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<b>Title 2. Agriculture</b>			
2 VAC 5-20-10 through 2 VAC 5-20-40	Amended	22:11 VA.R. 1761-1764	3/10/06
2 VAC 5-20-30	Erratum	22:13 VA.R. 2153	--
2 VAC 5-390-180	Amended	22:14 VA.R. 2201	2/27/06
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-36-50	Erratum	22:14 VA.R. 2216	--
4 VAC 5-40-10 through 4 VAC 5-40-350	Repealed	22:21 VA.R. 2801-2804	7/26/06
4 VAC 5-60-10 through 4 VAC 5-60-170	Repealed	22:21 VA.R. 2805-2807	7/26/06
4 VAC 10-30-10 through 4 VAC 10-30-350	Added	22:21 VA.R. 2801-2804	7/26/06
4 VAC 10-40-10 through 4 VAC 10-40-170	Added	22:21 VA.R. 2805-2807	7/26/06
4 VAC 15-20-65	Added	22:22 VA.R. 3089	7/1/06
4 VAC 15-20-130	Amended	22:19 VA.R. 2599	7/1/06
4 VAC 15-20-160	Amended	22:19 VA.R. 2600	7/1/06
4 VAC 15-40-30	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-40-200	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-40-285	Added	22:19 VA.R. 2601	7/1/06
4 VAC 15-50-71	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-50-110	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-50-120	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-70-10	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-70-60	Added	22:19 VA.R. 2602	7/1/06
4 VAC 15-90-22	Added	22:19 VA.R. 2603	7/1/06
4 VAC 15-90-70	Amended	22:19 VA.R. 2603	7/1/06
4 VAC 15-90-80	Amended	22:19 VA.R. 2604	7/1/06
4 VAC 15-90-80	Amended	22:22 VA.R. 3091	7/1/06
4 VAC 15-90-90	Amended	22:19 VA.R. 2605	7/1/06
4 VAC 15-90-91	Added	22:19 VA.R. 2605	7/1/06
4 VAC 15-90-100 through 4 VAC 15-90-121	Repealed	22:19 VA.R. 2608-2609	7/1/06
4 VAC 15-90-141	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-160	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-170	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-190 through 4 VAC 15-90-220	Repealed	22:19 VA.R. 2609-2610	7/1/06
4 VAC 15-90-291	Added	22:19 VA.R. 2610	7/1/06
4 VAC 15-90-292	Added	22:19 VA.R. 2610	7/1/06
4 VAC 15-110-20	Amended	22:19 VA.R. 2613	7/1/06
4 VAC 15-120-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-170-21	Added	22:19 VA.R. 2614	7/1/06
4 VAC 15-190-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-200-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-210-10 and 4 VAC 15-210-20	Amended	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-21	Added	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-40	Repealed	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-61	Added	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-10	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-20	Amended	22:19 VA.R. 2616	7/1/06

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4 VAC 15-240-31	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-320-25	Amended	22:19 VA.R. 2617	7/1/06
4 VAC 15-320-100	Amended	22:16 VA.R. 2370	5/17/06
4 VAC 15-330-50	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-330-140	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-330-160	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-340-10	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-340-30	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-340-40	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-360-10	Amended	22:19 VA.R. 2625	7/1/06
4 VAC 15-360-30	Amended	22:19 VA.R. 2626	7/1/06
4 VAC 15-360-70	Added	22:19 VA.R. 2626	7/1/06
4 VAC 20-20-20	Amended	22:10 VA.R. 1551	12/22/05
4 VAC 20-20-50	Amended	22:10 VA.R. 1551	12/22/05
4 VAC 20-20-50 emer	Amended	22:10 VA.R. 1682	12/28/05-1/27/06
4 VAC 20-20-50	Amended	22:12 VA.R. 2033	1/27/06
4 VAC 20-150-10 emer	Amended	22:20 VA.R. 2716	5/29/06-6/28/06
4 VAC 20-150-70 emer	Amended	22:20 VA.R. 2716	5/29/06-6/28/06
4 VAC 20-150-70	Amended	22:23 VA.R. 3277	6/28/06
4 VAC 20-252-30	Amended	22:23 VA.R. 3277	7/1/06
4 VAC 20-252-50	Amended	22:23 VA.R. 3278	7/1/06
4 VAC 20-252-55	Amended	22:15 VA.R. 2280	3/2/06
4 VAC 20-252-115	Added	22:23 VA.R. 3278	7/1/06
4 VAC 20-252-150	Amended	22:15 VA.R. 2280	3/2/06
4 VAC 20-450-30	Amended	22:20 VA.R. 2704	5/26/06
4 VAC 20-530-10	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-20	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-20 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-20	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-23	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-26	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-29	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-30	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-30 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-30	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-31	Added	22:12 VA.R. 2035	1/27/06
4 VAC 20-530-31 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-31	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-32 emer	Added	22:14 VA.R. 2209	3/2/06-3/31/06
4 VAC 20-530-32	Added	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-35	Repealed	22:12 VA.R. 2035	1/27/06
4 VAC 20-560-20 emer	Amended	22:16 VA.R. 2387	3/30/06-4/28/06
4 VAC 20-560-20	Amended	22:19 VA.R. 2626	4/28/06
4 VAC 20-560-40 emer	Amended	22:16 VA.R. 2388	3/30/06-4/28/06
4 VAC 20-560-40	Amended	22:19 VA.R. 2627	4/28/06
4 VAC 20-560-50 emer	Amended	22:16 VA.R. 2388	3/30/06-4/28/06
4 VAC 20-560-50	Amended	22:19 VA.R. 2628	4/28/06
4 VAC 20-720-40	Amended	22:10 VA.R. 1552	1/1/06
4 VAC 20-720-40 emer	Amended	22:12 VA.R. 2043	2/1/06-2/28/06
4 VAC 20-720-50	Amended	22:10 VA.R. 1552	1/1/06
4 VAC 20-720-50 emer	Amended	22:12 VA.R. 2043	2/1/06-2/28/06
4 VAC 20-720-70	Amended	22:10 VA.R. 1553	1/1/06
4 VAC 20-720-75	Amended	22:10 VA.R. 1553	1/1/06
4 VAC 20-900-10 through 4 VAC 20-900-30	Amended	22:23 VA.R. 3279-3280	7/1/06
4 VAC 20-900-25	Amended	22:10 VA.R. 1553	12/22/05
4 VAC 20-900-30	Amended	22:10 VA.R. 1554	12/22/05

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4 VAC 20-910-45	Amended	22:10 VA.R. 1555	12/30/05
4 VAC 20-950-47 emer	Amended	22:10 VA.R. 1682	1/1/06-1/30/06
4 VAC 20-950-47	Amended	22:12 VA.R. 2035	2/1/06
4 VAC 20-950-48 emer	Amended	22:10 VA.R. 1683	1/1/06-1/30/06
4 VAC 20-950-48	Amended	22:12 VA.R. 2035	2/1/06
4 VAC 20-1040-20	Amended	22:10 VA.R. 1555	1/1/06
4 VAC 20-1100-10 through 4 VAC 20-1100-30	Added	22:19 VA.R. 2628	7/1/06
4 VAC 25-31 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-35 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-40 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-130 (Forms)	Amended	22:16 VA.R. 2390	--
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-120-80	Amended	22:20 VA.R. 2704	7/12/06
6 VAC 20-190-10 through 6 VAC 20-190-200	Repealed	22:10 VA.R. 1556-1559	2/22/06
6 VAC 20-210-10 through 6 VAC 20-210-110	Repealed	22:10 VA.R. 1561-1562	2/22/06
6 VAC 20-220-20 through 6 VAC 20-220-80	Repealed	22:10 VA.R. 1559-1560	2/22/06
6 VAC 20-240-10 through 6 VAC 20-240-120	Added	22:11 VA.R. 1764-1768	3/8/06
6 VAC 20-260-10 through 6 VAC 20-260-360 emer	Added	22:12 VA.R. 2044-2053	2/20/06-2/19/07
6 VAC 40-20-10 through 6 VAC 40-20-200	Added	22:10 VA.R. 1556-1559	2/22/06
6 VAC 40-20 (Forms)	Added	22:16 VA.R. 2392	--
6 VAC 40-30-10 through 6 VAC 40-30-80	Added	22:10 VA.R. 1559-1560	2/22/06
6 VAC 40-30-10	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-30-20	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-30-50	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-40-10 through 6 VAC 40-40-110	Added	22:10 VA.R. 1561-1562	2/22/06
6 VAC 40-50-10 through 6 VAC 40-50-80 emer	Added	22:23 VA.R. 3406-3407	7/1/06-6/30/07
<b>Title 8. Education</b>			
8 VAC 20-520-10	Repealed	22:21 VA.R. 2922	9/15/06
8 VAC 20-521-10 through 8 VAC 20-521-60	Added	22:21 VA.R. 2922-2924	9/15/06
8 VAC 20-660-10 through 8 VAC 20-660-40	Added	22:22 VA.R. 3092-3094	8/23/06
8 VAC 40-30	Repealed	22:23 VA.R. 3281	8/24/06
8 VAC 40-31-10 through 8 VAC 40-31-320	Added	22:23 VA.R. 3281-3298	8/24/06
<b>Title 9. Environment</b>			
9 VAC 5-20-203	Amended	22:23 VA.R. 3299	9/1/06
9 VAC 5-20-204	Amended	22:23 VA.R. 3299	9/1/06
9 VAC 5-50-250	Amended	22:23 VA.R. 3301	9/1/06
9 VAC 5-50-270	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-50-280	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-80-1100	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-80-1110	Amended	22:23 VA.R. 3303	9/1/06
9 VAC 5-80-1310	Repealed	22:23 VA.R. 3308	9/1/06
9 VAC 5-80-1605	Amended	22:23 VA.R. 3309	9/1/06
9 VAC 5-80-1615	Amended	22:23 VA.R. 3310	9/1/06
9 VAC 5-80-1625	Amended	22:23 VA.R. 3321	9/1/06
9 VAC 5-80-1635	Added	22:23 VA.R. 3321	9/1/06
9 VAC 5-80-1645	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1655	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1665	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1675	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1685	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1695	Amended	22:23 VA.R. 3323	9/1/06
9 VAC 5-80-1700	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1705	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1710	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1715	Added	22:23 VA.R. 3324	9/1/06

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9 VAC 5-80-1720	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1725	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1730	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1735	Amended	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1740	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1745	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1750	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1755	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1760	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1765	Amended	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1770	Repealed	22:23 VA.R. 3327	9/1/06
9 VAC 5-80-1775	Added	22:23 VA.R. 3327	9/1/06
9 VAC 5-80-1780	Repealed	22:23 VA.R. 3328	9/1/06
9 VAC 5-80-1785	Amended	22:23 VA.R. 3328	9/1/06
9 VAC 5-80-1790	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1795	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1800	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1805	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1810	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1815	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1820	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1825	Amended	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1830	Repealed	22:23 VA.R. 3330	9/1/06
9 VAC 5-80-1835	Amended	22:23 VA.R. 3330	9/1/06
9 VAC 5-80-1840	Repealed	22:23 VA.R. 3332	9/1/06
9 VAC 5-80-1845	Amended	22:23 VA.R. 3332	9/1/06
9 VAC 5-80-1850	Repealed	22:23 VA.R. 3334	9/1/06
9 VAC 5-80-1855	Amended	22:23 VA.R. 3334	9/1/06
9 VAC 5-80-1860	Repealed	22:23 VA.R. 3335	9/1/06
9 VAC 5-80-1865	Amended	22:23 VA.R. 3335	9/1/06
9 VAC 5-80-1870 through 9 VAC 5-80-1920	Repealed	22:23 VA.R. 3340	9/1/06
9 VAC 5-80-1925	Amended	22:23 VA.R. 3340	9/1/06
9 VAC 5-80-1930	Repealed	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1935	Amended	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1940	Repealed	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1945	Amended	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1950	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1955	Amended	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1960	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1965	Amended	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1970	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1975	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1985	Amended	22:23 VA.R. 3343	9/1/06
9 VAC 5-80-1995	Added	22:23 VA.R. 3343	9/1/06
9 VAC 5-80-2000 through 9 VAC 5-80-2020	Amended	22:23 VA.R. 3343-3355	9/1/06
9 VAC 5-80-2040 through 9 VAC 5-80-2070	Amended	22:23 VA.R. 3355-3358	9/1/06
9 VAC 5-80-2090	Amended	22:23 VA.R. 3358	9/1/06
9 VAC 5-80-2091	Amended	22:23 VA.R. 3358	9/1/06
9 VAC 5-80-2110 through 9 VAC 5-80-2140	Amended	22:23 VA.R. 3359-3362	9/1/06
9 VAC 5-80-2141 through 9 VAC 5-80-2143	Repealed	22:23 VA.R. 3362-3366	9/1/06
9 VAC 5-80-2144	Added	22:23 VA.R. 3367	9/1/06
9 VAC 5-80-2180	Amended	22:23 VA.R. 3372	9/1/06
9 VAC 5-80-2200 through 9 VAC 5-80-2240	Amended	22:23 VA.R. 3373-3375	9/1/06
9 VAC 20-60-18	Amended	22:23 VA.R. 3375	8/23/06
9 VAC 20-170-70	Amended	22:21 VA.R. 2808	7/26/06
9 VAC 25-194-40	Amended	22:16 VA.R. 2372	5/17/06



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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-194-70	Amended	22:16 VA.R. 2372	5/17/06
9 VAC 25-260-310	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-260-410	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-260-530	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-660-10	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-10 through 9 VAC 25-660-100	Amended	22:21 VA.R. 2809-2824	8/1/06
9 VAC 25-660-60	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-90	Erratum	22:23 VA.R. 3424	--
9 VAC 25-660-95	Added	22:21 VA.R. 2817	8/1/06
9 VAC 25-670-10	Erratum	22:12 VA.R. 2063	--
9 VAC 25-670-10 through 9 VAC 25-670-100	Amended	22:21 VA.R. 2824-2845	8/1/06
9 VAC 25-670-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-670-95	Added	22:21 VA.R. 2833	8/1/06
9 VAC 25-670-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-10 through 9 VAC 25-680-100	Amended	22:21 VA.R. 2845-2866	8/1/06
9 VAC 25-680-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-70	Erratum	22:23 VA.R. 3424	--
9 VAC 25-680-80	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-90	Erratum	22:23 VA.R. 3424	--
9 VAC 25-680-95	Added	22:21 VA.R. 2854	8/1/06
9 VAC 25-680-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-10 through 9 VAC 25-690-100	Amended	22:21 VA.R. 2867-2889	8/1/06
9 VAC 25-690-30	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-50	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-70	Erratum	22:23 VA.R. 3424	--
9 VAC 25-690-95	Added	22:21 VA.R. 2876	8/1/06
9 VAC 25-690-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-720-60	Erratum	22:12 VA.R. 2064	--
9 VAC 25-720-110	Amended	22:16 VA.R. 2378	5/17/06
9 VAC 25-720-120	Erratum	22:12 VA.R. 2064	--
9 VAC 25-780-30	Amended	22:21 VA.R. 2889	7/26/06
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-160-10	Amended	22:18 VA.R. 2514	9/1/06
10 VAC 5-160-20	Amended	22:18 VA.R. 2514	9/1/06
10 VAC 5-160-30	Amended	22:18 VA.R. 2515	9/1/06
10 VAC 5-160-60	Added	22:18 VA.R. 2516	9/1/06
10 VAC 5-200-80	Amended	22:11 VA.R. 1769	3/1/06
<b>Title 11. Gaming</b>			
11 VAC 10-20-240	Amended	22:11 VA.R. 1771	3/8/06
11 VAC 10-20-260	Amended	22:15 VA.R. 2281	3/7/06
11 VAC 10-70-20	Amended	22:20 VA.R. 2705	5/19/06-9/4/06
11 VAC 10-70-30	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-40	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-50	Repealed	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-60	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-70	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-80	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-90	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-170	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-10	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-30	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-50	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 15-22-10 through 11 VAC 15-22-80	Amended	22:22 VA.R. 3095-3104	8/9/06
11 VAC 15-22-110	Amended	22:22 VA.R. 3104	8/9/06
11 VAC 15-22-120	Amended	22:22 VA.R. 3105	8/9/06

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11 VAC 15-31-10 through 11 VAC 15-31-60	Amended	22:22 VA.R. 3106-3112	8/9/06
<b>Title 12. Health</b>			
12 VAC 5-590-370	Amended	22:15 VA.R. 2282	5/3/06
12 VAC 5-590-400	Amended	22:15 VA.R. 2306	5/3/06
12 VAC 5-590-410	Amended	22:15 VA.R. 2307	5/3/06
12 VAC 5-590-440	Amended	22:15 VA.R. 2310	5/3/06
12 VAC 5-590-530	Amended	22:21 VA.R. 2890	7/26/06
12 VAC 5-590-540, Appendices B and N	Amended	22:15 VA.R. 2313	5/3/06
12 VAC 30-40-10	Amended	22:23 VA.R. 3376	8/23/06
12 VAC 30-40-290	Amended	22:23 VA.R. 3377	8/23/06
12 VAC 30-40-300	Amended	22:23 VA.R. 3379	8/23/06
12 VAC 30-40-360	Added	22:23 VA.R. 3385	8/23/06
12 VAC 30-50-10	Amended	22:16 VA.R. 2382	7/3/06
12 VAC 30-50-120	Amended	22:16 VA.R. 2383	7/3/06
12 VAC 30-50-140	Amended	22:16 VA.R. 2383	7/3/06
12 VAC 30-50-150	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 30-50-190	Amended	22:23 VA.R. 3386	8/23/06
12 VAC 30-60-40	Amended	22:22 VA.R. 3112	8/9/06
12 VAC 30-60-350	Added	22:22 VA.R. 3112	8/9/06
12 VAC 30-70-291	Amended	22:23 VA.R. 3388	8/23/06
12 VAC 30-70-425	Amended	22:23 VA.R. 3389	8/23/06
12 VAC 30-70-426	Repealed	22:23 VA.R. 3390	8/23/06
12 VAC 30-80-20	Amended	22:23 VA.R. 3390	8/23/06
12 VAC 30-80-30	Amended	22:23 VA.R. 3393	8/23/06
12 VAC 30-80-40	Amended	22:14 VA.R. 2202	5/1/06
12 VAC 30-80-190	Amended	22:14 VA.R. 2204	5/1/06
12 VAC 30-80-190 emer	Amended	22:14 VA.R. 2209	5/1/06-4/30/07
12 VAC 30-90-19	Amended	22:23 VA.R. 3395	8/23/06
12 VAC 30-90-41	Amended	22:22 VA.R. 3112	8/9/06
12 VAC 30-110-710	Amended	22:23 VA.R. 3385	8/23/06
12 VAC 30-110-960	Amended	22:23 VA.R. 3385	8/23/06
12 VAC 30-120-10 through 12 VAC 30-120-60	Repealed	22:10 VA.R. 1638	2/22/06
12 VAC 30-120-211	Amended	22:19 VA.R. 2629	6/28/06
12 VAC 30-120-213	Amended	22:19 VA.R. 2632	6/28/06
12 VAC 30-120-215	Amended	22:19 VA.R. 2633	6/28/06
12 VAC 30-120-217	Amended	22:19 VA.R. 2637	6/28/06
12 VAC 30-120-219	Amended	22:19 VA.R. 2639	6/28/06
12 VAC 30-120-221	Amended	22:19 VA.R. 2640	6/28/06
12 VAC 30-120-223	Amended	22:19 VA.R. 2641	6/28/06
12 VAC 30-120-225	Amended	22:19 VA.R. 2643	6/28/06
12 VAC 30-120-227	Amended	22:19 VA.R. 2647	6/28/06
12 VAC 30-120-229	Amended	22:19 VA.R. 2648	6/28/06
12 VAC 30-120-231	Amended	22:19 VA.R. 2649	6/28/06
12 VAC 30-120-233	Amended	22:19 VA.R. 2650	6/28/06
12 VAC 30-120-237	Amended	22:19 VA.R. 2653	6/28/06
12 VAC 30-120-241	Amended	22:19 VA.R. 2654	6/28/06
12 VAC 30-120-243	Repealed	22:19 VA.R. 2656	6/28/06
12 VAC 30-120-245	Amended	22:19 VA.R. 2658	6/28/06
12 VAC 30-120-247	Amended	22:19 VA.R. 2658	6/28/06
12 VAC 30-120-249	Amended	22:19 VA.R. 2660	6/28/06
12 VAC 30-120-380	Amended	22:23 VA.R. 3386	8/23/06
12 VAC 30-120-490 through 12 VAC 30-120-550	Repealed	22:10 VA.R. 1638	2/22/06
12 VAC 30-120-900 through 12 VAC 30-120-980	Added	22:10 VA.R. 1638-1661	2/22/06
12 VAC 30-141-200	Amended	22:23 VA.R. 3387	8/23/06
12 VAC 30-141-500	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 30-141-500	Amended	22:23 VA.R. 3387	8/23/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 35-45-10	Amended	22:10 VA.R. 1684	12/30/05-12/29/06
12 VAC 35-45-70 emer	Amended	22:10 VA.R. 1685	12/30/05-12/29/06
12 VAC 35-45-80 emer	Amended	22:10 VA.R. 1685	12/30/05-12/29/06
12 VAC 35-45-210 emer	Added	22:10 VA.R. 1686	12/30/05-12/29/06
12 VAC 35-105-20 emer	Amended	22:10 VA.R. 1686	12/30/05-12/29/06
12 VAC 35-105-30 emer	Amended	22:10 VA.R. 1693	12/30/05-12/29/06
12 VAC 35-105-590 emer	Amended	22:10 VA.R. 1693	12/30/05-12/29/06
12 VAC 35-105-660 emer	Amended	22:10 VA.R. 1694	12/30/05-12/29/06
<b>Title 13. Housing</b>			
13 VAC 5-51-132	Amended	22:20 VA.R 2709	7/12/06
13 VAC 5-63-40	Amended	22:20 VA.R 2710	7/12/06
13 VAC 5-63-480	Amended	22:20 VA.R 2712	7/12/06
13 VAC 6-20-10	Amended	22:10 VA.R. 1679	4/12/06
13 VAC 6-20-80	Amended	22:10 VA.R. 1680	4/12/06
13 VAC 6-20-120	Amended	22:10 VA.R. 1680	4/12/06
13 VAC 6-20-350	Amended	22:10 VA.R. 1680	4/12/06
<b>Title 14. Insurance</b>			
14 VAC 5-260 (Forms)	Amended	22:22 VA.R. 3140	--
<b>Title 16. Labor and Employment</b>			
16 VAC 25-90-1910.6	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.95	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.106	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.134	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.142	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.178	Amended	22:18 VA.R. 2517	6/15/06
16 VAC 25-90-1910.178	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.243	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.254	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.265	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.266	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.441	Repealed	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1000	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-90-1910.1000	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1001	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1017	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1018	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1020	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1025	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1026	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-90-1910.1027	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1028	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1029	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1030	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1043	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1045	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1047	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1048	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1050	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1051	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1052	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1450	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-100-1915.1000	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-100-1915.1001	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-100-1915.1026	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-120-1917.1	Amended	22:18 VA.R. 2519	6/15/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-130-1918.1	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926, Appendix B of Subpart R	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926, Appendix A to Subpart W	Adding	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.55	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926.60	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.62	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.754	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.754	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1002	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1003	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1092	Repealed	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1101	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1126	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926.1127	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-190-1928, Appendix B to Subpart C	Added	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.51	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.52	Added	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.53 and Appendix B to Subpart C	Added	22:18 VA.R. 2520	6/15/06
<b>Title 17. Libraries and Cultural Resources</b>			
17 VAC 10-30-10 through 17 VAC 10-30-160	Added	22:13 VA.R. 2132-2140	4/5/06
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-21-10 through 18 VAC 5-21-40	Amended	22:22 VA.R. 3113-3118	8/9/06
18 VAC 5-21-20	Amended	22:22 VA.R. 3136	9/23/06
18 VAC 5-21-170	Amended	22:22 VA.R. 3118	8/9/06
18 VAC 30-20-80	Amended	22:14 VA.R. 2205	4/19/06
18 VAC 60-20-10	Amended	22:23 VA.R. 3397	8/23/06
18 VAC 60-20-20	Amended	22:23 VA.R. 3398	8/23/06
18 VAC 60-20-30	Amended	22:15 VA.R. 2320	5/3/06
18 VAC 60-20-71	Added	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-105	Amended	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-106	Amended	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-210	Amended	22:23 VA.R. 3400	8/23/06
18 VAC 60-20-230	Amended	22:23 VA.R. 3400	8/23/06
18 VAC 65-20-60	Amended	22:21 VA.R. 2897	7/26/06
18 VAC 65-20-110	Amended	22:12 VA.R. 2036	3/22/06
18 VAC 65-20-500	Amended	22:21 VA.R. 2897	7/26/06
18 VAC 65-20-580	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-10	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40 (Forms)	Amended	22:21 VA.R. 2900	--
18 VAC 65-40-40	Amended	22:12 VA.R. 2036	3/22/06
18 VAC 65-40-40	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-90	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-110	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-130	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-160	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-180	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-201	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-220	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-280	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-300	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-320	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-330	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-340	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 70-20 (Forms)	Amended	22:21 VA.R. 2911	--
18 VAC 70-20-10	Amended	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-20	Repealed	22:21 VA.R. 2908	8/1/06

