

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9VAC5 CHAPTER 45
CONSUMER AND COMMERCIAL PRODUCTS

Part II
Emission Standards

Article 3

Emission Standards for Consumer Products Manufactured before August 1, 2010

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9VAC5-45-280. Applicability.

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

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

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

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

9VAC5-45-290. Exemptions.

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

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

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

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

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

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

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

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

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

J. The VOC limits specified in 9VAC5-45-310 A shall not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding

stimulants with less than 5.0% active ingredients.

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

1. The application shall set forth:

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

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

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

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

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

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

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

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

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

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

6. Upon the application of anyone, the board may review and for good cause modify or revoke a waiver from requirements of 9VAC5-45-310.

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

9VAC5-45-300. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the 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 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

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

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

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

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

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

where:

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

Enforceable sales = (see definition in this section).

VOC content = one of the following:

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

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

where:

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

B = total weight of all VOCs per unit.

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

2. For charcoal lighter material products only:

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

where:

Certified emissions = (see definition in this section).

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

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

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

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 9VAC5-45-310 A, except those products that have been exempted as innovative products under 9VAC5-45-330.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two.

"ACP VOC standard" means the maximum allowable VOC content for an ACP product, determined as follows:

1. The applicable VOC standard specified in 9VAC5-45-310 A for all ACP products except for charcoal lighter material;
2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$\text{VOC Standard} = \frac{(0.020 \text{ pound VOC per start} \times 100)}{\text{Certified Use Rate}}$$

where:

0.020 = the certification emissions level for the product, as specified in 9VAC5-45-310 F.

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

"Adhesive" means any product that is used to bond one surface to another by attachment. Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with

an adhesive incorporated onto or in an inert substrate. For contact adhesive only, adhesive also does not include units of product, less packaging, that consist of more than one gallon. In addition, for construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive does not include units of product, less packaging, that weigh more than one pound and consist of more than 16 fluid ounces. The package size limitations do not apply to aerosol adhesives.

"Adhesive remover" means a product designed to remove adhesive from either a specific substrate or a variety of substrates. Adhesive remover does not include products that remove adhesives intended exclusively for use on humans or animals. For the purpose of this definition, adhesive shall mean a substance used to bond one or more materials. Adhesives include, but are not limited to, caulks, sealants, glues, or similar substances used for the purpose of forming a bond.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. Aerosol adhesives include special purpose spray adhesives, mist spray adhesives, and web spray adhesives.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's carrier, or by means of a mechanically induced force. Aerosol product does not include pump sprays.

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

1. "Home use" means use in a household or its immediate environment.

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

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

4. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

"Air freshener" means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors or freshening, cleaning, scenting, or deodorizing the air. Air fresheners do not include products that are used on the human body, products that function primarily as cleaning products (as indicated on a product label), disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air fresheners do include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

"All other carbon-containing compounds" means all other compounds that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

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

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

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is not limited to, antimicrobial hand or body washes or cleaners, food handler hand washes, healthcare personnel hand washes, pre-operative skin preparations, and surgical scrubs. Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent or toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, and rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

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

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent or medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material, or dirt from motor vehicle brake mechanisms.

"Automotive hard paste wax" means an automotive wax or polish that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;
2. A solid at room temperature; and
3. Contains no water.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant, or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield washer fluid also

includes liquids that are (i) packaged as a pre-wetted, single-use manual wipe and (ii) designed exclusively for cleaning, washing, or wetting automotive glass surfaces for the purpose of restoring or maintaining visibility for the driver. Glass cleaners that are intended for use on other glass surfaces are not included in this definition. Automotive windshield washer fluid does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. Bathroom and tile cleaners do not include products designed primarily to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product labeled to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: (i) biological residues, such as insect carcasses and tree sap, and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaner" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. Carburetor or fuel-injection air intake cleaner does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9VAC5-45-310 F, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21), expressed to the nearest 0.001 pound VOC per start.

"Certified use rate" means the usage level for products approved under 9VAC5-45-310 F, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21), expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition.

Charcoal lighter material does not include any of the following:

1. Electrical starters and probes;
2. Metallic cylinders using paper tinder;
3. Natural gas;
4. Propane; or
5. Fat wood.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect or to dramatize an ingredient.

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

"Construction, panel, and floor covering adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

1. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, predecorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

2. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.

Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means a person who purchases or acquires a consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

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

adhesives, including aerosol adhesives used for consumer, industrial or commercial uses.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;
2. Is allowed to dry before the two surfaces are placed in contact with each other;
3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and
4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates. Contact adhesive also does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Contact person" means a representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement approving an ACP.

"Container or packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances that is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

2. "House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and that belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means any product that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria that cause the decomposition of perspiration. Deodorant includes, but is not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles.

"Device" means an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacterium, virus, or another microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals;
2. Products designed for agricultural use;
3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or
4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that require the product container to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a nonaqueous liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or

2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9VAC5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. Dusting aid does not include pressurized gas dusters.

"Electronic cleaner" means a product labeled for the removal of dirt, grease, or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Enforceable sales" means the total amount of an ACP product sold for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and

3. Other accurate product sales records acceptable to the board.

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

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics that are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. Furniture maintenance products do not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives;
2. Construction, panel, and floor covering adhesives;
3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as

different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product labeled to remove or dissolve grease, grime, oil, and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to establishments that manufacture or construct goods or commodities; and (ii) labeled "not for retail sale." Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Gross sales" means the estimated total sales of an ACP product in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the current population of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C; or

2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are (i) for agricultural use, or (ii) restricted materials that require a permit for use and possession.

"High volatility organic compound" or "HVOC" means a volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20°C.

"Household product" means a consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;
2. For a use that requires a structural pest control license under applicable state laws or regulations; or
3. Materials classified for restricted use pursuant to 40 CFR 152.75 and require a pesticide business license from the Virginia Pesticide Control Board pursuant to 2VAC20-40-20 for use and possession.

"Insecticide fogger" means an insecticide product designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" or "industrial and institutional (I&I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or
2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of 9VAC5-45-340 C, aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two-cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are:

1. Sold exclusively to establishments that manufacture or construct goods or commodities; and

2. Labeled "not for retail sale."

"LVP content" means the total weight, in pounds, of LVP-VOC in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

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

1. Has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310 (see 9VAC5-20-21);

2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;

3. Is a chemical compound with a boiling point greater than 216°C, as determined by CARB Method 310 (see 9VAC5-20-21); or

4. Is the weight percent of a chemical mixture that boils above 216°C, as determined by CARB Method 310 (see 9VAC5-20-21).

For the purposes of the definition of LVP-VOC, "chemical compound" means a molecule of definite chemical formula and isomeric structure, and "chemical mixture" means a substrate composed of two or more chemical compounds.

"Manufacturer" means a person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

"Medicated astringent or medicated toner" means a product regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

"Metal polish or cleanser" means a product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel, and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Missing data days" means the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the board, as specified in the ACP agreement.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multipurpose dry lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces; and
2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multipurpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multipurpose lubricant does not include multipurpose dry lubricants, penetrants, or silicone-based multipurpose

lubricants.

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

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-280 C:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9VAC5-45-310; or

2. Only one distinct ACP product line subject to the requirements of 9VAC5-45-310, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include 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 multipurpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the board, based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"Pressurized gas duster" means a pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of surfaces that cannot be cleaned with solvents. Pressurized gas duster does not include dusting aids.

"Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product category" means the applicable category that best describes the product as listed in this section and in Table 45-3A in 9VAC5-45-310 A.

"Product form," for the purpose of complying with 9VAC5-45-390 (notification, records and reporting) only, means the applicable form that most accurately describes the product's dispensing form as follows:

- A = Aerosol Product.
- S = Solid.
- P = Pump Spray.
- L = Liquid.
- SS = Semisolid.
- O = Other.

"Product line" means a group of products of identical form and function belonging to the same product category.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

"Reconcile" or "reconciliation" means to provide sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9VAC5-45-320 B 1 g (10).

"Responsible ACP party" means the company, firm, or establishment that is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by," as noted on the label.

"Responsible party" means the company, firm, or establishment that is listed on the product's label. If the label lists two companies, firms, or establishments, the responsible party is the party that the product was "manufactured for" or "distributed by," as noted on the label.

"Restricted materials" means pesticides established as restricted materials under Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

"Retail outlet" means an establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

"Retailer" means a person who sells, supplies, or offers consumer products for sale directly to consumers.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and vinyl protectant" means a product designed to protect, preserve, or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only, "removable caulking compound" means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking compound" means a compound that contains no appreciable level of opaque fillers or pigments, transmits most or all visible light through the caulk when cured, is paintable, and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including, but not limited to gels, pastes, and greases.

