for discharges to nontidal freshwater, and the facility outfall is greater than five miles upstream of the Upper York River Enterococci impairment. Compliance of this facility with the daily WLA for Enterococci will be met through compliance with existing E. coli permit limit protections. Compliance of this facility with the existing permit limits will not cause or contribute to the downstream Enterococci bacteria impairment in the Upper York River.

11. The HRSD West Point STP (VA0075434) is a VPDES minor municipal plant with a design flow of 0.60 million gallons per day (MGD) that discharges to the Lower Mattaponi River. The WLA in the TMDL was based on the Single Sample Instantaneous Maximum Standard of 104 (cfu/100mL) Enterococci, when it should have been based on the Geometric Mean (GM) Standard of 35 (cfu/100mL) Enterococci. DEQ proposes to correct the Upper York River Enterococci TMDL by revising the facility's daily WLA to accommodate this facility at a maximum design flow of 0.60 MGD and an Enterococci concentration of 35 N/mL.

12. Parham Landing WWTP (VA0088331) is a VPDES major municipal plant with a design flow of 2 MGD. However, the daily WLA in the Upper York River Enterococci TMDL was based on the Single Sample Instantaneous Maximum Standard of 104 (cfu/100mL) Enterococci, when it should have been based on the GM Standard of 35 (cfu/100mL) Enterococci. The WLA was also allocated at the incorrect design flow of 0.568 MGD. DEQ proposes to correct the Upper York River Enterococci TMDL by revising the facility's daily WLA to accommodate this facility at a maximum design flow of 2 MGD and an Enterococci concentration of 35 N/mL.

13. The Rock-Tenn West Point Mill (VA0003115) is a VPDES major industrial facility with a design flow of 23 MGD that discharges to the Lower Pamunkey River. This facility was recently identified as a source of bacteria in the Lower Pamunkey River and should receive a WLA in the Upper York Enterococci TMDL. Bacteria sources in the Lower Pamunkey River Enterococci TMDL were used as

inputs in the Upper York Enterococci TMDL development. DEQ proposes to revise the Upper York Enterococci TMDL by allocating a daily WLA to accommodate this facility at a maximum design flow of 23 MGD and the Enterococci GM Standard of 35 N/mL.

14. The original Future Growth allocated was equal to the sum of five times the daily load of the municipal dischargers HRSD West Point STP (VA0075434) and Parham Landing WWTP (VA0088331) at the Single Sample Instantaneous Maximum Standard of 104 N/mL Enterococci, equal to 0.01% of the TMDL. DEQ proposes to increase the daily Future Growth to 0.75% of the TMDL.

15. The revisions noted in 10-14 above, result in an increase in the daily Total WLA and a decrease in the daily Load Allocation (LA) values.

Changes 16-21 are with regard to the Upper York River Fecal Coliform TMDL segment (VAP-F26E-20).

16. The Mickens domestic discharger is a Single Family Home - General Permit (VAG404212) that discharges ≤1000 gallons per day (GPD) to a nontidal tributary of the Lower Pamunkey River, Unnamed Tributary (UT) to Olssen's Pond. The facility received a WLA in the Upper York River Fecal Coliform (Shellfish) TMDL based on the 90th Percentile Fecal Coliform Standard of 49 Most Probable Number (MPN) per 100mL when it should have been based on 200 MPN/100mL, which is the standard approved by the Virginia Department of Health. The WLA was also based on the incorrect design flow of the facility 60 GPD (or 0.00006 million gallons per day (MGD)). DEQ proposes to correct the Upper York River Fecal Coliform TMDL by revising the daily WLA at a design flow of 1000 GPD and a Fecal Coliform concentration of 200 MPN/100mL. This is a facility that uses chlorination in a contact tank, followed by dechlorination, meets Virginia's Single Family Home - General Permit limits for discharges to nontidal freshwater, and the facility outfall is greater than five miles upstream of the Upper York River Fecal Coliform impairment. Compliance of this facility with the daily WLA for Fecal Coliform will be met through compliance with existing E. coli permit limit protections. Compliance of this facility with the existing permit limits will not cause or contribute to the downstream Fecal Coliform impairment in the Upper York River.

17. The HRSD West Point STP (VA0075434) is a VPDES minor municipal plant with a design flow of 0.60 million gallons per day (MGD) which discharges to the Lower Mattaponi River. The facility should have received a WLA for Fecal Coliform based on 200 MPN/100mL, which is the standard approved by the Virginia Department of Health. DEQ proposes to correct the Upper York River Fecal Coliform TMDL by allocating a daily WLA to accommodate this facility at a maximum design flow of 0.60 MGD and a Fecal Coliform concentration of 200 MPN/mL.