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 70-20-30	Amended	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-50 through 18 VAC 70-20-90	Amended	22:21 VA.R. 2908-2910	8/1/06
18 VAC 70-20-105	Added	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-110	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-140	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-150	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 76-10-20	Amended	22:22 VA.R. 3120	6/19/06
18 VAC 76-10-65	Amended	22:22 VA.R. 3120	6/19/06
18 VAC 76-20-10	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-20	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-30	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-50	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-60	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-70	Added	22:23 VA.R. 3403	8/23/06
18 VAC 85-10-10 through 18 VAC 85-10-110	Erratum	22:15 VA.R. 2324	--
18 VAC 85-20-400 emer	Added	22:10 VA.R. 1695	12/21/05-12/20/06
18 VAC 85-20-410 emer	Added	22:10 VA.R. 1696	12/21/05-12/20/06
18 VAC 85-20-420 emer	Added	22:10 VA.R. 1696	12/21/05-12/20/06
18 VAC 85-130-10 through 18 VAC 85-130-170 emer	Added	22:10 VA.R. 1696-1700	12/21/05-12/20/06
18 VAC 90-20-30	Amended	22:12 VA.R. 2037	3/22/06
18 VAC 90-20-120	Amended	22:21 VA.R. 2915	7/26/06
18 VAC 90-25-80	Amended	22:12 VA.R. 2037	3/22/06
18 VAC 90-30-50	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 90-40-70	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 90-50-30	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 95-20-130	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 105-20-5	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-10	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-15	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-16	Amended	22:20 VA.R. 2715	7/12/06
18 VAC 105-20-20	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 110-20-20	Amended	22:15 VA.R. 2321	5/3/06
18 VAC 110-20-20	Erratum	22:16 VA.R. 2399	--
18 VAC 110-20-275	Amended	22:21 VA.R. 2926	9/10/06
18 VAC 110-20-710	Amended	22:21 VA.R. 2927	9/10/06
18 VAC 110-30-10	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-15	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-15	Amended	22:15 VA.R. 2322	5/3/06
18 VAC 110-30-15	Erratum	22:16 VA.R. 2399	--
18 VAC 110-30-20	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-30	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-35	Repealed	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-40	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-50	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-80	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-110	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-130	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-150	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-170 through 18 VAC 110-30-220	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-240	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-260	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-270	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 112-20-50	Amended	22:23 VA.R. 3404	8/23/06
18 VAC 112-20-65	Amended	22:23 VA.R. 3404	8/23/06
18 VAC 112-20-130	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 112-20-150	Amended	22:13 VA.R. 2142	4/5/06

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-20-20	Amended	22:14 VA.R. 2206	4/19/06
18 VAC 115-20-106	Amended	22:12 VA.R. 2039	3/22/06
18 VAC 115-30-30	Amended	22:14 VA.R. 2206	4/19/06
18 VAC 115-40-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-50-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-50-96	Amended	22:12 VA.R. 2040	3/22/06
18 VAC 115-60-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-60-116	Amended	22:12 VA.R. 2041	3/22/06
18 VAC 120-40-40	Amended	22:11 VA.R. 1779	4/23/06
18 VAC 120-40-50	Amended	22:11 VA.R. 1779	4/23/06
18 VAC 125-20-30	Amended	22:11 VA.R. 1772	3/8/06
18 VAC 125-30-20	Amended	22:11 VA.R. 1773	3/8/06
18 VAC 150-20-100	Amended	22:21 VA.R. 2916	7/26/06
<b>Title 19. Public Safety</b>			
19 VAC 30-20-40	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-80	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-205	Added	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-220	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-250	Amended	22:10 VA.R. 1663	3/1/06
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-313-10 through 20 VAC 5-313-40	Added	22:11 VA.R. 1775-1777	1/5/06
<b>Title 22. Social Services</b>			
22 VAC 40-90-10 through 22 VAC 40-90-40	Amended	22:22 VA.R. 3121-3122	9/1/06
22 VAC 40-141-20	Amended	22:10 VA.R. 1664	2/22/06
22 VAC 40-141-30	Amended	22:10 VA.R. 1664	2/22/06
22 VAC 40-141-80 through 22 VAC 40-141-90	Amended	22:10 VA.R. 1664-1666	2/22/06
22 VAC 40-141-110 through 22 VAC 40-141-210	Amended	22:10 VA.R. 1666-1672	2/22/06
22 VAC 40-191-10	Amended	22:22 VA.R. 3123	9/1/06
22 VAC 40-191-20	Amended	22:22 VA.R. 3125	9/1/06
22 VAC 40-191-40 through 22 VAC 40-191-70	Amended	22:22 VA.R. 3126-3131	9/1/06
22 VAC 40-191-90	Amended	22:22 VA.R. 3131	9/1/06
22 VAC 40-191-100	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-120	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-130	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-150	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-330-10 through 22 VAC 40-330-30	Repealed	22:22 VA.R. 3136-3138	9/23/06
22 VAC 40-340-10 and 22 VAC 40-340-20	Repealed	22:22 VA.R. 3138-3139	9/23/06
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-41 (Forms)	Amended	22:21 VA.R. 2921	--
24 VAC 30-41-220	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-230	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-290	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-300	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-310	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-320	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-430	Amended	22:21 VA.R. 2919	7/26/06
24 VAC 30-41-520	Amended	22:21 VA.R. 2920	7/26/06
24 VAC 30-41-650	Amended	22:21 VA.R. 2920	7/26/06
24 VAC 30-121-10 through 24 VAC 30-121-40	Added	22:10 VA.R. 1672-1676	2/22/06
24 VAC 30-400-10 through 24 VAC 30-400-40	Repealed	22:13 VA.R. 2142	2/14/06
24 VAC 30-401-10 through 24 VAC 30-401-40	Added	22:13 VA.R. 2142-2143	2/14/06

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PSYCHOLOGY

#### Agency Decision

Title of Regulation: **18 VAC 125-20. Regulations Governing the Practice of Psychology.**

Statutory Authority: § 54.1-3605 of the Code of Virginia.

Name of Petitioner: Denise Donatelli.

Nature of Petitioner's Request: To amend regulations to require three hours of continuing education on ethics, standards of practice or Virginia law over a two-year period rather than 1.5 hours per year.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board decided to deny the petition because the accruing of continuing education hours is tied to the annual licensure renewal cycle. Additionally, the board acknowledged that any ethics credit beyond the required 1.5 may be used to satisfy the overall 14-hour requirement.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-7250, or e-mail [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R06-216; Filed July 18, 2006, 3:32 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

† Indicates entries since last publication of the *Virginia Register*

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider repealing regulations entitled **6 VAC 20-171, Regulations Relating to Private Security Services**, and promulgating regulations entitled **6 VAC 20-172, Regulations Relating to Private Security Services**. The purpose of the proposed action is to conduct a comprehensive review and replacement of existing regulations 6 VAC 20-171. Due to the extensive nature of the amendments, the board will promulgate these regulations under a new number, 6 VAC 20-172 to replace 6 VAC 20-171. This review is based on legislative actions that require incorporation of regulations for detector canine credentials and on a comprehensive review to amend and revise the rules mandating and prescribing standards, requirements, and procedures that serve to protect the citizens of the Commonwealth from unqualified, unscrupulous and incompetent persons engaging in the activities of private security services. Regulations will also be established in order to incorporate the requirements for explosives and narcotic detector canine handlers as established in the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 9.1-141 of the Code of Virginia.

Public comments may be submitted until August 9, 2006.

**Contact:** Lisa McGee, Regulatory Program Manager, Department of Criminal Justice Services, 202 N. 9th St., Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344 or e-mail [lisa.mcgee@dcjs.virginia.gov](mailto:lisa.mcgee@dcjs.virginia.gov).

VA.R. Doc. No. R06-269; Filed June 15, 2006, 10:58 a.m.

### BOARD OF FORENSIC SCIENCE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Forensic Science intends to consider promulgating regulations entitled **6 VAC 40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**. The purpose of the proposed action is to establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department in accordance with § 19.2-

188.1 B of the Code of Virginia, which became effective July 1, 2006. Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether any plant material, the identity of which is at issue, is marijuana.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

**Contact:** Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail [katya.herndon@dfs.virginia.gov](mailto:katya.herndon@dfs.virginia.gov).

VA.R. Doc. No. R06-284; Filed June 29, 2006, 2:58 p.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to provide the Virginia Department of Health with the authority to collect fees from all applicants for a permit, permit modification, or permit reissuance, for the land application, distribution or marketing of treated sewage sludge (biosolids) in accordance with the regulations.

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

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

Public comments may be submitted until September 8, 2006.

**Contact:** C. M. Sawyer, Division Director, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475 or e-mail [cal.sawyer@vdh.virginia.gov](mailto:cal.sawyer@vdh.virginia.gov).

VA.R. Doc. No. R06-292; Filed July 14, 2006, 9:59 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to comply with a statutory mandate as set forth in Chapter 858 of the 2006 Acts of Assembly. In its proposed regulatory action, the board intends to establish the education and training required for a dental hygienist to demonstrate competency in the administration of local anesthesia and nitrous oxide under the direction of a licensed dentist.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until 5 p.m. on September 6, 2006.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943) or e mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

VA.R. Doc. No. R06-295; Filed July 18, 2006, 3:31 p.m.

### BOARD OF NURSING

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to address inadequacy in regulations for nursing programs and clarify other requirements.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until 5 p.m. on September 6, 2006.

**Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

VA.R. Doc. No. R06-307; Filed July 28, 2006, 2:26 p.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-25, Regulations Governing Certified Nurse Aides**. The purpose of the proposed action is to clarify certain requirements and address issues and problems that have arisen with the Nurse Aide Registry.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until 5 p.m. on September 6, 2006.

**Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

VA.R. Doc. No. R06-306; Filed July 28, 2006, 2:22 p.m.

### BOARD OF OPTOMETRY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to make technical changes to clarify the continuing education rules and consider some requirements for face-to-face or interactive hours.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098 or e-mail [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

VA.R. Doc. No. R06-286; Filed June 30, 2006, 8:41 a.m.

### BOARD OF COUNSELING

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-20 Regulations Governing the Practice of Professional Counseling; 18 VAC 115-50 Regulations Governing the Practice of Marriage and Family Therapy; and 18 VAC 115-60 Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners**. The purpose of the proposed action is to amend existing regulations regarding

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# Notices of Intended Regulatory Action

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supervision and residency specifications for the purpose of updating these requirements to meet the intended objectives of the board, which are to address what constitutes an approved supervisor, remove contradictory language regarding face-to-face supervision, and require registration of supervisors regardless of the exemption/nonexempt setting. The board also intends to amend existing regulations regarding prerequisites for licensure by endorsement to clarify existing requirements. Regulations must be consistent and fair in requirement and usage regardless of whether an applicant is applying for licensure through examination or endorsement.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone: 804-662-9133, FAX: 804-662-9943, or e-mail: [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R06-287; Filed June 30, 2006, 8:40 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing **22 VAC 40-810, Fees for Court Services Provided by Local Departments of Social Services**. The purpose of the proposed action is to repeal the regulation because standards for fees for court services provided by local departments of social services are now included in a new comprehensive regulation, currently under promulgation. This outdated, standalone regulation is no longer needed.

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

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Public comments may be submitted until August 9, 2006.

**Contact:** Brenda Kerr, Adoption Program Manager, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7530, FAX (804) 726-7499 or e-mail [brenda.kerr@dss.virginia.gov](mailto:brenda.kerr@dss.virginia.gov).

VA.R. Doc. No. R06-267; Filed June 16, 2006, 8:26 a.m.

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.  
Language which has been stricken indicates proposed text for deletion.

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## TITLE 13. HOUSING

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Titles of Regulations: **13 VAC 5-111. Virginia Enterprise Zone Program Regulations (repealing 13 VAC 5-111-10 through 13 VAC 5-111-390).**

**13 VAC 5-112. Enterprise Zone Grant Program Regulations (adding 13 VAC 5-112-10 through 13 VAC 5-112-560).**

Statutory Authority: § 59.1-540 of the Code of Virginia.

Public Hearing Date: September 13, 2006 - 9 a.m.

Public comments may be submitted until October 6, 2006.  
(See Calendar of Events section for additional information)

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail [steve.calhoun@dhdcd.virginia.gov](mailto:steve.calhoun@dhdcd.virginia.gov).

Basis: The Enterprise Zone Act (Chapter 22 (§§ 59.1-270 through 59.1-284.1) of Title 59.1 of the Code of Virginia) expired on July 1, 2005. The 2005 General Assembly passed legislation creating the Enterprise Zone Grant Act (Chapter 49 (§§ 59.1-538 through 59.1-549) of Title 59.1 of the Code of Virginia). Amendments were made to §§ 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia in order to continue certain aspects of the existing Enterprise Zone Program.

Section 59.1-541 of the Code of Virginia requires the Board of Housing and Community Development to promulgate Enterprise Zone Grant Program regulations.

Purpose: The new program will accomplish several important policy objectives. It will more directly target zone designations to localities with the greatest need and with potential for effectively putting a zone to productive use. It will increase fiscal accountability associated with state incentives and hone in on economic situations that can best benefit from financial incentives.

The proposed regulations will outline the process and procedures for implementation of all aspects of these legislative actions.

These regulations are necessary for the welfare of Virginians because they are an essential step in implementing the Enterprise Zone Program, which is designed to help target job creation and investment to Virginia's most distressed communities. Without a regulatory framework, the Department

of Housing and Community Development cannot administer this program.

Substance: The regulation will (i) provide processes, procedures and eligibility criteria for business firms to access enterprise zone job creation grants; (ii) provide process, procedures and eligibility for qualified zone investors to access real property investment grants; (iii) outline how enterprise zone grants will be allocated; (iv) provide processes, procedures and requirements for local governments to use to apply for and receive enterprise zone designations; (v) outline the circumstances under which an enterprise zone designation can be terminated; (vi) outline procedures for localities with enterprise zones to use when amending their zone boundaries or local incentives; (vii) specify the annual review process for designated zones; (viii) outline the procedures that will be used to consider renewing designated enterprise zones at the end of 10 and 15 years of zone designation; (ix) outline the circumstances under which a business or investor can access grants when a zone designation is ending; (x) outline the administrative requirements of the Enterprise Zone Program; and (xi) outline the limited circumstances under which qualified zone businesses and qualified zone residents can access enterprise zone tax credits that otherwise will not be available after July 1, 2005.

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth. The advantage of this regulation to the public is that it provides a mechanism to create jobs and bring private investment to distressed areas of the Commonwealth. This provides local governments and citizens of those areas with more economic opportunities and strengthens the Commonwealth's overall economic base.

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

Summary of the Proposed Regulation. The Board of Housing and Community Development (board) proposes to promulgate a permanent Enterprise Zone Grant Regulation that will establish the criteria and procedures for the designation, amendment, and administration of enterprise zones along with incentive qualification criteria. The proposed regulation will make amendments to the provision of the three incentives under the previous Enterprise Zone Regulations<sup>1</sup> (General Income Tax Credits, Investment Tax Credits, and Job Grants) and will establish rules for the provision of two new grant-based incentives (the Real Property Investment Grants and the Job Creation Grants).

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

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<sup>1</sup> The previous Enterprise Zone Regulations (13 VAC 5-111) expired on July 1, 2005, and an emergency regulation based on the Enterprise Zone Grant Program was effective on September 30, 2005.

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# Proposed Regulations

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Estimated economic impact. The Enterprise Zone Act (Chapter 22 (§§ 59.1-270 through 50.1-281.01) of Title 59.1 of the Code of Virginia) became effective in 1982 and expired on July 1, 2005. Under this statute, the governing body of any county, city or town might make written application to the Department of Housing and Community Development (DHCD) to have an area or areas declared to be an enterprise zone. Upon recommendation of DHCD, the Governor might approve the designation of up to 60 enterprise zone areas. In making an application for designation as an enterprise zone, the applying localities might propose local tax incentives<sup>2</sup> and regulatory flexibility<sup>3</sup>. The major incentives in the Enterprise Zone Act included (i) General Income Tax Credits, (ii) Investment Tax Credits, (iii) Real Property Improvement Tax Credits, and (iv) Job Grants.

As promulgated pursuant to the Enterprise Zone Act, the Enterprise Zone Program Regulation (13 VAC 5-111) has achieved great success in stimulating business and industrial growth that results in neighborhood, commercial and economic revitalization by means of tax incentives and regulatory flexibility. According to the 2004 Tax Year Annual Report of the Virginia Enterprise Zone Program,<sup>4</sup> the 199 businesses that qualified for the 2004 general income tax credits created a total of 4,903 net new jobs during tax year 2004, among which 1,111 were filled by low-to-moderate income persons. For tax year 2004, 158 businesses that qualified for the real property improvement tax credits made a total of \$82,095,081 of qualified improvements<sup>5</sup> to nonresidential properties within 32 enterprise zones, which indicated a 30% increase from the 2003 tax year. And 3,548 net new full-time jobs were created in the tax year 2004 by the 148 businesses that received \$1,960,000 job grants.

Since the Enterprise Zone Act expired on July 1, 2005, the 2005 General Assembly passed legislation creating the Enterprise Zone Grant Act (Chapter 49 (§§ 59.1-538 through 59.1-549) of Title 59.1 of the Code of Virginia) and made amendments to §§ 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia in order to continue certain aspects of the previous Enterprise Zone Program. Accordingly, the board promulgated an emergency regulation that was effective on September 30, 2005. Now the board proposes to promulgate a permanent Enterprise Zone Grant Program Regulation.

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<sup>2</sup> According to § 59.1-283 of the Code of Virginia (Expired July 1, 2005), local tax incentives include, but are not limited to (i) reduction of permit fees, (ii) reduction of user fees, (iii) reduction of the business, professional, and occupational license tax, (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-322.1 of the Code of Virginia, and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1.

<sup>3</sup> According to § 59.1-283 of the Code of Virginia (Expires July 1, 2005), regulatory flexibility includes, but is not limited to (i) special zoning districts, (ii) permit process reform, (iii) exemptions from local ordinances, and (iv) other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the enterprise zone.

<sup>4</sup> By Virginia Department of Housing and Community Development

<sup>5</sup> According to § 59.1-280.1 of the Code of Virginia, qualified improvement means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion.