"Shaving cream" means an aerosol product that dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system, in the removal of facial or other bodily hair.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring

prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multipurpose lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and
2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multipurpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and that does not require that the product container be shaken before use.

"Small business" means any stationary source that is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances that, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.
2. "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least 5.0%, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21) or from product formulation data.
3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:

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

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

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

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275°F.

"Spot remover" means a product labeled to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, or multipurpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or a deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water and that conforms with the definition in the federal consumer products regulation, 40 CFR 59 Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9VAC5-45-320 F 3,

surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Surplus trading" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflator" means a pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Total maximum historical emissions" or "TMHE" means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

$$MHE = \left(\frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

where:

Highest VOC content = the maximum VOC content that the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing data days = (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 CO₂, N₂, N₂O, or compressed air that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means a halocarbon that is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how and in what quantity the product is to be used.

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9VAC5-45-370 B and C.

For charcoal lighter material products only,

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

where:

Certified emissions = (see definition in this section).

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

"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.

"Waterproof" means a product designed and labeled exclusively to repel

water from fabric or leather substrates. Waterproofer does not include fabric protectants.

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means an aerosol adhesive that is not a mist spray or special purpose spray adhesive.

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9VAC5-45-310. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-290, 9VAC5-45-320 and 9VAC5-45-330, no owner or other person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after the applicable compliance date specified in 9VAC5-45-360 or (ii) manufacture for sale a consumer product on or after the applicable compliance date specified in 9VAC5-45-360, that contains volatile organic compounds in excess of the limits specified in Table 45-3A.

TABLE 45-3A

Product Category	Percent VOC by Weight
Adhesives	
Aerosol adhesives	
Mist spray adhesive:	65%
Web spray adhesive:	55%
Special purpose spray adhesives	
Automotive engine compartment adhesive:	70%
Automotive headliner adhesive:	65%
Flexible vinyl adhesive:	70%
Laminate repair or edgbanding adhesive:	60%

Mounting adhesive:	70%
Polystyrene foam adhesive:	65%
Polyolefin adhesive:	60%
Contact adhesive:	80%
Construction, panel, and floor covering adhesive:	15%
General purpose adhesive:	10%
Structural waterproof adhesive:	15%
Air fresheners	
Single-phase aerosol:	30%
Double-phase aerosol:	25%
Liquid/Pump spray:	18%
Solid/Gel:	3%
Antiperspirants	
Aerosol:	40% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Automotive brake cleaner:	45%
Automotive rubbing or polishing compound:	17%
Automotive wax, polish, sealant, or glaze	
Hard paste wax:	45%
Instant detailer:	3%
All other forms:	15%
Automotive windshield washer fluid:	35%
Bathroom and tile cleaners	
Aerosol:	7%
All other forms:	5%
Bug and tar remover:	40%
Carburetor or fuel-injection air intake cleaner:	45%
Carpet and upholstery cleaners	
Aerosol:	7%

Nonaerosol (dilutable):	0.1%
Nonaerosol (ready-to-use):	3.0%
Charcoal lighter material:	See subsection F of this section.
Cooking spray, aerosol:	18%
Deodorants	
Aerosol:	0% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Dusting aids	
Aerosol:	25%
All other forms:	7%
Engine degreasers	
Aerosol:	35%
Nonaerosol:	5%
Fabric protectant:	60%
Floor polishes/Waxes	
Products for flexible flooring materials:	7%
Products for nonresilient flooring:	10%
Wood floor wax:	90%
Floor wax stripper, nonaerosol:	See subsection H of this section.
Furniture maintenance products	
Aerosol:	17%
All other forms except solid or paste:	7%
General purpose cleaners	
Aerosol:	10%
Nonaerosol:	4%
General purpose degreasers	
Aerosol:	50%
Nonaerosol:	4%

Glass cleaners	
Aerosol:	12%
Nonaerosol:	4%
Hair mousse:	6%
Hair shine:	55%
Hair spray:	55%
Hair styling gel:	6%
Heavy-duty hand cleaner or soap:	8%
Insecticides	
Crawling bug (aerosol):	15%
Crawling bug (all other forms):	20%
Flea and tick:	25%
Flying bug (aerosol):	25%
Flying bug (all other forms):	35%
Fogger:	45%
Lawn and garden (all other forms):	20%
Lawn and garden (nonaerosol):	3%
Wasp and hornet:	40%
Laundry prewash	
Aerosol/Solid:	22%
All other forms:	5%
Laundry starch product:	5%
Metal polish or cleanser:	30%
Multipurpose lubricant (excluding solid or semi-solid products):	50%
Nail polish remover:	75%
Nonselective terrestrial herbicide, nonaerosol:	3%
Oven cleaners	
Aerosol/Pump spray:	8%
Liquid:	5%
Paint remover or stripper:	50%