18. Parham Landing WWTP (VA0088331) is a VPDES major municipal plant with a design flow of 2 MGD that discharges to the Lower Pamunkey River. The facility should have received a WLA for Fecal Coliform based on 200 MPN/100mL, which is the standard approved by the Virginia Department of Health. DEQ proposes to correct the Upper York River Fecal Coliform TMDL by allocating a daily WLA to accommodate this facility at a maximum design flow of 2 MGD and a Fecal Coliform concentration of 200 MPN/mL. The facility discharges treated sewage and has an existing permit limit for Enterococci to meet the current Water Quality Standard (see Lower Pamunkey Enterococci TMDL modification details above). Due to the protectiveness of the Enterococci discharge limits and the outfall location, which is over 5.5 miles upstream of the VDH-DSS prohibitive zone, and the Upper York River Shellfish impairment for Fecal Coliform, compliance of this facility with the Fecal Coliform daily WLA will be met through compliance of the existing Enterococci permit limit protections. Compliance of this facility with the existing permit limits will not cause or contribute to the downstream Fecal Coliform bacteria impairment in the Upper York River.

19. The Rock-Tenn West Point Mill (VA0003115) is a VPDES major industrial facility with a design flow of 23 MGD that discharges to the Lower Pamunkey River. This facility was recently identified as a source of bacteria in the Lower Pamunkey River and should receive a WLA in the Upper York Fecal Coliform (Shellfish) TMDL. Bacteria sources in the Lower Pamunkey River Enterococci TMDL were used as inputs in the Upper York Fecal Coliform (Shellfish) TMDL development. DEQ proposes to revise the Upper York Fecal Coliform TMDL by allocating a daily WLA to accommodate this facility at a maximum design flow of 23 MGD and a Fecal Coliform concentration of 200 MPN/mL. The facility has a nonsewage discharge containing Enterococci. Wood-pulp facilities have historically had an issue of false-positive results when analyzed for Fecal Coliform. The facility is receiving a permit limit for Enterococci to meet the current Water Quality Standard and a daily WLA in both the Lower Pamunkey and Upper York Enterococci TMDLs (noted in above sections). Due to the nature of the discharge and protectiveness of the Enterococci discharge limits and, given that the outfall is located over one mile upstream of the VDH-DSS prohibitive zone and the Upper York Shellfish impairment for fecal coliform, compliance of this facility with the Fecal Coliform daily WLA will be met through compliance with the existing Enterococci permit limit protections. Compliance of this facility with the existing permit limits will not cause or contribute to the downstream Fecal Coliform bacteria impairment in the Upper York River.

20. The original Future Growth allocated was equal to 1.0% of the TMDL. DEQ proposes to increase the daily Future Growth to 1.6% of the TMDL.

21. The revisions noted in 16-20 above, result in an increase in the daily Total WLA and a decrease in the daily Load Allocation (LA) values.

The changes noted above to the Lower Mattaponi Enterococci, Lower Pamunkey Enterococci, York Enterococci and Shellfish TMDLs are less than <1.0%, respectively for each TMDL and will neither cause nor contribute to the nonattainment of each impaired segment.

The public comment period for these modifications will end on September 14, 2012. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, email margaret.smigo@deq.virginia.gov, or FAX (804) 527-5106. Following the comment period, a modification letter and comments received will be sent to EPA for approval final approval. Contact Margaret Smigo to request a copy of the full proposed revision.

FORENSIC SCIENCE BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forensic Science is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

6VAC40-20, Regulations for Breath Alcohol Testing

6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs

6VAC40-40, Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries

6VAC40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material

The comment period begins August 13, 2012, and ends on September 4, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Stephanie E. Merritt, Department Counsel, Forensic Science Board, 700 N. 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email stephanie.merritt@dfs.virginia.gov. Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Housing and Community Development is conducting a periodic review of **13VAC5-200, Solar Energy Criteria for Tax Exemption**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 13, 2013, and ends on September 18, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, Virginia 23219, telephone 804-371-7000, FAX 804-371-7090, or email steve.calhoun@dhcd.virginia.gov. Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

SAFETY AND HEALTH CODES BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Safety and Health

Codes Board is conducting a periodic review of **16VAC25-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 13, 2012, and ends on September 3, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219. telephone (804) 371-2631, FAX (804) 786-8418, email reba.oconnor@doli.virginia.gov. Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Safety and Health Codes Board is conducting a periodic review of **16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 13, 2012, and ends on September 3, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, email reba.oconnor@doli.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Empire Petroleum Partners, LLC

An enforcement action has been proposed for Empire Petroleum Partners, LLC for violations of release detection and financial responsibility requirements at underground storage tanks at facilities in Victoria, Crewe, and Rocky Mount, Virginia. Descriptions of the proposed actions are available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from August 13, 2012, to September 12, 2012.