As authorized by the new statute, the proposed regulations will revise the rules for providing the General Income Tax Credit, Investment Tax Credit, and the Job Grants to allow businesses meeting certain conditions to continue to receive the incentives available under the previous program. Businesses that have already started their qualification periods for the three incentives under the previous program can finish out their incentive periods provided they continue to meet the qualification requirements for those incentives.<sup>6</sup> In addition, small qualified business firms, large qualified business firms and large qualified zone residents that have a signed agreement with the Commonwealth regarding the use of the tax credits on or before July 1, 2005, may initiate use of the tax credits according to their agreement. The proposed provisions for the three incentives are similar to those under the previous regulations.

The proposed regulations will establish the processes and procedures for the provision of two new grant-based incentives: the new Job Creation Grants and the new Real Property Investment Grants. There are two major differences between the old Job Grants and the new Job Creation Grants. While qualification for both incentives is based on the creation of net new permanent full-time positions, under the new Job Creation Grants, those new positions must pay wage rates of at least 175% of the federal minimum wage and offer health benefits (so-called "wage-based") in order to qualify for grants as required by statute. The old Job Grant had no such qualification requirements.<sup>7</sup> This requirement will increase the effectiveness of the grants by focusing on the quality of job creation as well as the quantity. Another difference is that positions in local services,<sup>8</sup> retail, food and beverage businesses are not eligible for the new Job Creation Grants as required by statute (§ 59.1-547 of the Code of Virginia), while they were for the old Job Grants. Since location and expansion decisions of these businesses are more driven by demographic and market factors than the availability of financial incentives, this change will raise the efficiency of the incentives by targeting on businesses that are more likely to be influenced by financial incentives. On the other hand, it may have a small adverse affect on businesses in local services, retail, food and beverage that would otherwise apply for job grants after July 1, 2005.

The proposed regulations will also establish rules for providing the new Real Property Investment Grants, which will replace the Real Property Improvement Tax Credits under the previous regulations. Replacing the tax credits with grants will increase fiscal accountability for and hone in economic

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<sup>6</sup> According to DHCD, Real Property Improvement Tax Credits had to have been taken for the tax year in which the real property was placed in service. Real property placed in service on or after January 1, 2005, would need to qualify under the new statute.

<sup>7</sup> According to § 59.1-282.1 of the Code of Virginia, the amount of the job grants for which a business firm is eligible in any grant year shall be equal to (i) \$1,000 multiplied by the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone.

<sup>8</sup> According to the proposed regulations, "local service" means a business that provides services primarily within the city or county in which the business is located.

situations that can best benefit from financial incentives.<sup>9</sup> It also provides more flexibility to the qualified businesses.

Under the previous program, the total amount of tax credits (including the General Income Tax Credits, Investment Tax Credit, and Real Property Improvement Tax Credits) was capped at \$19 million annually; and Job Grants was capped at \$1.96 million in fiscal year 2005.<sup>10</sup> The caps under the new program are revised to accommodate the elimination of Real Property Improvement Tax Credits and the creation of two new incentives, with the total (\$21 million) almost the same as that under the previous program (\$20.96 million). As shown in the last column of Table 1, the total tax credit allocation (including General Income Tax Credits and Investment Tax Credits) will be \$7.5 million annually. The total grant allocation (including Job Grants under the previous program, Job Creation Grants and Real Property Investment Grants) will be \$13.5 million for fiscal year 2006. According to DHCD, the new caps were decided based on the projected amount of total tax credits and grants that will be received under the new program. Comparing column 4 with column 6 of Table 1 indicates that the cap for the total tax credits (including General Income Tax Credits and Investment Tax Credits) is close to the actual amount of tax credits received in tax year 2004 for these two tax credits; the total grant allocation (including Job Grants under the previous program, Job Creation Grants and Real Property Investment Grants) is close to the actual combined amount of Real Property Improvement Tax Credits and Job Grants received in tax year 2004, with the Real Property Improvement Tax Credits being replaced by the Real Property Investment Grants. Therefore, the revision of caps will likely not have any significant impact on the qualified businesses.

The proposed regulations will also revise language pertaining to designation, amendment, and administration of enterprise zones in order to be consistent with the statute. For example, any enterprise zone may consist of three noncontiguous areas instead of two under the previous regulation; zone specific census-based and floor area vacancy rates are removed as eligibility requirements; new maximum and minimum acreage requirements are established to offer more flexibility to participants; and a section is added to describe the distress factors<sup>11</sup> of the entire locality that will be considered for zone designations. The impact of these regulatory changes will be that zone designations will be more targeted where there is the greatest need and the most potential for effective use of an enterprise zone designation. Since zone designation is based on localitywide need instead of the need of the zone area, and since there is no requirement that an enterprise zone be a distressed area but rather just be located somewhere in a distressed locality, localities have more flexibility in where to locate their enterprise zone and will more

likely maximize the zone effectiveness. However, the maximum number of zone designations will be 30 instead of 60 under the previous program; initial designation period will be 10 years with the possibility of two five-year extensions as specified in the statute (used to be a 20-year period). Therefore, localities will compete for fewer slots and less distressed localities<sup>12</sup> will have fewer chances to have their application approved.

In sum, the proposed regulatory changes, as required by statute, will improve zone effectiveness and efficiency by making the zone designations more targeted where there is the greatest need and the most potential for effective use of an enterprise zone designation, and zone incentives more targeted on businesses that are more likely to be influenced by financial incentives. Although businesses in local service, retail, food and beverage will not be able to apply for Job Creation Grants, businesses from other industries as well as residents in localities where the enterprise zone is located will benefit from the proposed regulatory changes. Since the benefit and the cost cannot be measured in monetary term, it is not known whether the total benefit exceeds the total cost.

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<sup>9</sup> The grants are dealt with through budget language for DHCD and the amount is authorized for each fiscal year.

<sup>10</sup> Ibid.

<sup>11</sup> According to the proposed regulations, the distress factors will account for at least 50% of the evaluation consideration for zone designation. These factors include: (i) the average unemployment rate, (ii) the average median adjusted gross income, (iii) the average percentage of public schools students within the locality receiving free or reduced price lunches over the most recent three-year periods.

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<sup>12</sup> See note 11.

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Table 1. Number of Qualified Businesses, Amount of Incentives and Caps for Incentives

	Number of Qualified Businesses in Tax Year 2004	Credits/Grants Received in Tax Year 2004	Credits/Grants Received in Tax Year 2004	Cap Under Previous Program	Cap Under Current Program
General Income Tax Credits	199	\$6,818,310	\$7,151,041	\$19,000,000	\$7,500,000
Investment Tax Credits	1	\$332,731			
Real Property Improvement Tax Credits	158	\$11,848,959	\$13,808,959	\$1,960,000	N/A
Job Grants	148	\$1,960,000			
Real Property Improvement Grants	N/A	N/A	N/A	N/A	\$13,500,000
Job Creation Grants	N/A	N/A	N/A	N/A	
<b>Total</b>	<b>506</b>	<b>\$20,960,000</b>	<b>\$20,960,000</b>	<b>\$20,960,000</b>	<b>\$21,000,000</b>

Source: DHCD, 2004 Tax Year Annual Report of the Virginia Enterprise Zone Program

Businesses and entities affected. The proposed regulatory changes will improve zone effectiveness and efficiency, which will better stimulate business and industrial growth and will benefit the businesses and residents in localities where the enterprise zone is located.

On the other hand, under the new program, positions in local services, retail, food and beverage businesses will not be eligible for the Job Creation Grants, as they were under the previous program. According to the 2004 Tax Year Annual Report of the Virginia Enterprise Zone Program, a total of 413 businesses requested incentives in tax year 2004, with 28% businesses from services and 14% from retail, and 148 businesses received the Job Grants. Assuming that businesses receiving Job Grants in tax year 2004 were distributed among industries in the same manner as those requesting any incentives, approximately 41 service businesses and 20 retail businesses received Job Grants in tax year 2004.<sup>13</sup>

Localities particularly affected. The proposed regulations will apply to localities throughout the Commonwealth. However, since the proposed regulation are more targeted where there is a greatest need and the most potential for effective use of an enterprise zone designation, localities with more distress<sup>14</sup> will benefit more from the proposed regulatory changes. Also, since the maximum number of zone designations will be

reduced from 60 to 30, less distressed localities will have fewer chances to have their application approved.

Projected impact on employment. The proposed regulation may have a negative impact on employment in local services, retail, food and beverage, while having a positive impact on employment from other industries. Under the new program, business in local services, retail, food and beverage will not be eligible for the Job Creation Grants, while they were under the previous Job Grants. According to the 2004 Tax Year Annual Report of the Virginia Enterprise Zone Program, 3,548 net new full-time jobs were created by the 148 businesses that received the Job Grants. Assuming that the number of net new full-time jobs created was distributed among industries in the similar manner as the businesses requesting any incentives, approximately 993 net new full-time jobs were created in service and 139 created in retail in tax year 2004. The number of reduced net new full-time job creation from local services, retail, food and beverage may be lower because, on the whole, the nature of such businesses is that demographic and market factors are a stronger determinant of location and expansion decisions than the availability of financial incentives. In addition, any reduction in the number of jobs created in these types of businesses will likely be more than offset by the increase in employment from other industries as a result of improved zone effectiveness and efficiency.

Effects on the use and value of private property. All types of businesses, including local service, retail, food and beverage, may qualify for the Real Property Investment Grants and so the proposed regulation may have a positive impact on commercial, industrial and mixed-use properties in localities where the enterprise zones are located. Also, the proposed regulatory changes will better stimulate business and industrial growth and will have a positive impact on the asset values of most businesses as well as the values of residential

<sup>13</sup> The number of businesses that will be affected will be much lower since this number includes businesses from all services, not just "local service" which is a business which provides services primarily within the city or county in which the business is located.

<sup>14</sup> See note 11.

properties. However, as required by statute (§ 59.1-547 of the Code of Virginia), positions in local services, retail, food and beverage businesses will not be eligible for the Job Creation Grants under the new program. This proposed change may reduce profits for these businesses and commensurately decrease their asset values.

**Small businesses: costs and other effects.** Small businesses in industries other than local services, retail, food and beverage will benefit from the proposed regulatory changes. While those in local services, retail, food and beverage may be adversely affected because they will not be able to apply for Job Creation Grants under the new program.

**Small businesses: alternative method that minimizes adverse impact.** As required by statute, the proposed regulations will establish rules for the provision of two new grant-based incentives, and make amendments to the provision of three existing incentives as well as language pertaining to designation, amendment, and administration of enterprise zones. The impact of these regulatory changes will be that zone designations are more targeted where there is the greatest need and the most potential for effective use of an enterprise zone designation, and zone incentives will be more targeted on businesses that are more likely to be influenced by financial incentives and that create a higher quality of job. The proposed regulation will increase zone effectiveness and efficiency and there will be no alternative that will have a smaller adverse impact.

**Legal mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development generally concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*The proposed regulations will establish the processes and procedures for the provision of the new Real Property Investment Grants and the new Job Creation Grants; establish new enterprise zone administration processes and procedures as provided for in Chapter 49 (§§ 59.1-538 through 59.1-549) of Title 59.1 of the Code of Virginia.*

*The proposed regulations will also establish the process and procedures for providing the Enterprise Zone Business Tax Credit, Enterprise Zone Real Property Investment Tax Credit and the Job Grants as provided for by amendments to §§ 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia.*

## PART I. DEFINITIONS AND PURPOSE.

### **13 VAC 5-112-10. Definitions.**

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

*"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants whereby the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.*

*"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.*

*"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20:*

*1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.*

*2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.*

*"Base taxable year" means either of two taxable years immediately preceding the first year of qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.*

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"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia as well as business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems provided they are not considered local service.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Conduct of same trade or business" means the operations of a single company or related companies or companies under common control.

"Department" means the Department of Housing and Community Development.

"Enterprise zone incentive grant" or "grant" means a grant provided for creating permanent full-time positions pursuant to § 59.1-282.1 of the Code of Virginia. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-200.

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was

engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under 13 VAC 5-112-200 and 13 VAC 5-112-260. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, local service or food and beverage service shall not be considered grant eligible positions.

"Grant year" means the calendar year for which a business firm applies for an enterprise zone incentive grant pursuant to § 59.1-282.1 of the Code of Virginia. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-200.

"Health benefits" means that at a minimum medical insurance is offered to employees and the employer shall offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.



"Household income" means all income actually received by all household members over the age of 16 from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);
2. Net self-employment income (gross receipts minus operating expenses);
3. Interest and dividend earnings; and
4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;
2. Public assistance payments;
3. Disability payments;
4. Unemployment and employment training benefits;
5. Capital gains and losses; and
6. One-time unearned income.

When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Jurisdiction" means the city or county which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application.

Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Local service" means a business that provides services primarily within the city or county in which the business is located. A service business where the majority of sales, or in the case of certain businesses, memberships, come from outside the city or county in which the business is located would not be considered a local service business and would be eligible to qualify for job creation grants pursuant to § 59.1-547 of the Code of Virginia. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the department for the city or county in which the zone is located. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13 VAC 5-112-110. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone

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location or locations is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land of a nonresidential structure built on the site/parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-200 and 13 VAC 5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work either (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Permanent full-time employee also means two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13 VAC 5-112-20.

"Permanent full-time position" (for purposes of qualifying for grants pursuant to § 59.1-282.1 of the Code of Virginia) means a job of indefinite duration at a business firm located in an enterprise zone, requiring the employee to report to work within the enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time a week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the

business firm for the employee. Seasonal, temporary, leased or contract labor positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions. This definition only applies to for the purpose of qualifying for job grants pursuant to 13 VAC 5-112-200.

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Placed in service" means (i) the final certificate of occupancy has been issued by the local jurisdiction for real property improvements or real property investments; or (ii) the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or (iii) in the case of tools and equipment it means the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13 VAC 5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13 VAC 5-112-20 or 13 VAC 5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) \$50,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) \$250,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures,

doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.
2. Other acquisition costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014 (a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable nonresidential real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to construct, expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include, but are not limited to, the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.
2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points or capitalized interest; (iv) legal, accounting, realtor, sales and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267 (b), or a trade or business under common control, as defined by Internal Revenue Code § 52 (b); or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014 (a). This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property for which the tenant holds a valid lease. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-330.

"Redetermined base year" means the base year for calculation of the number of eligible permanent full-time positions in a second or subsequent three-year grant period. If a second or subsequent three-year grant period is requested within two years after the previous three-year period, the redetermined base year will be the last grant year. The calculation of the redetermined base year employment

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will be determined by the number of positions in the preceding base year, plus the number of threshold positions, plus the number of permanent full-time positions receiving grants in the final year of the previous grant period. If a business firm applies for subsequent three-year periods beyond the two years immediately following the completion of a three-year grant period, the firm shall use one of the two preceding calendar years as the base year, at the choice of the business firm. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-200.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20 and 13 VAC 5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20 and 13 VAC 5-112-110.

"Threshold number" means 110% of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for an enterprise zone incentive grant. For a second and any subsequent three-year period of eligibility, the threshold means 120% of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer. Where there are no permanent full-time positions in the base year, the threshold will be zero. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-200.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use(s) of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor(s).

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by 1,680 hours. Bonuses, overtime and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting

employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13 VAC 5-112-20 and 13 VAC 5-112-200.

PART II.

PROCEDURES FOR QUALIFYING FOR GENERAL TAX CREDIT.

**13 VAC 5-112-20. Effective dates.**

Beginning on July 1, 2005, small qualified and large qualified business firms shall be allowed a credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et seq.) Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25 or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia as provided in this regulation for up to 10 consecutive years in an amount equaling up to 80% of the tax due the first tax year, and up to 60% of the tax due for the second through tenth tax years.

The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to § 59.1-280 of the Code of Virginia on or before July 1, 2005;
2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with § 59.1-280 of the Code of Virginia on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

**13 VAC 5-112-30. Computation of credit.**

A. The amount of credit allowed shall be subject to the limitations provided by 13 VAC 5-112-20. An unused tax credit may not be applied to future years. Any credit not useable for the taxable year the credit was allowed shall not be carried back to a preceding taxable year. The credit is not refundable.

B. If, due to adjustments, the amount of actual tax liability as reported on the application changes, the amount of credit that the qualified business firm will be eligible to receive will not exceed the amount of credit authorized by the department. However, if, as a result of adjustments, the tax liability decreases from the amount stated on the application, the qualified business firm will receive a lower credit amount based on the new tax liability in accordance with the percentage amounts specified in 13 VAC 5-112-20.

C. For large qualified business firms, the percentage amounts of the income tax credits available to such qualified business firms under this section will have been determined by agreement between the department and the qualified business firm. The negotiated percentage amount shall not exceed the percentages specified by 13 VAC 5-112-30.

D. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise zone, shall allocate and apportion its Virginia taxable income attributable to the conduct of business as follows:

1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.

a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm that is used in the enterprise zone. The denominator is the average value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 of the Code of Virginia for determining the Virginia taxable income of a corporation having income from business activities that is taxable both within and without the Commonwealth, *mutatis mutandis*.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income that is reasonably attributable to a business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonable prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.

E. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation, each taxpayer shall be granted a pro rata amount as determined by the department. The amount of such prorated credit shall be determined by applying a fraction, the numerator of which shall be the gross credits requested by the taxpayer for such year, and the denominator of which shall be the total gross

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credits requested by all taxpayers for such year, to the Commonwealth's annual financial limitation. The credit that may be requested each year shall be subject to the limitations provided by 13 VAC 5-112-40 and 13 VAC 5-112-130.

### **13 VAC 5-112-40. Annual fiscal limitations.**

A. The total amount of tax credits awarded to small and large qualified business firms under this section and qualified large zone residents in 13 VAC 5-112-110 shall not exceed \$7.5 million annually until the end of fiscal year 2019 as provided for in §§ 59.1-280 and 59.1-280.1 of the Code of Virginia.

B. Upon receiving applications for tax credits under this section and 13 VAC-5-112-110, the department shall determine the amount of the tax credit to be allocated to each eligible business firm. In the event that the amount of tax credits to which all applicants qualifying under this section and 13 VAC-5-112-110 are eligible, exceeds \$7.5 million annually, the tax credits shall be apportioned among eligible applicants pro rata, based upon the amount of the tax credits to which an applicant is eligible and the amount of tax credits available for allocation.

### **13 VAC 5-112-50. Qualified business.**

Qualification for the credit can occur by satisfying the criteria in subdivisions 1 through 3 of this section. Any business firm may be designated a qualified business for the purpose of this credit if:

1. A business firm establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth of Virginia by such taxpayer, and at least 25% or more (except for businesses qualifying prior to July 1, 1997, when it shall be at least 40% or more) of the permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone must either have incomes below 80% of the median income for the jurisdiction prior to employment or be zone residents. Zone residency will be subject to annual verification, while low-income status verification is only required upon initial employment. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

2. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth of Virginia, and increases the average number of permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least 10% over base taxable years' employment with no less than 25% (except for businesses qualifying prior to July 1, 1997, when it shall be no less than 40%) of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. In the event that a company has activities both inside and outside the enterprise zone, the business firm may not aggregate activity from outside the zone for calculation of employment increase. Other employment positions that shall not be used in the calculation of the 10% employment increase are referred to in subdivision 3 of this section and 13 VAC 5-112-90.

3. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and increases the average number of permanent full-time employees by at least 10% over the base taxable years' employment with no less than 25% or more (except for businesses qualifying prior to July 1, 1997, when it shall be at least 40% or more) of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of permanent full-time employees by the business firm within the enterprise zone.

4. If a business firm is actively engaged in the conduct of a trade or business in the Commonwealth and its operations continue following its assumption or acquisition by another entity, the resulting entity must meet the requirements for qualification described in subdivision 3 of this section and 13 VAC 5-112-90.

5. A business firm located within a locality's enterprise zone or zones that moves to another location within that locality's enterprise zone or zones must meet the requirements for qualification described in subdivisions 1, 2, or 3 of this section and 13 VAC 5-112-90.

6. A business firm moving from one locality's enterprise zone to another locality's enterprise zone prior to being qualified shall be subject to the requirements described in subdivision 3 of this section and 13 VAC 5-112-90.

7. A business firm that has already qualified for enterprise zone incentives and moves from one locality's enterprise zone into another locality's enterprise zone shall no longer be qualified unless the firm increases its permanent full-time employment by an additional 10% over the last year of qualification.

8. Large qualified business firms must meet the terms of their documented negotiation agreement with the Department pursuant to subdivision 2 of 13 VAC 5-112-20, prior to seeking initial qualification under this section.

9. The business firm must certify annually to the department on prescribed form or forms, and other documentation as required by the department, that the firm has met the criteria for qualification prescribed in subdivisions 1 through 7 of this section. The form or forms referred to in this subdivision must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the definition of a qualified business but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13 VAC 5-112-20.

**13 VAC 5-112-60. Qualification in zones whose designation period is ending.**

A. Small qualified business firms located in a zone whose designation period is ending that have qualified under 13 VAC 5-112-20 by or before the zone expiration date may receive the remainder of their incentive period provided they continue to qualify under 13 VAC 5-112-20. Tax credits are not authorized beyond the end of fiscal year 2019 as specified in § 59.1-280 I of the Code of Virginia.

B. Large qualified business firms located in a zone whose designation period is ending that have qualified under 13 VAC 5-112-20 by or before the zone expiration date may receive the remainder of their incentive period provided they continue to qualify under 13 VAC 5-112-20. The incentive period shall be for 10 consecutive years or until the negotiated credit amount is reached, whichever is sooner. Tax credits are not authorized beyond the end of fiscal year 2019 as specified in § 59.1-280 I of the Code of Virginia.

**13 VAC 5-112-70. Application submittal and processing.**

A. For tax years that end on or before December 31, or for businesses with tax years in accordance with § 441(f) of the Internal Revenue Code on or before January 7 of the subsequent year, applications requesting a general tax credit shall be submitted to the department by no later than May 1 of the subsequent calendar year. At a minimum, these applications must be signed by an independent certified public accountant licensed by the Commonwealth.