Penetrant:	50%
Rubber and vinyl protectants	
Nonaerosol:	3%
Aerosol:	10%
Sealant and caulking compound:	4%
Shaving cream:	5%
Silicone-based multipurpose lubricant (excluding solid or semi-solid products):	60%
Spot removers	
Aerosol:	25%
Nonaerosol:	8%
Tire sealant and inflator:	20%
Undercoating, aerosol:	40%

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9VAC5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 45-3A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 45-3A shall apply to the product only after the maximum recommended dilution has taken place.

D. The following provisions apply to sell through of consumer products manufactured before August 1, 2010:

1. Notwithstanding the provisions of subsection A, G, H or I of this section, a consumer product manufactured before the applicable compliance date specified in 9VAC5-45-360, may be sold, supplied, or offered for sale after the applicable compliance date if the date of manufacture or a date code representing the date of

manufacture is clearly displayed on the product container or package.

2. Notwithstanding the provisions of subsection A, G, H, or I of this section, a consumer product manufactured after the applicable compliance date specified in 9VAC5-45-360 and before August 1, 2010 may be sold, supplied, or offered for sale on or after August 1, 2010, if it complies with all of the provisions of Article 4 (9VAC5-45-400 et seq.) of this part.

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

E. For those consumer products that are registered under FIFRA, the effective date of the VOC standards shall be one year after the applicable compliance date specified in 9VAC5-45-360.

F. The following requirements shall apply to all charcoal lighter material products:

1. Effective as of the applicable compliance date specified in 9VAC5-45-360, no owner or other person shall (i) sell, supply, or offer for sale a charcoal lighter material product manufactured on or after the applicable compliance date or (ii) manufacture for sale a charcoal lighter material product unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that it has been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9VAC5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the executive order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21). The provisions relating to LVP-VOC in 9VAC5-45-290 F and 9VAC5-45-300 C shall not apply to a charcoal lighter material subject to the requirements of 9VAC5-45-310 A and this subsection.

b. The board may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material that meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection that may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal that are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

G. Provisions follow concerning aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9VAC5-45-290 and 9VAC5-45-330, no owner or other person shall sell, supply, offer for sale, use or manufacture for sale an aerosol adhesive that, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

2. a. In order to qualify as a "special purpose spray adhesive," the product must meet one or more of the definitions for special purpose spray adhesive specified in 9VAC5-45-300 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9VAC5-45-300 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9VAC5-45-300 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9VAC5-45-310 A.

3. Effective as of the applicable compliance dates specified in 9VAC5-45-360, no person shall (i) sell, supply, or offer for sale an aerosol adhesive manufactured on or after the applicable compliance date or (ii) manufacture for sale an aerosol adhesive that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9VAC5-45-340 D.

H. Effective as of the applicable compliance date specified in 9VAC5-45-360, no owner or other person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required as long as comparable terminology is used.

I. For a consumer product for which standards are specified under subsection A of this section, no owner or other person shall sell, supply, offer for sale, or manufacture for sale a consumer product that contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);
CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);
CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);
CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);
halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);
HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);
HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);
1,1,1-trichloroethane; or

carbon tetrachloride.

J. The requirements of subsection I of this section shall not apply to an existing product formulation that complies with Table 45-3A or an existing product formulation that is reformulated to meet Table 45-3A, provided the ozone-depleting compound content of the reformulated product does not increase.

K. The requirements of subsection I of this section shall not apply to ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

9VAC5-45-320. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product;

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for

the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency.

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-300 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-310 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of

violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

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

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

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

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

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

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

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

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

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

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

- a. Immediately upon request, during an on-site visit to a responsible ACP party,
- b. Within five working days after receipt of a written request from the board, or
- c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

- a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

- b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

- c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

- d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows.

