

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
CHAPTER III. AIR RESOURCES  
SUBCHAPTER A. PREVENTION AND CONTROL OF AIR CONTAMINATION AND AIR POLLUTION  
PART 241: ASPHALT PAVEMENT AND ASPHALT BASED SURFACE COATING

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105)

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**§241.1 Applicability**

This Part applies to:

- (a) any person who applies, supplies, sells, offers for sale, or manufactures any asphalt pavement; and
- (b) any person who applies, supplies, sells, offers for sale, or manufactures any asphalt-based surface coating.

**§241.2 Definitions**

- (a) *Asphalt*. The dark brown to black cementitious material (solid, semisolid or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.
- (b) *Asphalt pavement*. Pavement that is composed of stone, sand, and gravel bound together by asphalt.
- (c) *Cutback asphalt*. Any asphalt which has been liquefied by blending with petroleum solvents (diluent) or, in the case of some slow cure asphalts (road oils), has been produced directly from the distillation of petroleum.
- (d) *Asphalt-based surface coating*. A coating labeled and formulated for application to worn asphalt pavement surfaces including, but not limited to, highway, driveway, parking, curb and/or berm surfaces to perform one or more of the following functions:
  - (1) fill cracks;
  - (2) seal, coat, or cover the surface to provide protection or prolong its life; or

(3) restore or preserve the appearance.

(e) *Emulsified asphalt*. An emulsion of asphalt and water that contains an emulsifying agent; it is a heterogeneous system containing two normally immiscible phases (asphalt and water) in which the water forms the continuous phase of the emulsion, and minute globules of asphalt form the discontinuous phase.

(f) *Penetrating prime coat*. An application of low viscosity asphalt to an absorbent surface in order to prepare the surface for application of asphalt pavement.

### **§241.3 Asphalt pavement**

No emulsified asphalt, as classified under ASTM International standard specifications D 977 or D 2397 (see Table 1, section 200.9 of this Title), may be applied, sold, offered for sale, or manufactured that contains oil distillate, as determined by ASTM International standard test method D 6997, in amounts that exceed the following limits (milliliters of oil distillate per 200 gram sample):

(a) three milliliters for ASTM grades RS-1, SS-1, SS-1h, CRS-1, CSS-1, and CSS-1h;

(b) five milliliters for ASTM grades RS-2, CRS-2, and HFRS-2;

(c) sixteen milliliters for ASTM grades MS-2, HFMS-2 and HFMS-2h; and

(d) twenty milliliters for ASTM grades CMS-2 and CMS-2h.

### **§241.4 Cutback asphalt prohibition**

The use of cutback asphalt in paving activities is prohibited except in the following circumstances:

(a) when the asphalt is used in the production of long-life stockpile material for pavement patching and repair; or

(b) when the asphalt is used as a penetrating prime coat for the purpose of preparing a surface to receive asphalt pavement.

### **§241.5 Asphalt based surface coating**

(a) *VOC limitation*. No asphalt based surface coating may be applied, sold, offered for sale, or manufactured if it contains more than 100 grams of VOC per liter.

(b) *VOC content determination*.

(1) Except as provided in paragraph (2) of this subdivision, the VOC content of an asphalt based surface coating must be determined through the use of the following equation:

$$\text{VOC Content} = \frac{(W_s)}{(V_m - V_w)}$$

where:

VOC content = grams of VOC per liter of coating

Ws = weight of VOCs, in grams

Vm = volume of coating, in liters

Vw = volume of water, in liters

The VOC content of a tint base shall be determined prior to the addition of the colorant.

(2) An alternative method may be used if approved by the department and the administrator.

(3) The department may additionally require the manufacturer to conduct a 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) analysis to verify the VOC content.

*(c) Product labeling and record keeping.*

(1) Small container asphalt-based surface coating labeling. Any manufacturer of an asphalt based surface coating that is supplied, sold, or offered for sale in containers less than or equal to 10 gallons in size must display on the container the following information:

(i) the product name; and

(ii) the VOC content. Each container must display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using manufacturer's formulation data, or shall be determined according to subdivision (b) of this section.

(2) Bulk asphalt-based surface coating recordkeeping.

(i) Any person who sells or offers for sale any asphalt-based surface coating in quantities greater than 10 gallons in size must provide to the purchaser, and the department upon request, the following information regarding the coating:

(a) the invoice sheet, bill of sale, or product manifest document;

(b) the name of the supplier;

(c) the name of the manufacturer;

(d) the product name;

(e) the VOC content; and

(f) the material safety data sheet.

(ii) Any person who applies an asphalt-based surface coating from a container greater than 10 gallons in size must have available for inspection by department staff the documentation described in subparagraph (i) of this paragraph until the time that all the relevant coating is applied or discarded.