B. Beginning with tax years ending in 2005, any business firm that is eligible to qualify for tax credits under this section pursuant to 13 VAC 5-112-20 may amend past tax returns in order to qualify for and receive general tax credits. Such business firms shall submit an application requesting general tax credits to the department by no later than May 1 of any of three subsequent calendar years immediately following the year the business firm is requesting the credit provided that there is an outstanding credit balance remaining for that particular tax year. These requests will be handled on a first-come, first-serve basis. Business firms may not amend past tax returns in order to become initially eligible for tax credits under this section pursuant to 13 VAC 5-112-20.

C. The department shall review all applications for completeness and notify business firms of any errors no later than June 1. Business firms must respond to any unresolved issues by no later than June 15. If the department does not meet its June 1 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

D. The department shall notify all applicants by June 30 as to the amount of applicable general credit it may claim for the taxable year the request was made.

E. Applications must be made on forms prescribed by the department, and either hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and post marked no later than the date specified in this section.

F. Applicants may only apply for credits that they are otherwise eligible to claim for such taxable year, subject to the

limitations provided by 13 VAC 5-112-40 and 13 VAC 5-112-130.

**13 VAC 5-112-80. Certification to Tax Commissioner in accordance with § 59.1-280 A of the Code of Virginia.**

A. The department shall certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and forward the certification to the firm. A copy should be retained for the firm's records. The firm shall file the original with the applicable state tax return or returns. If the firm is not eligible for qualification, the department shall notify the firm that it fails to qualify for state tax incentives under this part.

B. Submission of state tax returns. A business firm, upon receipt from the department of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

C. Denial of tax credit. Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit.

**13 VAC 5-112-90. Anti-churning.**

A. A permanent full-time employee shall not include any employee:

1. For which a credit under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267 (b) or a trade or business under common control;
2. Who was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. Whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. Whose previous job function previously qualified for a credit in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control;
5. Whose job function counted for purposes of determining a 10% increase by an existing business firm and credited in



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an earlier taxable year on behalf of the taxpayer, a related party, or a trade or business under common control; or

6. Whose job function was filled in the Commonwealth and the trade or business where this job function was located was acquired or assumed by another taxpayer.

B. A new permanent full-time position that otherwise qualifies for the credit will not be disqualified for purposes of the credit where the employer chooses to use more than one individual to fill the position. This exception is limited to those situations where no more than two employees are used to fill a position, such employees are eligible for essentially the same benefits as full-time employees, and each employee works at least 20 hours per week for at least 48 weeks per year.

### **13 VAC 5-112-100. Pass-through entities.**

The amount of any credit attributable to a partnership, S corporation, or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively. The credit will be allocated in the manner in which income is allocated for federal income tax purposes.

### **PART III.**

### **PROCEDURES FOR QUALIFYING FOR ZONE REAL PROPERTY INVESTMENT TAX CREDIT.**

### **13 VAC 5-112-110. Effective dates.**

Beginning on July 1, 2005, a qualified large zone resident shall be allowed a real property investment tax credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et seq.); Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25, or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia, as provided in this chapter.

The provisions of this section shall apply only as follows:

1. To those large qualified zone residents that have initiated use of enterprise zone tax credits pursuant to § 59.1-280.1 of the Code of Virginia on or before July 1, 2005;
2. To those large qualified zone residents that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with § 59.1-280.1 of the Code of Virginia on or before July 1, 2005.

### **13 VAC 5-112-120. Computation of credit.**

A. A large qualified zone resident shall be eligible for a credit in an amount of up to 5.0% of the qualified zone investments. The zone real property investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any tax credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized. However, this incentive period shall not last beyond 2019 as specified in § 59.1-280 I of the Code of Virginia.

B. The percentage amount of the zone real property investment tax credit granted to a large qualified zone resident must have been determined by agreement between the

department and the large qualified zone resident, provided such percentage amount does not exceed 5.0%.

C. The percentage amounts of the business income tax credit provided in 13 VAC 5-112-30 C that may be granted to a large qualified business firm are also subject to agreement between the department in the event that a large qualified zone resident is also a large qualified business firm, provided such percentage amounts shall not exceed the percentage amounts otherwise provided in 13 VAC 5-112-30 C.

D. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or § 1014 (a) of the Internal Revenue Code.

### **13 VAC 5-112-130. Annual fiscal limitations.**

A. The total amount of tax credits awarded to small and large qualified business firms in 13 VAC 5-112-20 and qualified large zone residents under this section shall not exceed \$7.5 million annually until the end of fiscal year 2019 as provided for in §§ 59.1-280 and 59.1-280.1 of the Code of Virginia.

B. Upon receiving applications for tax credits under this section and 13 VAC-5-112-20, the department shall determine the amount of the tax credit to be allocated to each eligible business firm. In the event that the amount of tax credits to which all applicants qualifying under §§ 59.1-280 and 59.1-280.1 of the Code of Virginia are eligible, exceeds \$7.5 million annually, the tax credits shall be apportioned among eligible applicants pro rata, based upon the amount of the tax credits to which an applicant is eligible and the amount of tax credits available for allocation.

### **13 VAC 5-112-140. Eligibility.**

A. The use of zone real property investment tax credits may be initiated in accordance with 13 VAC 5-112-120 C once the job creation and investment identified in the negotiation have been completed.

B. The business firm must certify to the department on the prescribed form or forms, and other documents as prescribed by the department, that the firm has met the criteria for qualification prescribed in this section. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the qualifications, but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13 VAC 5-112-120 A.



**13 VAC 5-112-150. Qualification in zones whose designation period is ending.**

Large qualified zone residents located in a zone whose designation period is ending that have a documented negotiation agreement with the department and that have qualified by or before that the zone expiration date may continue receive the tax credits until the negotiated tax credit amount is reached, provided they continue to qualify under 13 VAC 5-112-110. This incentive period shall not last beyond 2019 as specified in § 59.1-280 I of the Code of Virginia.

**13 VAC 5-112-160. Anti-churning.**

The following shall not be included in the calculation of permanent full-time positions:

1. An employee for whom a credit under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267 (b) or a trade or business under common control;
2. A position in which an employee filling that position was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. A job function that was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. A position that previously qualified for a credit in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control; or
5. A position that was filled in the Commonwealth of Virginia and the trade or business where that position was located was purchased by another taxpayer.

**13 VAC 5-112-170. Pass through entities.**

The amount of any credit attributable to a partnership, S corporation, or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively. The credit will be allocated in the manner in which income is allocated for federal income tax purposes.

**13 VAC 5-112-180. Application submittal and processing.**

A. For tax years that end on or before December 31, or for businesses with tax years in accordance with § 441(f) of the Internal Revenue Code on or before January 7 of the subsequent year, applications requesting zone real property investment tax credits shall be submitted to the department by no later than May 1 of the subsequent calendar year. At a minimum, these applications must be signed by independent certified public accountant licensed by the Commonwealth.

B. The department shall review all applications for completeness and notify business firms of any errors by no later than June 1. Business firms must respond to any unresolved issues by no later than June 15. If the department does not meet its June 1 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification. The department shall notify all applicants by June 30 as to the amount of applicable credit or

refund it is eligible for in the taxable year the request was made.

C. Applications must be made on forms prescribed by the department, and either hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

D. Applicants may only apply for credits that they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13 VAC 5-112-40 and 13 VAC 5-112-130.

**13 VAC 5-112-190. Certification to Tax Commissioner in accordance with § 59.1-280 B of the Code of Virginia.**

A. The department shall certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and forward the certification to the firm, which should make a copy for its records and file original with the applicable state tax return or returns or notify the firm that it fails to qualify for state tax incentives under Part II (13 VAC 5-112-20 et seq.).

B. Submission of state tax returns. A business firm, upon receipt from the department of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

C. Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or the State Corporation Commission shall notify the department in writing upon determining that a business firm is ineligible for such a tax credit.

PART IV.

PROCEDURES FOR QUALIFYING FOR ZONE INCENTIVE GRANTS.

**13 VAC 5-112-200. Effective dates.**

Beginning on July 1, 2005, a business firm shall be eligible to receive enterprise zone incentive grants for the creation of new permanent full-time positions. This section shall apply only to those businesses that have initiated use of three-year grant period for creating permanent full-time positions pursuant to §§ 59.1-282.1 and 59.1-282.2 of the Code of Virginia on or before July 1, 2005. This part shall govern those

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businesses only for the duration of such three-year grant period. Businesses may not begin any three-year grant periods after July 1, 2005.

## **13 VAC 5-112-210. Computation of grant amount.**

A. For any eligible business firm, the amount of any grant earned shall be equal to (i) \$1,000 multiplied by the number of eligible permanent full-time positions filled by employees whose permanent place of residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible permanent full-time positions filled by employees whose permanent place of residence is outside the enterprise zone.

1. The number of eligible permanent full-time positions filled by employees whose permanent place of residence is within the enterprise zone shall be determined for any grant year by multiplying the number of eligible permanent full-time positions by a fraction, the numerator of which shall be the number of employees hired for permanent full-time positions from January 1 of the applicable base year through December 31 of the grant year whose permanent place of residence is within the enterprise zone, and the denominator of which shall be the total number of employees hired for permanent full-time positions by the business firm during the same period. Zone residency is subject to annual verification and if an employee moves outside the zone his permanent place of residence cannot be considered within the enterprise zone for the remaining grant period.

2. The number of eligible permanent full-time positions filled by employees whose permanent place of residence is outside the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, as determined in subdivision 1 of this subsection, from the number of eligible positions.

B. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than 12 full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is 12.

C. The maximum grant that may be earned by a business firm in one grant year is limited to \$100,000. Each member of an affiliated group of corporations shall be eligible to receive up to a maximum grant of \$100,000 in a single grant year.

## **13 VAC 5-112-220. Eligibility.**

A. A business firm shall be eligible to receive job grants for three consecutive calendar years beginning with the first year of grant eligibility. Business firms in their first three-year period shall demonstrate that they have increased the business firm's enterprise zone permanent full-time positions by 10% over the base year. Permanent full-time positions created during the second or third year of the grant period are eligible for additional grant funding over the previous year level at the option of the business firm, but only during the three-year grant period.

B. Business firms in their second or any subsequent three-year period of grant eligibility must demonstrate that it has increased employment by 20% over a redetermined base year.

## **13 VAC 5-112-230. Application submittal and processing.**

A. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided for in § 59.1-282.2 of the Code of Virginia.

B. In order to claim the grant an application must be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall be made on form or forms as prescribed by the department and may include other documentation as requested by the local zone administrator or department. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the eligibility requirements. At a minimum, these applications must be signed by an independent certified public accountant licensed by the Commonwealth.

C. The local zone administrator shall review applications and determine the completeness of each application and the requested documentation, and forward applications for grants to the department by no later than April 30 of the year following the grant year. Applications forwarded to the department by the local zone administrator must be either hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

D. The department shall review all applications for completeness and notify business firms of any errors no later than June 1 of the year following the grant year. Business firms must respond to any unresolved issues by no later than June 15 of the year following the grant year. If the department does not meet its June 1 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

E. The department shall notify all businesses by June 30 as to the amount of applicable zone incentive grant it is eligible for in the calendar year the request was made.

F. Any business firm receiving an enterprise zone incentive grant under § 59.1-282.1 of the Code of Virginia shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia with respect to any enterprise zone location that is receiving an enterprise zone incentive grant.

## **13 VAC 5-112-240. Qualification in zones whose designation period is ending.**

Business firms located in a zone whose designation period is ending that have qualified by or before the zone expiration date may receive the balance of their three consecutive year incentive period provided they continue to qualify under 13 VAC 5-112-200. Business firms may not begin a three-year grant period after the zone expiration date.

**13 VAC 5-112-250. Anti-churning.**

No grant shall be allowed for any permanent full-time position:

1. That a grant under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267 (b), or a trade or business under common control;
2. Where an employee filling that positions was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. That was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. That previously qualified for a grant in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control; or
5. That was filled in the Commonwealth of Virginia and the trade or business where that position was located was purchased by another taxpayer.

PART V.  
PROCEDURES FOR QUALIFYING FOR ENTERPRISE  
ZONE JOB CREATION GRANTS.

**13 VAC 5-112-260. Effective dates.**

Beginning on July 1, 2005, a business firm shall be eligible to receive enterprise zone job creation grants for the creation of new permanent full-time positions above the threshold number.

**13 VAC 5-112-270. Computation of grant amount.**

A. For any qualified business the grant amount is calculated as follows:

1. \$800 per year for up to five consecutive years for each grant eligible position that is paid a wage rate during the qualification year that is at least of 200% of the federal minimum wage in place during the qualification year, and that is provided with health benefits, or
2. \$500 per year for up to five years for each grant eligible position that is paid a wage rate during such year that is less than 200% of the federal minimum wage, but at least 175% of the federal minimum wage, and that is provided with health benefits.

B. A business firm may receive grants for up to a maximum of 350 grant eligible jobs annually.

C. Job creation grants are based on a calendar year. The grant amount for any permanent full-time position that is filled for less than a full calendar year must be prorated based on the number of full months worked.

1. In cases where a position is grant eligible for only a portion of a qualification year the grant amount will be prorated based on the number of full months the position was grant eligible. This shall include cases where changes in wage rate, health benefits, or the federal minimum wage rate change a position's grant eligibility.

2. In cases where a change in a grant eligible position's wage rate or the federal minimum wage rate during a qualification year changes the per position maximum grant amount available for that position, the grant amount shall be prorated based on the period the position was paid a minimum of 200% of the federal minimum wage rate and the period the position was paid a minimum of 175% of the federal minimum wage but less than 200%.

D. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

E. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 of the Code of Virginia shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

1. Large qualified business firms and large qualified zone residents may qualify for job creation grants pursuant to this section for permanent full-time positions that have been created above the permanent full-time positions as required by their documented negotiation agreement with the department pursuant to subdivision 2 of 13 VAC 5-112-20.

2 Small qualified business firms may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time employees in the most recently reported qualification year.

3. Business firms that have qualified for job grants to pursuant to §§ 59.1-282.1 and 59.1-282.2 of the Code of Virginia may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time positions in the most recently reported qualification year.

**13 VAC 5-112-280. Eligibility.**

A. A business firm shall be eligible to receive job creation grants for five consecutive years beginning with the first year of grant eligibility for permanent full-time positions created above the threshold number. Additional permanent full-time positions created during the remainder of years in the grant period are eligible for additional grant funding over the previous year's level or such positions may be used instead to begin a subsequent grant period pursuant to subsection B of this section.

B. A business firm may be eligible for subsequent five consecutive calendar year grant periods if it creates new grant eligible positions above the threshold number for its subsequent base year.

1. If a second or subsequent five-year grant period is requested within two years of the previous grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold

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positions, plus the number of grant eligible positions in the final year of the previous grant period.

2. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

C. A business firm is eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility.

D. Job creation grants shall be available beginning with calendar year 2005.

E. Any qualified business firm receiving an enterprise job creation grant under this section is not be eligible for a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia.

F. The following positions are not grant eligible:

1. Those in retail, local service or food and beverage service.
2. Those paying less than 175% of the federal minimum wage or that are not provided with health benefits.
3. Seasonal, temporary or contract positions.

### **13 VAC 5-112-290. Application submittal and processing.**

A. In order to claim the grant an application must be submitted to the department on prescribed form or forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the business is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to permanent full-time positions, wage rates and provision of health benefits are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. The department will not accept nor process any applications submitted without the required attestation information.

E. Applications requesting job creation grants shall be submitted to the department by no later than April 1 of the calendar year subsequent to the qualification year.

F. The department shall review all applications for completeness and notify business firms of any errors by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then

businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

G. The department shall award job creation grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

H. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

### **13 VAC 5-112-300. Accuracy and validity of information.**

A. The department may at any time review qualified zone businesses records related to qualification under this section to assure that information provided in the application process is accurate.

B. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period.

C. Job creation grants that do not have adequate documentation regarding permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business.

### **13 VAC 5-112-310. Anti-churning.**

No grant shall be allowed for any permanent full-time position:

1. That a grant under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267 (b), or a trade or business under common control;
2. Where an employee filling that positions was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. That was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. That previously qualified for a grant in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control; or
5. That was filled in the Commonwealth of Virginia and the trade or business where that position was located was purchased by another taxpayer.

### **13 VAC 5-112-320. Qualification in zones whose designation period is ending.**

Business firms located in a zone whose designation period is ending that have qualified by or before the zone expiration date may receive the balance of their five consecutive year incentive period provided they continue to qualify under 13 VAC 5-112-270 and 13 VAC 5-112-280. Business firms may not begin additional five-year grant period after the zone expiration date.

PART VI.  
PROCEDURES FOR QUALIFYING FOR REAL PROPERTY  
INVESTMENT GRANT.

**13 VAC 5-112-330. Effective dates.**

Beginning on July 1, 2005, a qualified zone investor shall be allowed a real property investment grant. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

**13 VAC 5-112-340. Computation of grant amount.**

A. For any qualified zone investor, the amount of the grant shall be equal to 30% of the qualified zone investments, as defined below:

1. Qualified zone investments include expenditures associated with (i) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (ii) excavations; (iii) grading and paving; (iv) installing driveways; and (v) landscaping or land improvements. These can include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

2. Qualified real property investments do not include:

a. The cost of acquiring any real property or building.

b. Other acquisition costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

c. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by § 267 (b) of the Internal Revenue Code, or a trade or business under common control as defined by § 52 (b) of the Internal Revenue Code); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014 (a) of the Internal Revenue Code.

B. For any qualified zone investor making less than \$2 million in qualified real property investment, the cumulative grant will not exceed \$125,000 within any five-year period for any building or facility.

1. In cases where subsequent qualified real property investment within the five-year period results in the total qualified real property investment equaling \$2 million or more then the qualified investor(s) shall be eligible to receive a grant(s) provided that the total of all grants received within the five-year period does not exceed a maximum of \$250,000 per building or facility.

2. In such cases the grant will be available to the qualified zone investor or investors whose qualified real property investment application(s) results in the total qualified real property investment for the building or facility to equal \$2 million or more for the calendar year in which the \$2 million threshold is met. The grant will be equal to 30% of that investor(s) real property investment not withstanding the \$250,000 cap per building or facility pursuant to 13 VAC 5-112-340 D.

C. For any qualified zone investor making \$2 million or more in qualified real property investments, the cumulative grant will not exceed \$250,000 within any five-year period for any building or facility.

D. Notwithstanding 13 VAC 5-112-350 E, in the case of a building with multiple tenants and/or owners, the maximum amount of the real property investment grant to each tenant and/or owner shall relate to the proportion of the property for the tenant holds a valid lease or the owner has a deed of trust.

1. This maximum shall be determined by the cumulative level of qualified real property investment made within the five consecutive year period. The first five consecutive year period starts with the first real property investment grant issued pursuant to § 59.1-548 of the Code of Virginia.

2. If the total of all qualified real property investments up to and including those made in the current grant year are less than \$2 million then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal to the qualified zone investor's proportion of the building or facility's useable floor space times \$125,000 or 30% of the qualified real property investment, whichever is less.

3. If the total of all qualified real property investments up to and including those made in the current grant year are \$2 million or more then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal the qualified zone investor's proportion of the building or facility's useable floor space times \$250,000 or 30% of the qualified real property investment, whichever is less.

E. The total grant amount per building or facility within a five-year period shall not exceed \$250,000.

**13 VAC 5-112-350. Eligibility.**

A. Only office, commercial or industrial or mixed use real property is eligible. A mixed-use building where the office, commercial or industrial use is less than 30% shall not be eligible for this grant.

B. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service provided that:

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1. The total amount of the rehabilitation or expansion of depreciable office, commercial or industrial or mixed use real property placed in service during the calendar year within the enterprise zone equals or exceeds \$50,000 with respect to a building or facility.

2. The cost of any newly constructed depreciable office, commercial or industrial or mixed-use real property (as opposed to rehabilitation or expansion) is at least \$250,000 with respect to a building or facility.

C. Real property investments that were placed in service in calendar year 2004 that were not eligible to submit a tax credit request as a small qualified zone resident pursuant to former § 59.1-280.1 of the Code of Virginia because of the timing of their tax year may apply for a real property investment grant in 2006.

D. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property for which the tenant holds a valid lease.

E. In the case of buildings with multiple tenants and/or owners, such tenants or owners shall coordinate under this section. In cases where such coordination has not occurred, the department will determine the amount of each tenants' and/or owners' real property investment pursuant to 13 VAC 5-112-340 D.

F. Units of local, state and federal government or political subdivisions are not eligible to apply for this grant.

### **13 VAC 5-112-360. Qualification in zones whose designation period is ending.**

Zone investors located in a zone whose designation period is ending must qualify for investments made prior to the zone expiration date to receive a real property investment grant. Zone investors may not qualify for investments made after the zone expiration date.

### **13 VAC 5-112-370. Intrastate Anti-Piracy Rule.**

Real property investment grants will not be available to assist a Virginia qualified zone investor to relocate from one area of Virginia to another unless there is an increase in employment or building square footage for the qualified zone investor.

### **13 VAC 5-112-380. Application submittal and processing.**

A. In order to claim the grant an application must be submitted to the department on prescribed form or forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the building or facility is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to qualified real property investments are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures

provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. The department will not accept nor process any applications submitted without the required attestation information.

E. Applications requesting real property investment grants shall be submitted to the department by no later than April 1 of the calendar year subsequent to the qualification year.

F. The department shall review all applications for completeness and notify applicants of any errors by no later than May 15. Applicants must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then applicants must respond to any unresolved issues within 10 calendar days of the actual notification.

G. The department shall award real property investment grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

H. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

I. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13 VAC 5-112-400.

### **13 VAC 5-112-390. Accuracy and validity of information.**

A. The department may at any time review qualified zone investors records related to qualification to assure that information provided in the application process is accurate.

B. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

C. Real property investment grants that do not have adequate documentation regarding qualified real property investments may be subject to repayment by the qualified zone investor.