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-300 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the

responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of

VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-310 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either

together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

- (1) The date the transfer is to become effective.
- (2) The date the surplus reductions being traded are due to expire.
- (3) The amount (in pounds of VOCs) of surplus reductions that is being transferred.
- (4) The total purchase price paid by the buyer for the surplus reductions.
- (5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.
- (6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-310 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC content_{initial} = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC content_{final} = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content,

LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

2. If any applicable VOC standards specified in 9VAC5-45-310 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board, as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-310 A is modified by the board in a future rulemaking, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more).

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with

the applicable VOC standards in 9VAC5-45-310 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-3A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-3A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-280 C.

9VAC5-45-330. Innovative products.

A. Manufacturers of consumer products may seek an innovative products

exemption in accordance with the following criteria:

1. The board will exempt a consumer product from the VOC limits specified in 9VAC5-45-310 A if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

a. The VOC emissions from a representative consumer product that complies with the VOC limits specified in 9VAC5-45-310 A, or

b. The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in 9VAC5-45-310 A. VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

where:

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

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

VOC_{STD} = the VOC limit specified in Table 45-3A.

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

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method that accurately calculates emissions may be used upon approval of the board.

2. For the purposes of this subsection, "representative consumer product" means a consumer product that meets all of the following criteria:

a. The representative product shall be subject to the same VOC limit in 9VAC5-45-310 A as the innovative product;

b. The representative product shall be of the same product form as the innovative product unless the innovative product uses a new form that does not exist in the product category at the time the application is made; and

c. The representative product shall have at least a similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

3. A manufacturer shall apply in writing to the board for an exemption claimed under subdivision A 1 of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide the information necessary to enable the board to establish enforceable conditions for granting the exemption, including the VOC content for the innovative product and test methods for determining the VOC content. Information submitted to the board pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

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

5. Within 90 days after an application has been deemed complete, the board will determine whether, under what conditions, and to what extent an exemption from the requirements of 9VAC5-45-310 A will be permitted. The board may extend this time period if additional time is needed to reach a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The board will notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in subdivision 1 of this subsection, and that such emissions reductions can be enforced.

6. In granting an exemption for a product, the board will establish enforceable conditions. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates, and other parameters determined by the board to be necessary. The board will also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.

7. For a product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the board in writing within 30 days of a change in the product formulation or recommended product usage directions and shall also notify the board within 30 days if the manufacturer learns of information that would alter the emissions estimates submitted to the board in support of the exemption application.

8. If the VOC limits specified in 9VAC5-45-310 A are lowered for a product category through a subsequent rulemaking, all innovative product exemptions granted

for products in the product category, except as provided in this subdivision, shall have no force and effect as of the effective date of the modified VOC standard. This subdivision shall not apply to those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the board at least 60 days before the effective date of such limits.

9. If the board believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subdivision 1 of this subsection, the board may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

B. In granting an exemption under this section, the board will take into consideration whether the applicant has been granted an innovative product exemption by CARB. A manufacturer of consumer products that has been granted an innovative product exemption by the CARB under the innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the California Code of Regulations (see 9VAC5-20-21), may be exempt from Table 45-3A for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in Table 45-3A. A manufacturer claiming such an exemption on this basis must submit to the board a copy of the innovative product exemption decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption, and certification that the manufacturer will comply with the CARB innovative product exemption decision for those products in the areas specified in 9VAC5-45-280 C.

9VAC5-45-340. Administrative requirements.

A. Provisions follow concerning product dating.

1. Each manufacturer of a consumer product subject to 9VAC5-45-310 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date.

2. A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of subdivision B 1 of this section, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where:

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

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

3. The date or date code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by simply removing the cap or cover) without irreversibly disassembling a part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

4. This date or date code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in 9VAC5-45-310 A.

5. The requirements of this section shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. Additional provisions follow concerning product dating.

1. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9VAC5-45-310, an explanation of the date portion of the code must be filed with the board upon request by the board.

2. If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to 9VAC5-45-310 and the board has requested an explanation of any previous product dating code for that consumer product, then an explanation of the modified code shall be submitted to the board before any products displaying the modified code are sold, supplied, or offered for sale within the areas designated in 9VAC5-45-280 C.