Proposed Enforcement Action for GSKS Properties, LLC

An enforcement action has been proposed for GSKS Properties, LLC, for violations in the City of Portsmouth of Virginia Pollutant Discharge Elimination General Permit VAR05 at the Tidewater Yacht Agency marina. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from August 13, 2012, to September 12, 2012.

Proposed Consent Special Order for Jai Jalram Corporation

An enforcement action has been proposed for Jai Jalram Corporation for violations at the D&G Mart in Roanoke, 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 Department of Environmental Quality 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 Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from August 13, 2012, to September 12, 2012.

Proposed Consent Order for Presidential Service Company, Tier II, Inc.

An enforcement action has been proposed for Presidential Service Company, Tier II, Inc. for violations of the State Water Control Law and regulations in King George County. The State Water Control Board proposes to issue a consent order resolving violations at the Presidential Lakes, Section 14 - Wastewater Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 14, 2012, through September 13, 2012.

Proposed Consent Special Order for Mr. Douglas R. Sowers

An enforcement action has been proposed for Mr. Douglas R. Sowers for alleged violations at Rountrey Residential Subdivision, Phases III & IV, Chesterfield County, VA. The State Water Control Board proposes to issue a consent special order to Mr. Douglas R. Sowers to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 8, 2012, to September 12, 2012.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: Mailing Address: Virginia Code Commission, 201 N. 9th Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; Telephone: Voice (804) 786-3591; FAX (804) 692-0625; Email: varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the Virginia Register of Regulations since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/cumultab.htm.

ERRATA

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: **9VAC5-20. General Provisions (Rev. B12) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. B12) (adding 9VAC5-40-8200 through 9VAC5-40-8370).

Publication: 28:23 VA.R. 1714 - 1722 July 16, 2012.

Correction to Final Regulation:

Page 1719, 9VAC5-40-8210 C, change the defined term "'"Performance test,' as defined in 40 CFR 63.1," to "'Performance test as defined in 40 CFR 63.1'"

Page 1720, 9VAC5-40-8270, delete subsection designator "A." and delete subsections B and C in their entirety.

VA.R. Doc. No. R12-3184; Filed July 20, 2012, 1:01 p.m.

STATE CORPORATION COMMISSION

Title of Regulation: **10VAC5-161. Mortgage Loan Originators (amending 10VAC5-161-10 through 10VAC5-161-40, 10VAC5-161-60; adding 10VAC5-161-45, 10VAC5-161-70, 10VAC5-161-80).**

Publication: 28:20 VA.R. 1579-1584 June 4, 2012.

Correction to Final Regulation:

Page 1582, 10VAC5-161-45 A 1 c, line 3, change "subdivision A 1 a or b of this section" to "subdivision 1 a or b of this subsection"

Page 1582, 10VAC5-161-45 A 2, lines 1 and 6, change "subdivision A 1 of this section" to "subdivision 1 of this subsection"

Page 1583, 10VAC5-161-60 C 2, last line, change "section" to "subsection"

VA.R. Doc. No. R12-2883

DEPARTMENT OF STATE POLICE

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations (amending 19VAC30-70-1, 19VAC30-70-3 through 19VAC30-70-10, 19VAC30-70-30, 19VAC30-70-40 through 19VAC30-70-230, 19VAC30-70-260, 19VAC30-70-290, 19VAC30-70-310, 19VAC30-70-330, 19VAC30-70-340, 19VAC30-70-350, 19VAC30-70-360, 19VAC30-70-390, 19VAC30-70-430, 19VAC30-70-450, 19VAC30-70-460, 19VAC30-70-490, 19VAC30-70-500, 19VAC30-70-510, 19VAC30-70-530, 19VAC30-70-550, 19VAC30-70-570, 19VAC30-70-580, 19VAC30-70-660; adding 19VAC30-70-9.1, 19VAC30-70-11, 19VAC30-70-25, 19VAC30-70-31, 19VAC30-70-32, 19VAC30-70-690).**

Publication: 28:24 VA.R. 1861-1933 July 30, 2012.

Correction to Final Regulation:

Page 1870, 19VAC30-70-10 F, line 2, unstrike "~~the~~"

Page 1879, 19VAC30-70-50 I, sentences 2 and 3, strike "The current trailer/motorcycle decal will continue to be utilized for trailers only until depletion. Decals for trailers will eventually have a prefix T and will remain blue" and insert "Trailers have a separate decal that is blue and issued with the prefix T"

Page 1879, 19VAC30-70-50 I, last sentence, change "trailer/motorcycle" to "trailer and motorcycle"

Page 1916, before 19VAC30-70-490, strike part heading in its entirety "~~Part V Inspection Requirements for Vehicles Over 10,000 Pounds~~"

Page 1933, before 19VAC30-70-690, change "Part VII" to "Part VI"

VA.R. Doc. No. R12-2928