## **PART VII.**

### **POLICIES AND PROCEDURES FOR ENTERPRISE ZONE GRANTS.**

#### **13 VAC 5-112-400. Allocating enterprise zone grants.**

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone grants provided for in 13 VAC 5-112-200, 13 VAC 5-112-260 and 13 VAC 5-112-330 to the extent that they apply for and are approved for grant allocations through the department.

B. Upon receiving applications for grants provided for under 13 VAC 5-112-200, 13 VAC 5-112-260, and 13 VAC 5-112-330, the department shall determine the amount of the grant to be allocated to each eligible business firm and zone investor.

C. If the total amount of grants for which qualified business firms are eligible under 13 VAC 5-112-200 and 13 VAC 5-112-260 and for which qualified zone investors are eligible under 13 VAC 5-112-330 exceeds the annual appropriation for such

grants, then the amount of grant that each qualified business firm and qualified zone investor will receive for shall be prorated in a proportional manner.

**13 VAC 5-112-410. Actions of the department.**

Actions of the department relating to the approval or denial of applications for enterprise zone grants under this section shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002 of the Code of Virginia.

PART VIII.

ENTERPRISE ZONE DESIGNATION.

**13 VAC 5-112-420. Status of enterprise zones designated prior to July 1, 2005.**

All enterprise zones designated pursuant to §§ 59.1-274, 59.1-274.1, and 59.1-274.2 of the Code of Virginia as those that were in effect prior to July 1, 2005, shall continue in effect until the end of their 20-year designation period. Such zones shall be governed by the provisions of Chapter 49 (§ 59.1-438 et seq.) of Title 59.1, exclusive of § 59.1-542 E of the Code of Virginia.

**13 VAC 5-112-430. Eligible applicants for zone designation.**

A. Eligible applicants include the governing body of any county or city.

B. Towns are not eligible applicants. However, county applicants may include acreage in an incorporated town as part of the county's proposed enterprise zone provided that the town is located within the applicant county. In such situations, towns may provide local incentives in addition to the county incentives.

C. Two or more adjacent localities may file a joint application for an enterprise zone.

D. Jurisdictions may apply for more than one enterprise zone designation. This includes the submission of a joint application with other jurisdictions. Each jurisdiction is limited to a total of three enterprise zones.

**13 VAC 5-112-440. Zone eligibility requirements.**

A. To be eligible for consideration, an application for an enterprise zone must meet the requirements set out in this section.

B. Enterprise zones may consist of no more than three noncontiguous areas. The size of the enterprise zone shall consist of the total of the acreage of all noncontiguous areas. The maximum combined land area cannot exceed maximum size guidelines set forth in subdivisions C 1, 2, 3 and 4 of this section.

C. All proposed zones shall conform to the following size guidelines:

1. Cities - minimum: 1/4 square mile (160 acres); maximum: 1 square mile (640 acres) or 7.0% of the jurisdiction's land area or an area that includes 7.0% of the population, whichever is largest. Towns designated as enterprise zones pursuant to former §§ 59.1-274, 59.1-274.1 and 59.1-274.2

of the Code of Virginia shall conform to the size guidelines for cities.

2. Unincorporated areas of counties - minimum: 1/2 square mile (320 acres); maximum: 6 square miles (3,840 acres).

3. Consolidated cities - zones in cities the boundaries of which were created through the consolidation of a city and county or the consolidation of two cities shall conform substantially to the minimum and maximum size guidelines for unincorporated areas of counties as set forth in subdivision 2 of this subsection.

4. In no instance shall a zone consist only of a site for a single business firm.

**13 VAC 5-112-450. Relationship to federal empowerment zone program.**

For enterprise zones designated by the Governor that have been enlarged to conform with the boundaries of a federal empowerment zone, the state enterprise zone designation shall continue until the expiration of the area's federal empowerment zone designation, unless earlier terminated as provided in this chapter.

PART IX.

PROCEDURES AND REQUIREMENTS FOR ZONE DESIGNATIONS.

**13 VAC 5-112-460. Procedures for zone application and designation.**

A. Upon recommendation of the Director of the Department of Housing and Community Development, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this section. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions or the termination of designations pursuant to 13 VAC 5-112-510, 13 VAC 5-112-520, and 13 VAC 5-112-530 D.

B. Applications for zone designation will be solicited by the department on a competitive basis in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-1 to the Director, Virginia Department of Housing and Community Development, 501 North Second Street, Richmond, Virginia 23219, on or before the submission deadline established by the department.

2. Each applicant jurisdiction(s) must hold at least one public hearing on the application for zone designation prior to submission of the application to the department. Notification of the public hearing is to be in accordance with § 15.2-2204 of the Code of Virginia relating to advertising of public hearings. An actual copy of the advertisement must be included in the application.

3. In order to be considered in the competitive zone designation process an application from a jurisdiction(s) must include all the requested information, be accompanied by a resolution(s) of the local governing body(s) and be signed by the chief administrator(s) or the clerk(s) to county board of supervisors where there is no chief administrator. The chief administrator(s) or clerk(s), in signing the

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application, must certify that the applicant jurisdiction(s) held the public hearing required in subdivision 2 of this subsection.

C. Within 60 days following the application submission deadline, the department shall review and the Director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. Enterprise zones designated pursuant to § 59.1-542 of the Code of Virginia will be designated for an initial 10-year period except as provided for in 13 VAC 5-112-510 and 13 VAC 5-112-520. Upon recommendation of the director of the department, the Governor may renew zones for up to two five-year renewal periods.

E. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

### **13 VAC 112-470. Procedures and requirements for joint applications.**

A. Two or more adjacent localities may file a joint application for an enterprise zone as provided for in 13 VAC 5-112-430 and must meet the requirements set out in this section.

B. Localities applying for a joint zone must demonstrate a regional need for an enterprise zone and a regional impact that could not be achieved through a single jurisdiction zone.

C. Applicants for a joint zone shall also specify what mechanisms will be used to ensure that the economic benefits of such a zone are shared among the applicant localities.

D. A joint enterprise zone shall consist of no more than three noncontiguous zone areas for each participating locality.

E. Each jurisdiction comprising the proposed joint enterprise zone may have the maximum acreage as specified by the size guidelines in 13 VAC 5-112-440.

F. The applicants may designate one jurisdiction to act as program administrator. The jurisdiction so designated shall be responsible for filing annual reports as provided for in 13 VAC 5-112-560.

G. In order to submit a joint application, Form EZ-I must be completed and filed by the jurisdiction acting as program administrator in accordance with the procedures set forth in subdivision B 1 through 3 of 13 VAC 5-112-460. In addition, a copy of Form EZ-I-JA must be completed by each of the other participating jurisdictions to certify that they are in agreement in filing the joint application. A copy or copies of Form EZ-I-JA must be submitted to the department with Form EZ-I.

H. The applicants must meet all other requirements of these regulations pertaining to applicants. In the case of joint applications, all references to "applicant" and "local governing body" contained in the text of these regulations shall mean the governing body of each participating jurisdiction.

### **13 VAC 5-112-480. Application considerations.**

A. Consideration for enterprise zone designations shall be based upon the localitywide need and impact of such a designation.

B. Need shall be assessed in part by the following distress factors: (i) the average unemployment rate for the locality over the most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period. These distress factors shall account for at least 50% of the consideration given to local governments' for enterprise zone designation.

C. Local governments submitting applications for enterprise zone designation shall propose local incentives that address the economic conditions within their locality and that will help stimulate real property improvements and new job creation. Such local incentives include, but are not limited to (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221 of the Code of Virginia; and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia. The extent and duration of such incentives shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as an enterprise zone, the application may also contain proposals for regulatory flexibility, including but not limited to, (a) special zoning districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other public incentives proposed in the locality's application which shall be binding upon the locality upon designation of the enterprise zone.

D. The likely impact of proposed local incentives in addressing the economic conditions within the locality, and in stimulating real property investments and job creation together with the projected impact of state incentives, will be factors in evaluating applications.

E. A locality may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

F. Proposed local incentives may be provided by the local governing body itself or by an assigned agent or agents such as a local redevelopment and housing authority, an industrial development authority, a private nonprofit entity or a private for-profit entity. In the case of a county that includes acreage in an incorporated town(s), the county may designate the governing body of the town(s) to serve as its assigned agent for incentives to be provided by the town(s).

### **PART X.**

### **PROCEDURES FOR ZONE AMENDMENT.**

### **13 VAC 5-112-490. Amendment of approved applications.**

A. A local governing body will be permitted to request amendments to approved applications for zone designation in



accordance with the procedures and requirements set out in this section. Each jurisdiction participating in a joint zone may amend their portion of the application, including boundaries and incentives, independently of the other participating jurisdictions.

B. The applicant jurisdiction must be current on the submission of annual reports as set forth in 13 VAC 5-112-550 in order to amend an approved application.

C. The applicant jurisdiction must hold at least one public hearing on the requested amendment prior to its submission to the department. This public hearing may not have been held more than six months prior to the amendment submission. In the case of a boundary amendment that involves the elimination of area or areas, the applicant jurisdiction must separately notify each property owner and business located within the affected area of the proposed amendment prior to holding the public hearing.

D. A request for an amendment must be submitted to the department on Form EZ-2. This form must be accompanied by a resolution of the local governing body and must certify that the applicant jurisdiction held the public hearing required in subsection C of this section prior to the adoption of the resolution. In the case of a joint application, Form EZ-2 must be completed by the jurisdiction requesting the amendment and must be accompanied by Form EZ-2-JA. This form certifies that the other participating jurisdictions are in agreement in filing the request for amendment.

E. An enterprise zone application may be amended annually, at least 12 months from the last amendment application by the jurisdiction. Amendments may be to the entire application or individual sections such as the boundary or incentives.

F. A zone boundary amendment may not consist of a site for a single business firm or be less than 10 acres.

G. A noncontiguous area(s) may be added to an enterprise zone through a boundary amendment. However, no enterprise zone shall have more than three noncontiguous areas.

H. The total zone acreage resulting from a boundary amendment must conform to the size guidelines set forth in 13 VAC 5-112-440.

I. Boundary amendments that involve the elimination of area or areas from a zone shall be reviewed on a case-by-case basis with the potential impact on affected businesses and property owners being given primary consideration. Such boundary changes cannot involve more than 15% of the total zone acreage.

J. A county may amend its zone boundaries to include as part of the county's total acreage, acreage in any town located within the county provided it meets the provisions of subsections A through I of this section. This shall not constitute a joint zone and does not provide the town with the ability to make any zone amendments, add noncontiguous areas or give the town its own zone acreage allocation. In such situations, towns may provide local incentives in addition to the county incentives.

K. The department will approve an amendment to local incentives only when the proposed incentive is equal to or

superior to that in the original application or any previous amendment approved by the department. The department will approve an amendment of zone boundaries only if the proposed amendment is deemed to be consistent with the purposes of the program as determined by the department.

L. A local governing body that is denied an application amendment shall be provided with the reasons for denial.

## PART XI. PROCEDURES FOR ANNUAL REVIEW.

### **13 VAC 5-112-500. Annual review of enterprise zones.**

A. Annually, the department will review the performance and effectiveness of each enterprise zone in creating new jobs, encouraging private investment and usage of state incentives based on information provided by the locality(s) in their annual report pursuant to 13 VAC 5-112-550 and during periodic on-site visit. The department shall notify the locality(s) of any concerns and make recommendations for improvement where necessary.

B. The department shall annually provide enterprise zone localities with a current listing of all qualified business firms, qualified large zone residents and qualified zone investors.

## PART XII. PROCEDURES FOR ZONE TERMINATION.

### **13 VAC 5-112-510. Failure to provide local program incentives.**

A. If the local governing body or assigned agent(s) is unable or unwilling to provide the specified local incentives as proposed in its application for zone designation or as approved by the department in an amendment the following procedures will apply. In the case of joint applications, these procedures will apply if any local governing body or its assigned agent or agents is unable or unwilling to provide approved local incentives.

B. A local governing body must notify the department in writing within 30 days of any inability or unwillingness to provide an approved local program incentive.

C. A local governing body will have 60 days after submission of the notice required in subsection B of this section to request an amendment to its application. Such a request shall be filed in accordance with the procedures set forth in 13 VAC 5-112-490.

D. The department will review requests for amendments in accordance with the requirements set forth in 13 VAC 5-112-490. Approval of an amendment will allow a zone to continue in operation. If a local governing body fails to provide notice as set forth in subsection B of this section, or has its request for an amendment denied, then the department shall terminate that enterprise zone designation.

### **13 VAC 5-112-520. Failure to qualify for state incentives.**

If no business firms, large zone residents or zone investors have qualified for incentives as provided for in 13 VAC 5-112-20, 13 VAC 5-112-110, 13 VAC 5-112-200, 13 VAC 5-112-260 and 13 VAC 5-112-330 within any five-year period, the department shall terminate that enterprise zone designation.

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## PART XIII.

### PROCEDURES FOR ENTERPRISE ZONE RENEWAL.

#### **13 VAC 5-112-530. Procedures for zone renewal.**

A. Enterprise zones designated pursuant to 13 VAC 5-112-460 are in effect for an initial 10-year period with up to two five-year renewal periods, except as provided for in 13 VAC 5-112-510 and 13 VAC 5-112-520. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment. The following procedures shall be used in considering such an enterprise zone for renewal.

B. In anticipation of the tenth and fifteen anniversaries of an enterprise zone's designation, the locality(s) shall submit to the department on the prescribed form information regarding, but not limited to, (i) the area conditions; (ii) the continued need for the enterprise zone; (iii) its long-term effectiveness in creating jobs and capital investment. The department shall also consider the locality(s) long-term performance of enterprise zone responsibilities.

C. A jurisdiction that has shown satisfactory performance and effectiveness, or that is making steady improvement in performance and effectiveness or has a continued need for an enterprise zone will be recommended to the Governor by the department for an additional five-year designation period. No enterprise zone designation shall be in effect more than 20 years.

D. A jurisdiction that has shown consistently poor performance and effectiveness or that no longer needs an enterprise zone will not be recommended for renewal and will be notified of such in writing by the department.

## PART XIV.

### ZONE TERMINATION AND INCENTIVE QUALIFICATION.

#### **13 VAC 5-112-540. Zone termination and incentive qualification.**

A. A zone shall be terminated in accordance with the procedures set forth in 13 VAC 5-112-510, 13 VAC 5-112-520 and 13 VAC 5-112-530 D upon written notice to a local governing body. The date of such notice is considered to be the date of zone termination.

B. Qualified business firms, qualified large zone residents and qualified zone investors located in a terminated zone may continue to request state enterprise zone incentives for any remaining years in the incentive period for which they are eligible as provided for in 13 VAC 5-112-20, 13 VAC 5-112-110, 13 VAC 5-112-200, 13 VAC 5-112-260 and 13 VAC 5-112-330.

C. In the case of business firms and large zone residents qualified under 13 VAC 5-112-20, 13 VAC 5-112-110 and 13 VAC 5-112-200, the incentive period shall not go beyond 2019.

## PART XV.

### ADMINISTRATIVE REQUIREMENTS.

#### **13 VAC 5-112-550. Annual reporting.**

A. A local governing body shall submit annual reports to the department for the purpose of program monitoring and evaluation. Annual reports shall be submitted to the department on Form EZ-3-AR no later than July 15 of the following year. Annual reports shall include information and data for the purpose of program evaluation as requested on Form EZ-3-AR.

B. The department shall review the effectiveness in creating jobs and capital investment and activity occurring within designated enterprise zones and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Appropriations Committee, and the House Committee on Commerce and Labor. When the potential exists that the annual fiscal limitations on the enterprise zone incentives will be fully utilized, thus triggering their pro rata distribution, the department shall include this information in the annual report.

#### **13 VAC 5-112-560. Confidentiality of information.**

Pursuant to § 58.1-3 of the Code of Virginia, except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the department shall not divulge any information acquired by him in the performance of his duties with respect to employment, property, or income of any business firm submitted to the department. Any person violating this section shall be guilty of a Class 2 misdemeanor. The provisions of this section shall not be applicable, however, to:

1. Acts performed or words spoken or published in the line of duty under law;
2. Inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged;
3. Disclosures of information to the Department of Taxation or the State Corporation Commission as may be required to implement the provisions of this chapter; or
4. The publication of statistics so classified as to prevent the identification of particular business firms.

VA.R. Doc. No. R06-81; Filed July 7, 2006, 9:40 a.m.



**TITLE 18. PROFESSIONAL AND  
OCCUPATIONAL LICENSING**

**DEPARTMENT OF PROFESSIONAL AND  
OCCUPATIONAL REGULATION**

**Title of Regulation:** 18 VAC 120-30. Regulations Governing Polygraph Examiners (amending 18 VAC 120-30-10, 18 VAC 120-30-30, 18 VAC 120-30-40, 18 VAC 120-30-50, 18 VAC 120-30-90, 18 VAC 120-30-100, 18 VAC 120-30-130, 18 VAC 120-30-150, 18 VAC 120-30-160, 18 VAC 120-30-180, 18 VAC 120-30-190, 18 VAC 120-30-200, 18 VAC 120-30-220, 18 VAC 120-30-230, 18 VAC 120-30-240, 18 VAC 120-30-250, 18 VAC 120-30-270, 18 VAC 120-30-280; adding 18 VAC 120-30-55, 18 VAC 120-30-290, 18 VAC 120-30-300 and 18 VAC 120-30-310).

**Statutory Authority:** § 54.1-1802 of the Code of Virginia.

**Public Hearing Date:** September 21, 2006 - 10 a.m.

Public comments may be submitted until October 6, 2006.

(See Calendar of Events section for additional information)

**Agency Contact:** Kevin E. Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-6166, FAX (804) 367-2474, or e-mail polygraph@dpor.virginia.gov.

**Basis:** Section 54.1-1802 of the Code of Virginia requires that the Director of the Department of Professional and Occupational Regulation "promulgate regulations that are not inconsistent with the laws of Virginia necessary to carry out the provisions of (Chapter 18 of Title 54.1 of the Code of Virginia) and Chapter 1 (§ 54.1-100 et seq.)."

18 VAC 120-30-30 provides the authority for the Director of the Department of Professional and Occupational Regulation to appoint a board to advise the department on any matters relating to the practice or licensure of polygraph examiners.

**Purpose:** DPOR seeks to amend the current Regulations Governing Polygraph Examiners in order to remove redundant information, correct referenced citations, clarify language and modify licensing requirements. The clarifications and corrections are essential to the protection of the health, safety and welfare of citizens, as regulations that are incorrect or that cite incorrect references are confusing to the regulants and can lead to errors in examination procedures and protocols. The proposed regulations have been developed to reduce confusion and subjective interpretations of the regulations by both the licensees and the general public.

**Substance:** The majority of changes are cosmetic in that they remove sections that are duplicated in statute or elsewhere in the regulations. These administrative changes serve to clean up the regulations and reduce the chances of noncompliance with other relevant sources (statutory or otherwise) that are subject to periodic amendments; most of these changes are found in the definitions.

A large portion of the regulation has been moved to a more appropriate section, making it less confusing and easier to

reference. The section that currently provides training and education requirements for licensure, applicable primarily to interns, has been moved from the general qualifications section into the section listing eligibility criteria for interns. An additional portion of the general qualifications that provides eligibility criteria for polygraph examiners was moved into the more appropriate section dealing specifically with that license.

The dishonored check fee was removed from the fee schedule in order to be more in compliance with the regulations of other programs housed at DPOR. It has been determined, through the regulatory review process of other programs, that the dishonored check fee is an administrative fee set by the agency that encompasses all regulatory programs and is based on actual fees charged by financial institutions utilized by the agency. As an agency administration fee, it has been determined that this item should not be listed within the regulations of a specific board.

The requirement that an applicant must submit fingerprint cards along with the application has been amended to require the submission of the applicant's Central Criminal Records Exchange report (available from the Virginia Department of State Police) in lieu of the fingerprint cards. For several months DPOR has not been able to submit fingerprint cards for processing as the Department of State Police notified the agency that they would be unable to continue to provide this service for programs that did not have the statutory requirement to fingerprint applicants. The agency determined that a search of the criminal data base, part of the fingerprint card processing procedures, would be sufficient to determine if an applicant has a past criminal history or arrest record.

Other changes provide clarifying language to sections that were confusing as currently written and change referenced citations.

**Issues:** In amending these regulations the department, with the technical expertise of the Polygraph Examiners Advisory Board, reviewed current regulations, amendments to the statutes, and current federal polygraph law and weighed them along with the protection to the public and the burden to the regulant population. Many of these amendments were the direct result of feedback received from applicants as well as input from the licensing staff who provided anecdotal data of difficulties in processing applications and interaction with the applicant as a result of those difficulties. As a result, the board moved sections of the regulations pertaining to the eligibility requirements for licensure into an order that should alleviate some confusion and make them easier to understand. There is no perceived disadvantage to changing the regulations to make them easier to understand.

Other amendments submitted with this proposal change the requirements for instructors at polygraph schools and for the schools themselves. This proposal will allow more instructors to meet the qualifications to teach, expanding the pool of available instructors. Additional changes require schools to report changes in any of the provisions that qualify them as approved schools and allow the department to periodically review a school's qualifications. Both of these proposals would be advantageous in that they would increase the number of available instructors for certain classes, yet would give the department the authority to requalify schools,

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ensuring that those offering training for licensure maintain their qualifications at all times.

This program directly affects a small number of regulants (less than 300) and it is not anticipated that this population will change significantly as a result of these regulatory amendments. The anticipated changes should be an advantage to the licensing staff since the clarifications should lead to a decrease in telephone calls from applicants trying to understand the eligibility criteria, resulting in more time to process applications, lowering the processing time.