3. No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

4. Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

C. Notwithstanding the definition of "product category" in 9VAC5-45-300 C, if anywhere on the principal display panel of a consumer product, a representation is made that the product may be used as or is suitable for use as a consumer product for which a lower VOC limit is specified in 9VAC5-45-310 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

D. Provisions follow concerning additional labeling requirements for aerosol

adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9VAC5-45-390, both the manufacturer and responsible party for each aerosol adhesive product subject to this article shall ensure that all products clearly display the following information on each product container that is manufactured on or after July 1, 2005.

a. The aerosol adhesive category as specified in 9VAC5-45-310 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9VAC5-45-310 A, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the board, as provided in 9VAC5-45-320, and the product exceeds the applicable VOC standard;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9VAC5-45-310 A, the product shall be labeled with the term "ACP" or "ACP product";

c. If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

d. If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision 1 of this subsection shall be displayed on the product container such that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9VAC5-45-350. Compliance.

The provisions of 9VAC5-45-20 (Compliance) apply.

9VAC5-45-360. Compliance schedules.

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

or

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

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

9VAC5-45-370. Test methods and procedures.

A. The provisions of 9VAC5-45-30 (Emission testing) apply.

B. 1. Testing to determine compliance with the requirements of this article shall be performed using CARB Method 310 (see 9VAC5-20-21). Alternative methods that can accurately determine the concentration of VOCs in a subject product or its emissions may be used consistent with the approval requirements of 9VAC5-45-30 A.

2. In sections 3.5, 3.6, and 3.7 of CARB Method 310 (see 9VAC5-20-21), a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content." Information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

C. For VOC content determinations using product formulation and records, testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

2. For the purposes of this subsection, the VOC content shall be calculated according to the following equation:

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

where:

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

B = total weight of all VOCs per unit.

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

290.

3. If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310 (see 9VAC5-20-21), the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this article.

D. Testing to determine whether a product is a liquid or solid shall be performed using ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

E. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21).

F. Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (see 9VAC5-20-21).

G. No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and other tests, processes, or records used in connection with product manufacture.

9VAC5-45-380. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) apply.

9VAC5-45-390. Notification, records and reporting.

A. The provisions of 9VAC5-45-50 (Notification, records and reporting) apply.

B. Upon 90 days written notice, the board may require a responsible party to report information for a consumer product the board may specify, including, but not limited to, all or part of the following information:

1. The company name of the responsible party and the party's address, telephone number, and designated contact person.

2. A showing satisfactory to the board under 9VAC5-170-60 B and C that supports any claim of confidentiality made pursuant to 9VAC5-170-60, §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law, and other applicable state confidentiality requirements.

3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label.
4. The product category to which the consumer product belongs.
5. The applicable product forms listed separately.
6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both.
7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form.
8. For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in this subsection.
9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):
 - a. Total exempt compounds.
 - b. Total LVP-VOCs that are not fragrances.
 - c. Total all other carbon-containing compounds that are not fragrances.
 - d. Total all noncarbon-containing compounds.
 - e. Total fragrance.
 - f. For products containing greater than 2.0% by weight fragrance:
 - (1) The percent of fragrances that are LVP-VOCs; and
 - (2) The percent of fragrances that are all other carbon-containing compounds.
 - g. Total paradichlorobenzene.
10. For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

- a. Each exempt compound; and
- b. Each LVP-VOC that is not a fragrance.

11. If applicable, the weight percent composed of propellant for each product.

12. If applicable, an identification of the type of propellant.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percentage by weight of each ozone-depleting compound that is:

1. Listed in 9VAC5-45-310 I; and

2. Contained in a product subject to registration under subsection B of this section in an amount greater than 1.0% by weight.

D. Information submitted by responsible parties pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

E. Provisions follow concerning special recordkeeping and reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9VAC5-45-310 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall keep records of the following information for products sold during each calendar year, beginning with the year of the applicable compliance date specified in 9VAC5-45-360, and ending with the year 2010:

a. The product brand name and a copy of the product label with legible usage instructions;

b. The product category to which the consumer product belongs;

c. The applicable product form, listed separately;

d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;

e. The weight percentage, to the nearest 0.10% of perchloroethylene and methylene chloride in the consumer product;

3. Upon 90 days written notice, the board may require a responsible party to report the information specified in subdivision 2 of this subsection.

4. Records required by subdivision 2 of this subsection shall be maintained by the responsible party for three calendar years from the date such records were created.

5. Alternative control plan notifications, records and reporting shall be made as required by 9VAC5-45-320 and as required in the ACP agreement.

6. Innovative product notifications, records, and reporting shall be made as required by 9VAC5-45-330 and as required in the innovative products exemption notification letter.

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