There were no other items identified that would be considered pertinent matters of interest to the regulated community, government officials or the public.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Polygraph Examiners proposes to amend the Regulations Governing Polygraph Examiners in several substantive ways:

1. To facilitate online submission of applications, applicants for licensure will no longer be required to submit signed affidavits certifying that they have read and understand the sections of Virginia law and the Administrative Code that deal with polygraph examiner licensure.
2. Applicants for licensure will submit a record of current Central Criminal Records Exchange (CCRE) with their application rather than submitting fingerprint cards as is required currently.
3. Lawyers who are licensed in any state or jurisdiction of the United States will be allowed to provide instruction on the "Legal Aspects of Polygraph Examination" at polygraph examiner schools (polygraphy schools). Currently, instructors must be members of the Virginia State Bar.

Estimated economic impact. Current regulation requires that individuals applying for licensure as polygraph examiners submit, as part of their application packet, a signed affidavit certifying that the applicant has read and understands all sections of Virginia legislative and administrative code that regulate polygraph examiner licensing. The board proposes to eliminate the requirement for this affidavit so that applicants will be able to submit their applications electronically. E-applications will still require applicants to indicate that they understand laws and regulations as they pertain to the licensing process, but applicants will no longer be required to sign an affidavit and have it notarized. This regulatory change

will benefit the regulated community since it will make the application process easier and will save the cost of notarization.

Current regulation also requires applicants for licensure to submit fingerprint cards with their application. The Virginia State Police (VSP), however, will no longer process fingerprint checks for boards or other departments that do not have a specific statutory requirement to fingerprint applicants. Because of this change in VSP policy, the board will now require a current CCRE report be submitted instead of fingerprint cards. New applicants for licensure who do not already have a current CCRE report available will be responsible for paying the \$15 fee required by the Virginia State Police. The board reports that most applicants are law-enforcement officers who would already have a current CCRE.

Polygraphy schools may currently hire only members of the Virginia State Bar to teach about the legal aspects of polygraph examination. This proposed regulation will allow lawyers who are licensed in any jurisdiction in the United States to be hired for these positions. Currently, there are two polygraphy schools in Virginia so only two instructor positions will be affected by this change in regulation. Polygraphy schools will benefit, however, from being able to choose the most qualified candidate from a now larger pool of possible employees. These schools might also, in theory, see some cost savings as more applicants compete for a fixed number of jobs and wages are bid down.

Businesses and entities affected. There are approximately 350 licensed polygraph examiners in the Commonwealth; in addition, the board receives between 10 and 15 applications for new licenses each year. There are two polygraphy schools in Virginia and, consequently, there are two instructor positions that will be affected by the proposed regulation.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. Although the proposed regulation will allow lawyers licensed in jurisdictions other than Virginia to pursue employment opportunities at Virginia polygraphy schools, this is likely to have no discernable impact on employment. No new polygraphy schools are likely to open in Virginia since only 10-15 people seek licensure as polygraphy examiners in any given year. The pool of instructors from which these schools may hire will be larger but, everything else held constant, there will be no more jobs to fill than there are currently.

Effects on the use and value of private property. Polygraphy schools may see some cost saving if opening legal instruction jobs to a larger group of lawyers drives wages down. The net worth of these schools would increase by an amount equal to those savings if wages drop.

Small businesses: costs and other effects. The proposed regulation will likely have no effect on the bookkeeping costs of regulated small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulation will decrease the compliance burden borne by the regulated community.

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

Summary:

*The proposed amendments (i) facilitate online submission of applications, (ii) provide that applicants for licensure will no longer be required to submit signed affidavits certifying that they have read and understand the sections of Virginia law and the administrative code that deal with polygraph examiner licensure, (iii) provide that applicants for licensure will submit a record of current Central Criminal Records Exchange with their application rather than submit fingerprint cards, and (iv) provide that attorneys who are licensed in any state of jurisdiction of the United States will be allowed to provide instruction on the "Legal Aspects of Polygraph Examination" at polygraph examiner schools.*

**18 VAC 120-30-10. Definitions.**

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

~~"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.~~

"Advisory board" or "board" means the Polygraph Examiner's Advisory Board.

~~"Department" means the Department of Professional and Occupational Regulation.~~

~~"Director" means the Director of the Department of Professional and Occupational Regulation.~~

~~"Polygraph" means any mechanical or electronic instrument or device used to test or question individuals for the purpose of determining truthfulness.~~

"Polygraph examination" means the entire period of contact between a licensee and an examiner.

~~"Polygraph examiner" or "examiner" means any person who uses any device or instrument to test or question individuals for the purpose of determining truthfulness.~~

~~"Polygraph examiner intern" means any person engaged in the study of polygraphy and the administration of polygraph examinations under the personal supervision and control of a polygraph examiner.~~

"Polygraph test" means the part of the polygraph examination during which the examinee is connected to a polygraph instrument which is continuously recording the examinee's reactions to questions.

"Reciprocity" means any individual holding a current license in another jurisdiction may obtain a Virginia polygraph examiners license provided the requirements and standards under which the license was issued are substantially equivalent to those established in this chapter and the individual meets all other board requirements for licensure in Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date on the license has passed. When a licensee fails to renew his license within one calendar month after its expiration date, the licensee is required to apply for reinstatement of the license. Six months after the expiration date on the license, reinstatement is no longer possible and the applicant must reapply and requalify for licensure.

"Relevant question" means a question asked of an examinee during a polygraph test which concerns an issue identified to the examinee during the pretest and which is to be reported by the licensee to any other person.

"Renewal" means continuing the effectiveness of a license for another period of time.

**18 VAC 120-30-30. Advisory board.**

A. The Polygraph Examiners Advisory Board, consisting of eight members appointed by the director, shall *exercise the authority delegated by the director consistent with § 2.2-2100 A of the Code of Virginia* and advise the department on any matters relating to the practice of polygraphy and the licensure of polygraph examiners in the Commonwealth of Virginia.

B. The advisory board shall be composed of three Virginia licensed polygraph examiners employed by law enforcement agencies of the Commonwealth, or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as defined in §§ 54.1-107 and 54.1-200 of the Code of Virginia. All members must be residents of the Commonwealth of Virginia.

C. Each member shall serve a four-year term. No member shall serve more than two consecutive four-year terms.

**18 VAC 120-30-40. Basic qualifications for licensure and registration.**

A. Every applicant to the board for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years old.
2. ~~The applicant has met the experience requirements by having a high school diploma or its equivalent and a minimum of five years experience as an investigator, detective, or in a field acceptable to the department which demonstrates the ability to practice polygraphy.~~
  - a. ~~The applicant will be credited two years of the five years of experience required in subdivision 2 of this subsection if he has an associate degree from an accredited college or university.~~
  - b. ~~The applicant will be credited all five years of experience required in subdivision 2 of this subsection if he has a bachelor's degree from an accredited college or university.~~
3. ~~The applicant has met the education requirements by either completing the required training in detection or deception at a polygraph school approved by the department, or by submitting evidence of satisfactory completion of substantially equivalent training if the~~

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~~polygraph school at which the applicant received the training in the detection or deception is not approved by the department.~~

~~4. The applicant has completed six months as a registered intern examiner under the personal and direct on premise supervision of an examiner qualified under 18 VAC 120-30-60 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall not be eligible to sit for the license examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed. The department may waive the internship for any person who practiced polygraphy in the federal jurisdiction.~~

~~5. 2. The applicant is in good standing as a licensed polygraph examiner in every jurisdiction where licensed. The applicant must disclose if he has had a license as a polygraph examiner which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a polygraph examiner and whether he has been previously licensed in Virginia as a polygraph examiner.~~

~~6. 3. The applicant is fit and suited to engage in the profession of polygraphy. The applicant must disclose if he has been convicted in any jurisdiction of a felony or misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in the evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.~~

~~7. 4. The applicant has disclosed his physical address. A post office box is not acceptable.~~

~~8. 5. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as a service agent for all actions filed in any court in this Commonwealth.~~

~~9. 6. The applicant has signed, as part of the application, an affidavit a statement certifying that he has read and understands the Virginia polygraph examiner's license law and the regulations of the board.~~

~~10. 7. The applicant has submitted two fingerprint cards with his application on forms provided by the department for a criminal background history an application, provided by the department, which shall include criminal history record information from the Central Criminal Records Exchange, with a report date within 30 days of the date the application is received by the department.~~

B. The department may (i) make further inquiries and investigations with respect to the qualifications of the applicant, (ii) require a personal interview with the applicant, (iii) or both. Failure of an applicant to comply with a written request from the advisory board or director for additional information within 30 days of receiving such notice, except in such instances where the advisory board or director has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

C. The applicant shall pass all parts of the polygraph examiners licensing examination approved by the department at a single administration in order to be eligible for a polygraph examiners license.

## **18 VAC 120-30-50. Registration of polygraph examiner interns.**

A. A polygraph examiner intern registration shall be issued to applicants who fulfill the requirements of subdivisions A 2 and A 3 of 18 VAC 120-30-40. and the following:

*1. The applicant has met the experience requirements by having a high school diploma or its equivalent and a minimum of five years experience as an investigator or detective, or in a field acceptable to the department that demonstrates the ability to practice polygraphy.*

*a. The applicant will be credited two years of the five years of experience required in subdivision 1 of this subsection if he has an associate degree from an accredited college or university.*

*b. The applicant will be credited all five years of experience required in subdivision 1 of this subsection if he has a bachelor's degree from an accredited college or university.*

*2. The applicant has met the education requirements by either completing the required training in detection of deception at a polygraph school approved by the department, or by submitting evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received the training in the detection of deception is not approved by the department.*

B. An intern registration shall be valid for 12 months from the date of issue as indicated on the registration.

C. Each intern shall be supervised by a licensed polygraph examiner who meets the qualifications in 18 VAC 120-30-60.

D. A polygraph intern may apply for an extension of a polygraph intern registration after the expiration of the initial intern registration for no more than one year by submitting the fee referenced in 18 VAC 120-30-100. Additional extensions will be allowed if the individual repeats the education requirements set forth in subdivision A 3 2 of ~~18 VAC 120-30-40~~ 18 VAC 120-30-50.

**18 VAC 120-30-55. Qualifications for licensure by examination.**

A. A polygraph examiner license shall be issued to applicants who fulfill the requirements of 18 VAC 120-30-40, 18 VAC 120-30-50, and subsections B and C of this section:

B. The applicant shall have completed six months as a registered intern examiner under the personal and direct on-premise supervision of an examiner qualified under 18 VAC 120-30-60 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall not be eligible to sit for the license examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed. The department may waive the internship for any person who practiced polygraphy in the federal jurisdiction.

C. Upon submission of the completed application and fee, the applicant will be considered for the examination required by 18 VAC 120-30-110. Upon passing such examination, the applicant shall be granted his polygraph examiners license provided the applicant is otherwise qualified.

**18 VAC 120-30-90. Waiver of internship requirement.**

Any federal employee or military personnel who have administered polygraph examinations as one of their duties in their respective jobs, and who have received training from the federal government or United States military, may obtain a Virginia polygraph examiner's license without fulfilling the internship requirement by successfully passing the ~~board's~~ department's written examination.

**18 VAC 120-30-100. Fees.**

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date ~~which~~ that will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus ~~the additional processing charge shown below~~ an additional processing charge set by the department.

D. The following fees listed in the table apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License	\$45	With application
Application for Examiner's License by Reciprocity	\$45	With application
Application for Intern	\$20	With application

Registration		
Dishonored Check	\$25	Upon notification by financial institution
Examination	\$75	With application
Reexamination	\$75	With approval letter
Renewal	\$15	Up to one calendar month after the expiration date on license
Reinstatement	\$50	One to six calendar months after the expiration date on license
Duplicate Wall Certificate	\$25	With written request

**18 VAC 120-30-130. Procedures for renewal.**

The department will mail a renewal application form to the licensee at the last known ~~home~~ address of department record. Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the department all required forms and the appropriate fee as referenced in 18 VAC 120-30-100.

**18 VAC 120-30-150. Department discretion to deny renewal.**

The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia).

Failure to timely pay a monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.

**18 VAC 120-30-160. Qualifications for renewal.**

Applicants for renewal of a license shall continue to meet the standards for entry as set forth in subdivisions A § 2 through A § 5 of 18 VAC 120-30-40.

**18 VAC 120-30-180. Department discretion to deny reinstatement.**

The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee.

~~The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding the services provided by the department, such as, but not limited to, renewal,

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reinstatement, processing of a new application, or examination administration.

## **18 VAC 120-30-190. Status of a license during the period before reinstatement.**

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date one year from the previous *expiration* date of the license.

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the department during this entire period. Nothing in this chapter shall divest the department of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

## **18 VAC 120-30-200. Polygraph examination procedures.**

A. Each licensed polygraph examiner and registered polygraph examiner intern must post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.

B. The examiner shall provide the examinee with a written explanation of the provisions of 18 VAC 120-30-200, 18 VAC 120-30-210 and 18 VAC 120-30-220 at the beginning of each polygraph examination.

C. The examinee may request a tape recording of the polygraph examination being administered. Each examiner shall maintain tape recording equipment and tapes adequate for such recording. The examiner shall safeguard all examination recordings with the records he is required to keep *by pursuant to* 18 VAC 120-30-230. All recordings shall be made available to the department, the examinee or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed \$25 only if the examinee requests and receives a copy of an examination tape recording.

D. The examinee shall be entitled to a copy of all portions of any written report pertaining to his examination which is prepared by the examiner and provided to any person or organization. The examinee shall make his request in writing to the examiner. The examiner shall comply within 10 business days of providing the written report to any person or organization or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than \$1.00 per page from the examinee for any copy provided.

E. The provisions of subsections B, C, and D of this section shall not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws. However, examiners administering examinations as described in this section shall comply with subsection B of this section through a verbal explanation of the provisions of 18 VAC 120-30-210 and 18 VAC 120-30-220.

## **18 VAC 120-30-220. Examination standards of practice.**

~~A. To protect the rights of each examinee, The examiner shall comply with the following standards of practice by advising and shall disclose to each examinee in the manner prescribed of each of the following standards of practice the provisions of this subsection and shall not proceed to examine or continue the examination if it is or becomes apparent to the examiner that the examinee does not understand any one of these standards disclosures:~~

1. All questions to be asked during the polygraph test(s) shall be reduced to writing and read to the examinee.

2. The examinee or the examiner may terminate the examination at any time.

3. If the examination is within the scope of § 40.1-51.4:3 of the Code of Virginia, the examiner shall explain the provisions of that statute to the examinee.

4. No questions shall be asked concerning any examinee's lawful religious affiliations, lawful political affiliations, or lawful labor activities. This provision shall not apply to any such affiliation which is inconsistent with the oath of office for public law-enforcement officers.

5. The examinee shall be provided the full name of the examiner and the name, address, and telephone number of the department.

~~B. The examiner shall not ask questions during any part of a pre-employment polygraph examination concerning an examinee's sexual preferences or sexual activities in accordance with § 40.1-51.4:3 or 54.1-1806 of the Code of Virginia.~~

~~C. B. An examiner shall not perform more than 12 polygraph examinations in any 24-hour period.~~

~~D. C. An examiner shall not ask more than 16 questions per chart on a single polygraph test. Nothing in this subsection shall prohibit an examiner from conducting more than one polygraph test during a polygraph examination.~~

~~E. D. An examiner shall allow on every polygraph test a minimum time interval of 10 seconds between the examinee's answer to a question and the start of the next question.~~

~~F. E. An examiner shall record at a minimum the following information on each polygraph test chart produced:~~

1. The name of the examinee;

2. The date of the examination;

3. The time that each test begins;

4. The examiner's initials;

5. Any adjustment made to component sensitivity;

6. The point at which each question begins and each answer is given;

7. Each question number; and

8. Each answer given by the examinee.



~~G.~~ F. An examiner shall render only three evaluations of polygraph tests:

1. Deception indicated;
2. No deception indicated; or
3. Inconclusive.

An examiner may include in his report any information revealed by the examinee during the polygraph examination.

Nothing in this section shall prohibit an examiner from explaining the meaning of the above evaluations.

~~H.~~ G. An examiner shall not render a verbal or written report based upon polygraph test chart analysis without having conducted at least two polygraph tests. Each relevant question shall have been asked at least once on each of at least two polygraph tests.

~~I.~~ H. An examiner may make a hiring or retention recommendation for the examiner's full-time employer provided the hiring or retention decision is not based solely on the results of the polygraph examination.

**18 VAC 120-30-230. Records.**

The licensed polygraph examiner or registered polygraph examiner intern shall maintain the following for at least one year from the date of each polygraph examination:

1. Polygraphic charts-;
2. Questions asked during the examination;
3. A copy of the results and the conclusions drawn;
4. A copy of any written report provided in connection with the examination-; *and*
5. Tape recordings of examinations made in compliance with subsection C of 18 VAC 120-30-200.

**18 VAC 120-30-240. Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval.**

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has presented false or fraudulent information when applying for any license or registration, renewal of license or registration, or approval;
2. Has violated, aided, or abetted others to violate Chapters 1 through 3 of Title 54.1 or §§ 54.1-1800 through ~~54.1-1805~~ 54.1-1806 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;
3. Has been convicted of any misdemeanor directly related to the occupation or any felony. Any pleas of nolo contendere shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be forwarded to the board within 10 days of

entry and shall be admissible as prima facie evidence of such conviction;

4. Has made any misrepresentation or false promise or caused to be published any advertisement that is false, deceptive, or misleading;

5. Has allowed one's license or registration to be used by anyone else;

6. Has failed, within a reasonable period of time, to provide any records or other information requested or demanded by the department; ~~or~~

7. Has displayed professional incompetence or negligence in the performance of polygraphy-; *or*

8. *Has violated any provision of 18 VAC 120-30-220.*

**18 VAC 120-30-250. Maintenance of license.**

A. Notice in writing shall be given to the department in the event of any change of ~~business or individual~~ name or address. Such notice shall be mailed to the department within 30 days of the change of the name or location. The department shall not be responsible for the licensee's or registrant's failure to receive notices, communications and correspondence caused by the licensee's or registrant's failure to promptly notify the department in writing of any change of name or address.

B. All licensees or registrants shall operate under the name in which the license or registration was issued.

**18 VAC 120-30-270. Minimum requirements for school curriculum.**

A. There must be one type of accepted polygraph instrument per three students in the course.

B. To receive approval, the institution must offer a minimum of 240 hours of instruction, unless the school has obtained approval from the department for less than the minimum hours of course instruction. The following subject areas *must be included* in the school's curriculum ~~must include~~:

1. Polygraph theory;
2. Examination techniques and question formulation;
3. Polygraph interrogation;
4. Case observation;
5. Polygraph case practice;
6. Chart interpretation;
7. Legal aspects of *polygraph examination*;
8. Physiological aspects of polygraphy;
9. Psychological aspects of polygraphy;
10. Instrumentation;
11. History of polygraph; and
12. Reviews and examinations.

C. Out-of-state schools seeking approval of their curriculum which has been approved by their state must have the

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appropriate regulatory agency of their state certify such approval to the department.

## 18 VAC 120-30-280. Instructor minimum requirements.

A. Any person teaching the subjects required by this regulation shall meet the following minimum requirements for the subjects to be taught:

1. Legal Aspects of Polygraph Examination. The instructor must be ~~a member of the Virginia State Bar~~ *licensed as an attorney in a state or jurisdiction of the United States.*
2. Polygraph Interrogation. The instructor must have five years experience in the field of interrogation.
3. Physiological Aspects of Polygraphy. The instructor must have a degree in a health related science with coursework in physiology from an accredited institution of higher learning.
4. Psychological Aspects of Polygraphy. The instructor must have a degree in psychology from an accredited institution of higher learning.
5. All other courses ~~may~~ *shall* be taught by individuals having at least five years of experience as a polygraph examiner.

B. The department may make exception to the above qualifications when an instructor is otherwise qualified by education or experience and provides such evidence in writing to the department.

~~C. Schools may be required to submit evidence of compliance with this section on a quarterly basis and shall allow observations of their compliance by the department's designated representatives.~~

## 18 VAC 120-30-290. Amendments and changes.

*Any change in the information provided by the school to the department as required by 18 VAC 120-30-260, 18 VAC 120-30-270 or 18 VAC 120-30-280 shall be reported to the department in writing within 30 days of such an occurrence.*

## 18 VAC 120-30-300. Periodic requalification for continued course approval.

*At times established by the department, the department may require that schools that have previously obtained course approval, provide the department with evidence, in a form set forth by the department, that they continue to comply with the requirements of 18 VAC 120-30-260, 18 VAC 120-30-270 and 18 VAC 120-30-280. Failure to continue to comply with the department's requirements or respond to such a request may result in the department withdrawing its approval.*

## 18 VAC 120-30-310. Grounds for withdrawing approval from a school.

*The department may withdraw approval from a school upon a finding that:*

1. *An instructor of the approved school fails to teach the curriculum as provided for in 18 VAC 120-30-270.*
2. *The owner, employee, or instructor of the approved school permits or allows a person to teach in the school*

*who does not meet the requirements of 18 VAC 120-30-280.*

3. *The owner, employee, or teacher is guilty of any dishonest conduct, including but not limited to fraud or deceit, in the teaching of polygraphy or violates any of the provisions of 18 VAC 120-30-240.*

**NOTICE:** The forms used in administering 18 VAC 120-30, Regulations Governing Polygraph Examiners, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Licensing, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

### FORMS

~~License Exam Application/~~ Internship Completion and License Exam Form, 16EXINT (~~eff. 11/99~~ rev. 11/02).

License/Intern Registration Application, 16LIC (~~eff. 11/99~~ rev. 12/03).

Polygraph School Curriculum Approval Application, POLYSCHL (~~12/97~~ rev. 11/02 ).

Supervisor Endorsement Form, POLYSEND (~~12/97~~ rev. 11/02).

VA.R. Doc. No. R05-100; Filed July 12, 2006, 2:18 p.m.

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

Titles of Regulations: 22 VAC 40-71. Standards and Regulations for Licensed Assisted Living Facilities (REPEALED).

22 VAC 40-72. Standards for Licensed Assisted Living Facilities (adding 22 VAC 40-72-10 through 22 VAC 40-72-1160).

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Public Hearing Dates: September 7, 2006 - 6 p.m. (Fredericksburg)

September 11, 2006 - 6 p.m. (Williamsburg)

September 13, 2006 - 6 p.m. (Roanoke)

Public comments may be submitted until October 6, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Judith McGreal, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, or e-mail [judith.mcgregal@dss.virginia.gov](mailto:judith.mcgregal@dss.virginia.gov).

Basis: The following sections of the Code of Virginia are the sources of the legal authority to promulgate this regulation:

§ 63.2-217 of the Code of Virginia (mandatory) says that the state board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia; § 63.2-1721 of the Code of Virginia (mandatory) requires applicants for assisted living facility licensure to undergo a background check; § 63.2-1732 of the Code of Virginia (mandatory and discretionary) addresses the state board's overall authority to promulgate regulations for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1802 of the Code of Virginia (mandatory and discretionary) authorizes assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments due to dementia if they comply with the board's regulations; § 63.2-1803 of the Code of Virginia (mandatory and discretionary) addresses staffing of assisted living facilities; § 63.2-1805 of the Code of Virginia (mandatory) relates to admission, retention, and discharge of residents; and § 63.2-1808 of the Code of Virginia (mandatory and discretionary) relates to resident rights.

Purpose: This new regulation is needed in order to replace the emergency regulation, which was the result of legislation passed by the 2005 Session of the General Assembly. The new regulation is also a comprehensive revision to the standards in effect prior to the emergency regulation. As such, the new regulation incorporates requirements included in the emergency regulation, as well as requirements in other areas critical to the protection and well-being of residents of assisted living facilities (ALFs).

The resident population of ALFs has become increasingly vulnerable in recent years. Elderly residents have become frailer, many residents have more severe health problems, and there are residents with greater mental health needs. This regulatory action strengthens the standards to provide much needed improvements in the requirements in order to protect the health, safety and welfare of residents of ALFs.

Substance: The proposed regulatory action adds requirements related to dedicated hospice facilities; licensees; public disclosure; a written risk management plan; an infection control program; a quality improvement program to strengthen facility management and accountability; requirements for job descriptions and annual employee performance evaluations; increased education and training for administrators, managers, and direct care staff; retaining mentally impaired residents and referral of those residents to mental health providers in certain situations; health screening; nutrition; medication management; pets; firearms; controlled substances; emergencies; physical plant features; and supervision, orientation and records of volunteers.

Issues: The primary advantage of the proposed regulatory action is the increased protection it provides to residents of assisted living facilities (ALFs). The ALF resident population has become increasingly vulnerable over the past several years; i.e., elderly residents are frailer, have more severe health problems, and have increased mental health issues. The proposed regulatory action strengthens the standards to provide much needed improvements in the requirements for care and services; for the qualifications, training, and responsibilities of staff who provide the care and services; for facility management; for the building in which the residents

reside; and for coordination with mental health treatment systems.

As always, when requirements are strengthened, there must be a balance between the benefit and the associated costs. In the proposed regulatory action, a fair and reasonable balance has been attempted throughout the standards. Since assisted living facilities will bear the lion's share of any increased costs, it is likely that some will disagree that this balance has been effectively achieved.

The advantage to the Commonwealth is that the proposed action reflects the importance that Virginia places on ensuring adequate care for some of its most vulnerable citizens. There are no known disadvantages to the Commonwealth.

It is possible that ALFs will pass along some of the increased costs to consumers, i.e., residents and their families. Moreover, it is recognized that the Auxiliary Grant rate is in need of an increase.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The State Board of Social Services (board) proposes to repeal the existing regulation, 22 VAC 40-71, and establish a new regulation, 22 VAC 40-72. The new regulation includes additional requirements for assisted living facilities in the following areas: care and services to residents; staff qualifications, training, and responsibilities; management of the facility; physical plant features; coordination with mental health systems; disclosure of information; and emergency preparedness. The proposed standards emphasize resident-centered care and services. The standards include requirements that strive for a more homelike environment for residents.

Estimated economic impact. The board proposes numerous new requirements for assisted living facilities. All of the proposed amendments produce some benefit, and most of the proposed amendments also produce additional cost. For the most part, the benefits are in the form of reduced health and safety risks for the assisted living facility residents. The costs consist of additional staff time and fees. According to the department, some of the better-run facilities are already effectively complying with several of the proposed requirements.

Pursuant to § 63.2-1706 of the Code of Virginia, the State Department of Social Services (department) inspects assisted living facilities per the following schedule. For any assisted living facility issued a license or renewal thereof for a period of

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six months, the department makes at least two inspections during the six-month period, one of which is unannounced. For any assisted living facility issued a license or renewal thereof for a period of one year, the department makes at least three inspections each year, at least two of which are unannounced. For any assisted living facility issued a license or a renewal thereof for a period of two years, the department makes at least two inspections each year, at least one of which shall be unannounced. For any assisted living facility issued a three-year license, the department makes at least one inspection each year, which is unannounced.

If the department finds the assisted living facility in violation of any of the proposed requirements, as well as the current requirements, it may administer sanctions as delineated in 22 VAC 40-80-340. Those sanctions currently include:

1. Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;
2. Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for violation that adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of residents, or for permitting, aiding or abetting the commission of any illegal act in an adult care facility;
3. Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license; and
4. Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709 D of the Code of Virginia. These include:
  - a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants or children are at risk;
  - b. Reducing the licensed capacity or prohibiting new admissions when the commissioner has determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;
  - c. Requiring that probationary status announcements, provisional licenses and denial and revocation notices be posted in a conspicuous place on the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violation;
  - d. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the commissioner has determined that the lack of such training has led directly to violations of regulations;
  - e. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of an adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;

f. Requiring licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and

g. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

The following subsections describe proposed amendments to these regulations, 22 VAC 40-72, along with estimated costs.

**Licensee.** The proposed changes to the section include (i) adding a requirement that the licensee meet the criminal background check regulation, (ii) specifying that the licensee must develop and maintain an operating budget, and (iii) requiring the licensee to provide advance notification of voluntary closure or impending sale, with updates upon request. The criminal background check requirement is specified in law as a result of legislation passed by the 2005 Session of the General Assembly (HB 2512 and SB 1183), and it provides increased assurances regarding the background of those the department licenses. More specification about the responsibilities of the licensee strengthens the provision and continuity of services to residents. Advance notice of closure alerts residents and their families to the necessity for relocation or to possible changes in services or rates, and also gives them time to make new arrangements, if necessary or desired. Criminal background checks cost approximately \$15 per person.

**Disclosure.** The proposed change adds a provision for consistent public disclosure that describes services, fees, criteria for admission, transfer and discharge, number and qualifications of staff, provision of activities, rules regarding resident conduct, and facility ownership structure. The requirement for public disclosure of specified information is based upon changes to the law made as a result of legislation passed by the 2005 Session of the General Assembly (HB 2512 and SB 1183). Disclosure provides prospective residents and their families information that allows for comparison of facilities and enables them to make an informed choice. The department estimates that it will cost \$145 for completion of the public disclosure form by the administrator (\$29 x 5 hours).<sup>1</sup>

**Risk management.** The proposed change adds a requirement for a written risk management plan. The rationale for such a plan is to ensure that management examines and reduces risks to residents in order to better protect the population in care. The department estimates that it will cost \$116 for development of a risk management plan by the licensee (\$29 x 4 hours).

**Quality improvement.** The proposed change adds a requirement for a quality improvement program, to include self-assessment based on examination of specified items, and development and implementation of plans to correct deficiencies and improve care. The purpose of the new requirement is to strengthen facility management and accountability for results. The department estimates that it will

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<sup>1</sup> The State Department of Social Services surveyed assisted living provider associations and determined that on average administrators are paid \$29 per hour.

cost \$145 for development of a quality improvement program by the administrator (\$29 x 5 hours).

Infection control program. The proposed change adds a requirement for an infection control program, with specified elements to be included. The purpose of the change is to provide a necessary safeguard, as there are more debilitated residents in care and an increasing number of residents with antibiotic resistant infections. The department estimates that it will cost \$116 for establishment of an infection control program by the administrator (\$29 x 4 hours).

Incident and occurrence reports. The proposed change adds specific occurrences that must be reported and provides instructions regarding documentation and reporting of incidents and occurrences. The purpose of the change is to clarify and strengthen the current standard. The department estimates that it will cost \$15 for completion of each incident report by the administrator (\$29 x 1/2 hour).

Provision of data. The proposed standard adds a requirement that facilities provide demographic and clinical data about residents to the department, upon request but no more than twice yearly. The rationale for this new provision is to provide better information for planning and training purposes and this information is to be shared with providers. The department estimates that it will cost \$116 for initial compilation of demographic and clinical data by the administrator (\$29 x 4 hours).

Personnel policies and procedures. The proposed changes add requirements for job descriptions for all positions and for annual employee performance evaluations. Also included in the proposed standard is a requirement for verification of employee credentials and training. The intent of these changes is to increase resident well-being through improved employee performance resulting from better knowledge and direction regarding job expectations, and to ensure employee credentials. The department estimates that it will cost \$29 for each employee performance evaluation by the administrator (annually, each time \$29 x 1 hour).

Employee orientation. The proposed changes add to employee orientation the following training topics: the facility's policies and procedures, handling of resident emergencies, infection control measures, incident reporting, and for direct care staff, information on residents' needs, preferences and routines. The purpose of these changes is to improve care and provide increased protection to residents. The intent includes an emphasis on person-centered care.

Administrator provisions and responsibilities. The proposed changes provide for (i) appointment of a qualified acting administrator when an administrator terminates employment, (ii) strengthening and clarifying administrator responsibilities, (iii) at least 24 of the 40 hours being on week days during the day shift, and (iv) a written schedule for the administrator. The purpose of these changes is to ensure appropriate and adequate oversight of facilities. These requirements are based on a change in the law resulting from 2005 Session of the General Assembly legislation, except for strengthening and clarifying administrator responsibilities. The department estimates that hiring a qualified acting administrator for 90

days would cost \$8,840 for ( $\$17 \times 40 = \$680$  a week x 13 weeks).

Administrator qualifications. The proposed changes increase educational requirements for administrators, providing for differences based on the level of care for which a facility is licensed. Provisions are made for the grandfathering of current administrators, although those who were grandfathered in the previous standards who are administrators in facilities licensed for assisted living care are required to complete a department-approved course. The intent of the changes is for administrators to have increased knowledge in order to better manage an increasingly complex operation. The department estimates that it would cost \$650 for a department-approved course for a prospective administrator of an assisted living facility and for current administrators of facilities licensed for assisted living care who do not have a high school degree or GED.

Administrator training. The proposed changes add the following requirements: (i) new administrator training, grandfathering in current administrators; (ii) refresher training for administrators when standards are revised, unless determined unnecessary by the department; and (iii) medication training for administrators under certain circumstances. The purpose of these changes is to increase protection of residents by ensuring administrators are knowledgeable in a timely fashion about standards and that resident safety is enhanced by improved management and supervision of medication aides. The requirement regarding medication training is based on changes in the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$174 for a new administrator to attend pre-licensure training ( $\$29 \times 6$  hours), \$87 for an administrator to attend revised standards training ( $\$29 \times 3$  hours), and \$1,278 for an administrator to complete the medication training program ( $\$29 \times 32$  hours =  $\$928 + \$350$  for the course).

Shared administrator for smaller facilities. The proposed change adds a provision for a shared administrator for smaller facilities under certain circumstances, allowing an administrator to be present for fewer than 40 hours at a given facility, without a designated assistant who meets the qualifications of an administrator. The intent of this standard is to reduce costs while maintaining adequate administrative function. The proposed standard is based on a change in the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that there would be \$20,040 in savings for a shared administrator in facilities licensed for 10 or fewer residents (annually \$45,000 of administrator salary saved – \$24,960 manager salary spent = \$20,040 saved) and \$13,360 in savings for a shared administrator in facilities licensed for 11-19 residents (annually \$30,000 of administrator salary saved – \$16,640 manager salary spent = \$13,360 saved).

Administrator of both assisted living facility and nursing home. The proposed change increases the educational and training requirements for the manager position, which is a necessary position if the administrator of both an assisted living facility and a nursing home does not provide direct management of the assisted living facility. Current managers are

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grandfathered. The purpose of this change is to upgrade the qualifications and training of the person who is responsible for the day-to-day management of the facility, in order to improve services and provide greater protection for residents.

Designated staff person in charge. The proposed change provides for a designated direct care staff person to be in charge when the administrator, designated assistant, or manager is not on duty at the facility. The rationale for this change is to ensure someone is responsible for overseeing the facility at all times. The proposed standard is based on a change in the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$13,312 for a designated staff person to be in charge for the hours when the administrator or manager is not on duty (annually 6,656 hours x additional \$2 an hour).

Direct care staff qualifications. The proposed change requires that direct care staff who care for residents at the assisted living level of care must complete specified training within two months of employment. Another change adds graduation from an approved personal care aide training program to the training options available. The intent of these changes is to assure that staff are trained as quickly as reasonably possible for improved staff performance and to offer more flexibility in training options. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly.

Direct care staff training. One of the proposed changes is to require that the annual direct care staff training must commence within 60 days of employment. Another proposed change is an increase to 16 hours in the annual training required for direct care staff serving the assisted living level of care except for licensed health care professionals and certified nurse aides who would be required to attend 12 hours of annual training. The intent of requiring training to commence within 60 days of employment is to prevent facilities from waiting until employees' 11th or 12th month for them to receive their annual training. The purpose of the increase in training hours is to increase the ability of staff to do their jobs well. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$42 per staff member for additional training for direct care staff for the assisted living level of care (annually 4 hours x \$8 + \$10 cost of training).

Volunteers. The proposed changes include additional requirements for supervision, orientation, and records of volunteers. The purpose of the changes is to ensure the safety of residents and volunteers, and to provide clearer direction to volunteers regarding their duties.

Employee records and health requirements. The proposed change requires risk assessments for tuberculosis. The purpose of the change is to comply with the current guidelines of the Virginia Department of Health.

First aid and CPR certification. The proposed changes add requirements that (i) all direct care staff have current first aid certification, (ii) there be additional staff with CPR certification in larger facilities, and (iii) there be an employee with current

first aid and CPR present at facility-sponsored activities off the premises and when an employee transports residents. The purpose of these changes is to avoid delays in securing emergency support. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$63 for a direct care staff person to receive certification in first aid (3.5 hours x \$8 + \$35 for course). The department estimates that it would cost \$55 for a direct care staff person to receive certification in CPR for a facility licensed for over 100 residents or for taking residents on trips (2.5 hours x \$8 + \$35 for course).

Staffing. The proposed changes add requirements for a written direct care staffing plan based upon resident acuity levels and individualized care needs and for written work schedules, and eliminate the allowance for smaller facilities to permit the staff person on duty to sleep during the night. The purpose of these changes is to ensure adequate staffing to meet the needs of residents. The proposed change regarding the elimination of allowing a staff person to sleep at night is based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$174 for development of a direct care staffing plan by the administrator (\$29 x 6 hours) and \$64 for elimination of the allowance that permitted staff person on duty to sleep at night in smaller facilities (daily 8 hours x \$8).

Admission and retention of residents. One of the proposed changes adds an assessment of psychological, behavioral, and emotional functioning, if recommended for a resident, to the information needed for the facility to make a decision regarding admission. The intent of this change is to ensure that the facility has adequate information to determine whether it can meet the needs of the resident. The proposed change is based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly. Another of the proposed changes is the addition of requirements when care for gastric tubes is provided by unlicensed direct care staff. The intent of this requirement is to provide protection to residents receiving gastric tube care from unlicensed staff, as allowed by a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$200 for an RN to train and monitor an unlicensed direct care staff person who provides care for gastric tubes (10 hours x \$20) and \$210 for each psychological assessment of a resident by a qualified mental health professional (\$105 x 2 hours).

Physical examination and report. The proposed changes require risk assessments for tuberculosis and add an annual assessment for residents. The purpose of the changes is to comply with the current guidelines of the Virginia Department of Health and provide further protection for the health of residents. The department estimates that it would cost \$19 for an annual tuberculosis risk assessment for a resident by a nurse in a physician's office.

Mental health assessment. The proposed changes add requirements for (i) an evaluation of a resident by a qualified mental health professional when there are indications of

mental illness, mental retardation, substance abuse, or behavioral disorders; (ii) notification of a contact person and a mental health services provider when the evaluation indicates a need for such services; and (iii) the collection of collateral information for individuals with mental health disabilities. The purpose of the changes is to ensure that residents with mental health problems are properly assessed and receive appropriate care. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly.

**Resident agreement with facility.** The proposed changes add a few items to be included in the agreement between the resident and the facility and require the facility to annually review with the resident the terms of the agreement. The intent of the changes is to ensure that residents are aware of the terms of the agreement and their residency in the facility. The department estimates that it would cost \$4.80 per resident for an administrator to review with the resident the agreement between him and the facility (annually, each time \$29 x 10 minutes).

**Orientation and related information for residents.** The proposed change adds a requirement for orientation for new residents and their legal representatives. The intent of this change is to assure residents and their representatives are aware of facility routines from the beginning in order to allow a smoother transition and protect the welfare of the resident.

**Discharge of residents.** The proposed changes include additional provisions regarding notification of discharge and reduction in the maximum number of days notice a facility may require from a resident who wishes to move. The intent of the changes are to ensure proper notification of discharge and to bring time frames for resident-initiated notice closer to those for facility-initiated notice.

**Uniform assessment instrument (UAI).** The proposed changes add a requirement that facility employees who complete the uniform assessment instrument (UAI) for private pay residents receive department-approved training and that residents are advised of the right to appeal the outcome of the assessment. The purpose of the changes is to ensure that employees are well trained in completion of the UAI and that residents are aware of their right to appeal the assessment.

**Individualized service plans.** The proposed changes (i) add a requirement for staff training on the completion of the individualized service plan (ISP), (ii) shorten time frames for completion of the ISP, (iii) make an allowance for deviation from the plan, and (iv) require documentation of outcomes and progress toward reaching expected outcomes. The purpose of the changes is to improve ISPs so that the needs of residents are better addressed. The department estimates that it would cost \$145 for an administrator to complete the ISP training program (\$29 x 5 hours).

**Personal care services and general supervision and care.** The proposed changes provide for (i) resident-centered care, (ii) observation of residents for changes in functioning, (iii) notification requirements when residents fall or wander, (iv) communication between an employee and a resident in a language the resident understands, and (v) resident access to preferred personal care items when possible. The intent of the

changes is that residents receive appropriate care and services based on their individualized needs.

**Health care services.** The proposed changes add more specific requirements regarding the provision of health care. The intent of the changes is to ensure that needed health care is provided to residents in a timely manner.

**Health care oversight.** The proposed changes add requirements for (i) the licensed health care professional to have two years of experience in adult residential or day care, (ii) residents at the residential living level of care to be provided health care oversight at least every six months, and (iii) additional responsibilities to be included in the health care oversight. The purpose of the changes is to increase health care oversight by broadening it to include residents at both levels of care and by adding certain responsibilities, and to improve the oversight by requiring health care professionals to have experience in adult residential or day care. The additional responsibility related to medication is based upon a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$144 for a licensed health care professional to provide health care oversight for residents at the residential living level of care (twice a year, each time \$18 x 8 hours) and \$9 for increased responsibilities of a licensed health care professional who provides health care oversight for residents at the assisted living level of care (four times a year, each time \$18 x 1/2 hour).

**Mental Health Services Coordination, Support, and Agreement.** The proposed change requires a facility to evaluate its ability to retain mentally impaired residents when recommended mental health services cannot be obtained. The purpose of the change is to protect residents and others, and to provide information on the accountability of community services. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 Session of the General Assembly.

**Intervention for high risk behavior.** The proposed changes require (i) referral to mental health providers when a resident exhibits or indicates an intent to engage in high risk behavior, (ii) if needed, the development of a behavioral management tracking form, (iii) training for facility staff who care for residents with high risk behavior, and (iv) special conditions to be met for use of a restrictive behavioral management plan. The purpose of the changes is to reduce risks to residents with mental disorders and increase safety, and to improve services to residents who exhibit high risk behavior. The proposed changes relating to referral and training are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$14.50 for an administrator to provide consultation to a mental health treatment provider regarding a behavioral management tracking form (\$29 x 1/2 hour) and \$52.50 for development of a behavioral management tracking form by a mental health treatment provider (\$105 x 1/2 hour).

**Activity/recreational requirements.** The proposed changes provide for greater variety in available activities, for involvement of residents and employees in planning activities, and for improved implementation of the activity program. The

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intent of the changes is to offer an activity program that is of increased interest and benefit to residents.

Visiting in the facility. The proposed change adds a requirement that a facility encourage family involvement with a resident and provide opportunities for family participation in facility activities. The intent of the change is to promote continued connectedness.

Resident rights. The proposed changes add an annual review of resident rights with employees and a requirement that a facility follow up when a physician did not record a resident's inability to understand rights that is later questioned. The purpose of the changes is to remind employees about resident rights and to emphasize their importance and to stop the presumption that a resident understands his rights in the face of contrary evidence.

Food service and nutrition. One of the proposed changes provides for residents to have the option of eating in their rooms if the facility offers routine or regular room service. The intent of this change is to allow greater flexibility and to support resident choice. Another proposed change adds a requirement that residents have a minimum of 30 minutes to eat. The intent of the change is to ensure that residents have adequate time to finish their meals. Another proposed change includes the monitoring of residents' food consumption and intervention when nutritional problems are suspected. The intent of this change is to protect the health of residents.

Number of meals. The proposed change adds availability of snacks between meals. The intent of the change is to provide more food for residents who eat smaller meals due to disability or medications and to allow all residents to have the opportunity for a snack in between meals, which is consistent with the "homelike" atmosphere that assisted living facilities market to the public.

Menus for meals and snacks. The proposed changes add requirements for (i) having a dietary manual, (ii) quarterly oversight of special diets by a dietitian or nutritionist, and (iii) availability of drinking water. The purpose of the changes is to improve nutrition and hydration and to ensure that special diets are prepared and provided appropriately. The department estimates that it would cost \$25 for a diet manual and \$40 annually for a dietitian or nutritionist to provide oversight of special diets (quarterly, each time \$20 x 1/2 hour per resident).

Medication management plan and reference materials. The proposed changes add requirements for (i) a medication management plan that addresses procedures related to administering medications to residents and is approved by the department and (ii) maintenance of medication reference materials. The intent of the changes is to improve administration of medications and reduce the possibility of medication errors. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$145 for development of a medication management plan by an administrator (5 hours x \$29) and \$55 for medication management reference materials.

Physician's order. The proposed changes add requirements for new orders for medication and treatment when a resident returns from a hospital, and for the content of and the taking of physicians' orders. The intent of these changes is to ensure that residents receive medications properly. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly.

Storage of medications. The proposed changes add requirements for the storage of controlled substances and other medications. The intent of the changes is to protect the safety of residents. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly.

Qualifications, training, and supervision of staff administering medications. The proposed changes (i) increase the qualifications of medication aides who care for residents at the residential living level of care, grandfathering in current medication aides, (ii) add annual in-service training for medication aides, (iii) add a requirement for a refresher course every three years for medication aides, and (iv) add a requirement regarding supervision of medication aides. The purpose of the changes is to have more qualified and better trained and supervised medication aides to reduce errors in medication administration. The proposed changes related to in-service training and the refresher course are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly. The department estimates that it would cost \$655 for the department-approved direct care staff training for a medication aide who only cares for residents at the residential living level of care, with current medication aides grandfathered (40 hours x \$8 + \$335 for course), \$18 for in-service medication training for medication aides provided by a licensed health care professional (annually, each time 1 hour x 18) and \$34 for medication refresher training for a medication aide provided by a licensed health care professional (every three years, \$10 for course + 3 hours x \$8).

Administration of medications and related provisions. The proposed changes (i) eliminate the option of pre-pouring medications, (ii) add a requirement that medications be administered in accordance with the resource guide approved by the Board of Nursing, and (iii) specify when a stat-drug box may be used. The purpose of these changes is to reduce errors in the administration of drugs and regarding the stat-drug box, to comply with Board of Pharmacy regulations. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly.

Medication review. The proposed changes (i) add a requirement for an annual review of medications of residents in the residential living level of care, except for those who self-administer; (ii) increase the review of medications to every six months for residents in the assisted living level of care; and (iii) specify that which needs to be covered in the review. The purpose of the changes is to add protections for residents and to ensure the review is done properly. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 Session of the General Assembly.



**Restraints.** The proposed changes eliminate the requirement for a written plan to reduce the use of restraints in a facility and add notification requirements when restraints are used. The intent of eliminating the written plan is to delete a requirement that has proved to be unnecessary, since restraint reduction is focused on the individual resident. The purpose of adding notification requirements is to increase protection to residents.

**Personal possessions.** The proposed change adds a requirement that a facility implement a policy regarding procedures to follow when a resident's personal possession is missing. The intent of the change is to provide assistance to a resident in recovering a missing item and to reduce future losses. The department estimates that it would cost \$29 for the administrator to develop a policy regarding procedures to follow when a resident's personal possession is missing (1 hour x \$29).

**Resident councils.** The proposed changes increase a facility's responsibilities for supporting a resident council, eliminate the exception regarding the council when the majority of residents do not want one, and address the purposes of the council. The intent of these changes is to strengthen the chances of having a successful resident council, which would give residents a more active role in working with management.

**Pets living in the assisted living facility.** The proposed change adds requirements regarding pets living in the facility, if the facility allows pets to live on the premises. The purpose of the change is to ensure that pets are healthy and well-treated; do not compromise the rights, preferences, or medical needs of any resident; and do not pose a significant health or safety risk.

**Pets visiting the assisted living facility.** The proposed change adds requirements for pets that visit the facility, if the facility allows pets to visit. The intent of the change is to ensure that pets are in good health and well-treated; that residents' rights, preferences and medical needs are not compromised; and that pets do not pose a significant health or safety risk.

**General requirements.** The proposed change adds a requirement that facilities that allow firearms on the premises must ensure that ammunitions and firearms are stored separately and in locked locations. The purpose of the change is to protect residents and staff.

**Maintenance of buildings and grounds.** The proposed change adds a requirement for a schedule for preventive maintenance and a schedule for cleaning and housekeeping. The intent of the change is to ensure that buildings and grounds are well-maintained for the safety and well-being of residents. The department estimates that it would cost \$58 for the administrator to develop schedules for preventive maintenance and for cleaning and housekeeping tasks (2 hours x \$29).

**Heating, ventilation, and cooling.** The proposed changes (i) lower the inside temperature from 85 to 82 degrees for the use of cooling devices, (ii) add a requirement that the largest common area used by residents be air conditioned six months after the effective date of the regulations, (iii) add a requirement for air conditioning for new construction or change in use group, and (iv) add a requirement that as of six

years after the effective date of the standards, the facility be air conditioned. The purpose of the changes is to protect the health and well-being of residents, many of whom are elderly or on medications. A fan is insufficient in this climate. The department estimates that it would cost \$650 for air conditioning equipment for a common area (window/wall unit 28,000 BTUs), \$5,000 for air conditioning system for a building that is new construction (central air for 4,000 square feet) and \$7,000 for adding an air conditioning system to existing building (\$1,500 to upgrade electrical service + \$5,500 for central air conditioning system for 4,000 square feet).

**Sleeping areas.** The proposed change decreases the allowed occupancy in a bedroom to no more than two residents for new construction or change in use group. The intent of the change is to provide greater privacy and dignity for residents. The department estimates that it would cost \$500 for a bedroom that can accommodate two residents, rather than four, in new construction (\$200 for wall, \$100 for door, \$100 for wiring, electrical, mechanical work, and \$100 miscellaneous expenses).

**Toilet, face/hand washing and bathing facilities.** The proposed changes require for new construction or change in use group one toilet for four residents, one sink for four residents, and one tub or shower for seven residents on floors with residents' bedrooms, with related provisions. The proposed changes also provide for an additional toilet or sink for common use on floors with resident rooms and the main living or dining area when there is new construction or change in use group. The purpose of the changes is to improve access to bathrooms for populations with uncertain continence and to provide greater dignity to residents. The department estimates that it would cost \$670 for a sink, toilet, and bathtub with installation in new construction (\$160 for sink, \$210 for toilet, and \$300 for bathtub).

**Emergency preparedness and response plan.** The proposed changes add requirements for an emergency preparedness and response plan that is developed in accordance with a department-approved manual and that addresses specified topic areas, and for quarterly reviews on emergency preparedness. The intent of the changes is to ensure that facilities are better prepared for both natural and manmade disasters. The department estimates that it would cost \$145 for an administrator to develop an emergency preparedness and response plan (\$29 x 5 hours).

**Emergency evacuation plan.** The proposed change broadens plans to include other emergencies as well as fire. The intent of the change is for the facility to be better prepared to meet all types of emergencies.

**Evacuation drills.** The proposed change requires evacuation drills, rather than fire drills. The intent of the change is to broaden the type of emergencies for which a facility will be prepared.

**Emergency equipment and supplies.** The proposed changes (i) add a few required items to the first aid kit, (ii) add a requirement that there be a first aid kit on facility motor vehicles that transport residents, (iii) add a requirement that first aid kits be checked quarterly to ensure items are present

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and not expired, (iv) add a requirement that by 07/01/07, facilities with six or more residents are able to connect to a temporary electrical power source and have either an emergency generator or access to one through contract, (v) add a requirement that there be an alternative form of communication in addition to the telephone, and (vi) increase the supply of emergency food and drinking water to a 96-hour supply and add generator fuel and oxygen for residents using oxygen to supply requirements. The intent of the changes is to protect resident safety and to ensure a facility's ability to respond to an emergency situation. The proposed change regarding the emergency generator is based on revisions to the law resulting from legislation passed by the 2004 Session of the General Assembly. The department estimates that it would cost \$40 for a first aid kit on a facility vehicle, \$3,000 for an emergency generator and wiring and electrical service panel work in a small facility (\$1,500 for generator + \$1,500 for wiring and electrical service panel work), and \$1 per resident for one additional gallon of emergency drinking water.

Plan for resident emergencies and practice exercise. The proposed change adds a requirement that a facility have a plan for resident emergencies and that employees practice procedures for resident emergencies. The purpose of the change is to increase protection of the safety and welfare of residents. The department estimates that it would cost \$29 for development of a resident emergency plan by an administrator (\$29 x 1 hour).

Activities. The proposed change adds two categories of required activities to be available to residents in special care units. The intent of the change is to add other areas of interest and to provide increased variety of activities for the benefit of residents.

Businesses and entities affected. The proposed regulations affect the 620 licensed assisted living facilities in the Commonwealth, as well as their residents and families. Prospective administrators and managers and some current administrators of assisted living facilities are also affected.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments in aggregate should reduce risks to the health and safety of assisted living facility residents, but the associated increased costs may cause some facilities to no longer be profitable. Hence, there may be a modest reduction in employment.

Effects on the use and value of private property. Overall, the proposed amendments will raise costs for assisted living facilities.

Small businesses: costs and other effects. As discussed above, the proposed amendments will significantly raise costs in terms of staff time and fees for assisted living facilities, most or all of which are small businesses.

Small businesses: alternative method that minimizes adverse impact. Essentially all of the proposed new requirements will likely produce some benefit for the public. Cumulatively though, they do introduce a significant new burden for assisted living facilities, most or all of which are small businesses. Given the thoroughness of the safeguards

associated with the proposed regulations, the safety of the residents would likely not be significantly compromised by making a few of the proposals optional.

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

## Summary:

*The proposed regulatory action is a joint action to repeal the existing regulation, 22 VAC 40-71, and establish a new regulation, 22 VAC 40-72, for licensed assisted living facilities. The new regulation includes additional requirements for assisted living facilities in the following areas: care and services to residents; staff qualifications, training, and responsibilities; management of the facility; physical plant features; coordination with mental health systems; disclosure of information; and emergency preparedness. The proposed standards emphasize resident-centered care and services. The standards include requirements that strive for a more homelike environment for residents.*

## CHAPTER 72. STANDARDS FOR LICENSED ASSISTED LIVING FACILITIES.

### PART I. GENERAL PROVISIONS.

#### **22 VAC 40-72-10. Definitions.**

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

*"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.*

*"Administer medication" means to open a container of medicine or to remove the prescribed dosage and to give it to the resident for whom it is prescribed.*

*"Administrator" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.*

*"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia. The individual or his legal representative can rescind the document at any time.*

*NOTE: See § 54.1-2985 of the Code of Virginia regarding rescinding an advance directive and § 54.1-2987.1 of the Code of Virginia regarding rescinding a Durable Do Not Resuscitate Order.*

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13 VAC 5-63, the Virginia Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

NOTE: Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation (CPR)" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or mental retardation, that prohibits an individual from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Community services board" or "CSB" means a citizens' board established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the State Department of Social Services.

"Department's representative" means an employee or designee of the State Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in the performance of personal care and daily living activities.

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Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance and laundry personnel.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency" means, as it applies to restraints, a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by not permitting entry into the facility until the requirements for admission have been met.

"Employees" mean personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function or duration of employment at the facility. Employees also include those individuals hired through a contract to provide services for the facility.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent unnecessary additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"High risk behavior" means any behavior, including an expressed intent, that exposes, or has the potential to expose, the person exhibiting the behavior, or those being exposed to the behavior, to harm. Examples of high risk behaviors

include, but are not limited to, the following: physically assaulting others or gesturing, making suicidal attempts, verbalizing a threat to harm self or others, verbalizing an unrealistic fear of being harmed by others, destroying property that exposes self or others to harm, wandering in or outside of the facility, being intrusive in the personal space of others, putting objects or liquids in the mouth that are mistaken as food or consumable fluids, increased physical activity such as floor pacing that might indicate anxiety or stress, increased or confusing speech pattern or communications that might indicate a disorder of thought process, decreased physical activity such as staying in bed, not eating, or not communicating that might indicate depression.

"Household member" means any person domiciled in an assisted living facility other than residents or employees.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious to life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of another person.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

NOTE: "Physician" is defined later in this section.

"Individualized service plan (ISP)" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act.

NOTE: A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions.

NOTE: For any given standard, the term legal representative applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist.

NOTE: Responsibilities of physicians contained within this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Licensee" means any person, association, partnership or corporation to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22 VAC 40-72-220 and 22 VAC 40-72-230.

"Mandated reporter" means the following persons acting in their professional capacity who have reason to suspect abuse, neglect or exploitation of an adult:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;
3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5 of the Code of Virginia;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer.

This is pursuant to § 63.2-1606 of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

NOTE: An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has successfully completed (i) one of the five requirements specified in 22 VAC 40-72-250 C 1 through 5, with an exception allowed if responsible for medication administration prior to (insert the effective date of these standards), and (ii) the medication training program developed by the department and approved by the Board of Nursing.

"Mental impairment" means a disability that reduces an individual's ability to reason, make decisions, or engage in purposeful behavior.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, Text Revision, 2000, or subsequent editions, that affects the well-being or behavior of an individual.

"Mentally retarded" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.

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*"Outbreak"* means a sudden rise in the incidence of a disease or symptoms above expected levels, or the occurrence of a large number of cases of a disease or symptoms in a short period of time. There is not a specific number or percentage that always constitutes an outbreak because the level of risk is dependent upon the severity of the disease or the intensity of the symptoms.

*"Physical impairment"* means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

*"Physical restraint"* means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

*"Physician"* means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

*"Private pay"* means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

*"Psychopharmacologic drug"* means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the Food and Drug Administration.

*"Public pay"* means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

*"Qualified"* means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience.

*NOTE:* Specific definitions for qualified assessor and qualified mental health professional are included in this section.

*"Qualified assessor"* means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument. For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

*"Qualified mental health professional"* means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician: a doctor of medicine or osteopathy; (ii) a psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iv)

a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRSRS); (vi) a registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vii) any other licensed mental health professional; or (viii) any other person deemed by the Department of Mental Health, Mental Retardation and Substance Abuse Services as having qualifications equivalent to those described in this definition.

*"Rehabilitative services"* means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to enhance or improve his level of functioning.

*"Resident"* means any adult residing in an assisted living facility.

*"Residential living care"* means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

*"Respite care"* means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

*"Restorative care"* means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

*"Risk management"* means a planned set of strategies intended to eliminate or reduce potential or actual harm to persons from risks to their person or well-being, including but not limited to, environmental and physical hazards, harm from others or from self.

*"Safe, secure environment"* means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be

monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to door alarms, cameras, constant employee oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. NOTE: Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician that is provided by and within the scope and practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of

the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

## **22 VAC 40-72-20. Legal base and applicability.**

A. Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia include requirements of law relating to licensure, including licensure of assisted living facilities.

B. This regulation applies to assisted living facilities as defined in § 63.2-100 of the Code of Virginia and in 22 VAC 40-72-10.

1. Each assisted living facility shall comply with Parts I (22 VAC 40-72-10 et seq.) through IX (22 VAC 40-72-930 et seq.) of this regulation.

2. An assisted living facility that cares for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare shall also comply with Part X (22 VAC 40-72-980 et seq.) of this regulation.

## **22 VAC 40-72-30. Dedicated hospice facilities.**

A. Providers operating an assisted living facility that is a dedicated hospice facility shall maintain compliance with both the department's regulations for the licensure of assisted living facilities and the Department of Health's regulations for the licensure of hospice.

B. When applicable regulations for licensure of assisted living facilities and licensure of hospice are similar, the more stringent regulation shall take precedence.

C. At the time of submission of a renewal application for an assisted living facility license, providers operating a dedicated hospice facility shall include a copy of all inspection reports and plans of correction for the licensed hospice for the previous assisted living facility licensure period. These reports may be taken into consideration in the department's decision to renew an assisted living facility's license.

## **22 VAC 40-72-40. Program of care.**

There shall be a program of care that:

1. Meets the resident population's physical, mental, emotional, and psychosocial needs;
2. Provides protection, guidance and supervision;
3. Promotes a sense of security and self-worth;
4. Promotes the resident's involvement with appropriate community resources; and
5. Meets the objectives of the service plan.

## **PART II.**

### **ADMINISTRATION AND ADMINISTRATIVE SERVICES.**

## **22 VAC 40-72-50. Licensee.**

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state or local laws and other relevant regulations; and with the facility's own policies and procedures.

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*B. The licensee shall meet the following requirements:*

1. *The licensee shall give evidence of financial responsibility.*

2. *The licensee shall be of good character and reputation.*

*NOTE: Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.*

3. *The licensee shall meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22 VAC 40-90).*

4. *The licensee shall protect the physical and mental well-being of residents.*

5. *The licensee shall exercise general supervision over the affairs of the licensed facility and establish policies concerning its operation in conformance with applicable law, these regulations, and the welfare of the residents.*

6. *The licensee shall develop and maintain an operating budget, including resident care, dietary, and physical plant maintenance allocations and expenditures. The budget shall be sufficient to ensure adequate funds in all aspects of operation.*

7. *The licensee shall ensure that the facility keep such records, make such reports and maintain such plans, schedules, and other information as required by this chapter for licensed assisted living facilities. The facility shall submit, or make available, to the department's representative, records, reports, plans, schedules, and other information necessary to establish compliance with this chapter and applicable law. Such records, reports, plans, schedules, and other information shall be maintained at the facility and may be inspected at any reasonable time by the department's representative.*

8. *The licensee shall meet the qualifications of and requirements for the administrator if he serves as the administrator of the facility.*

*C. An assisted living facility sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.*

*D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.*

1. *The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the department.*

2. *The commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the board.*

3. *The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.*

4. *The commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.*

*E. If there are plans for a facility to be voluntarily closed or sold, the licensee shall notify the licensing office of intent to close or sell the facility no less than 60 days prior to the closure or sale date. The following shall apply:*

1. *No less than 60 days prior to the planned closure or sale date, the licensee shall notify the residents, legal representatives, and designated contact persons of the intended closure or sale of the facility and the date for such, and the requirements of 22 VAC 40-72-420 shall apply.*

2. *If the facility is to be sold, at the time of notification of residents of such, the licensee shall explain to each resident, legal representative, and at least one designated contact person that unless provided otherwise by the new licensee, the resident has a choice as to whether to stay or to relocate and that if a resident chooses to stay, there must be a new agreement/acknowledgment between the resident and the new licensee that meets the specifications of 22 VAC 40-72-390.*

3. *The licensee shall provide updates regarding the closure or sale of the facility to the licensing office, as requested.*

*EXCEPTION: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the licensing office, the residents, legal representatives, and designated contact persons as soon as the intent to close or sell the facility is known.*

**22 VAC 40-72-60. Disclosure.**

A. *The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:*

1. *Disclose information fully and accurately in plain language;*

2. *Be provided to the prospective resident and his legal representative at least five days in advance of the planned admission date, and prior to signing an admission agreement or contract;*

3. *Be provided to a resident or his legal representative upon request; and*

4. *Disclose the following information, which shall be kept current:*

a. *Name of the facility;*

b. *Name of the licensee;*

c. *Names of any other facilities for which the licensee has been issued a license by the Commonwealth of Virginia;*



d. Ownership structure of the facility, i.e., individual, partnership, corporation, limited liability company, unincorporated association or public agency;

e. Owner of the property, if it is leased;

f. Name of management company that operates the facility, if other than the licensee;

g. Licensed capacity of the facility and description of the characteristics of the resident population;

h. Description of all accommodations, services, and care that the facility offers;

i. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and any fees for additional accommodations, services, and care;

j. Policy regarding increases in charges and length of time for advance notice of intent to increase charges;

k. Amount of an advance or deposit payment and refund policy for such payment;

l. Criteria for admission to the facility and any restrictions on admission;

m. Criteria for transfer to a different living area within the same facility, including transfer to another level of care within the same facility or complex;

n. Criteria for discharge, including the actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility;

o. Requirements or rules regarding resident conduct and other restrictions and special conditions;

p. Range, categories, frequency, and number of activities provided for residents;

q. General number, functions, and qualifications of staff on each shift;

r. Indication of whether contractors are used to provide any essential services to residents and, if used, provide names of contractors upon request: and

s. Address of the website of the department, with a note that additional information about the facility may be obtained from the website, including type of license, special services, and compliance history that includes information after July 1, 2003.

B. If a prospective resident is admitted to the facility, written acknowledgement of the receipt of the disclosure by the resident or his legal representative shall be retained in his record.

**EXCEPTION:** If circumstances are such that resident admission to a facility prevents disclosure of the information at least five days in advance, then the information shall be disclosed at the earliest possible time prior to signing an admission agreement or contract. The circumstances causing the delay shall be documented.

C. The information required in this section shall also be available to the general public.

## **22 VAC 40-72-70. Risk management.**

The licensee or his designee shall develop, implement, monitor, and evaluate a risk management plan for the facility that addresses risk to residents, employees, volunteers and visitors. The plan shall be in writing and shall include procedures for identifying, monitoring, and preventing or minimizing risks associated with, but not limited to, injuries, errors in medication administration or documentation, dermal ulcers, infections, falls, wandering, aggression, suicide and suicide attempts, assaults, resident abuse, procedure errors, and environmental and physical hazards.

## **22 VAC 40-72-80. Quality improvement.**

A. Each assisted living facility shall develop and implement an ongoing quality improvement program to evaluate objectively and systematically the quality of resident care and services, pursue opportunities to improve care and services, and resolve identified problems.

B. Each facility shall perform a comprehensive, integrated, self-assessment of the quality and appropriateness of care provided to meet the needs of residents, including services provided under contract or agreement. The administrator shall involve in the assessment direct care staff and any other employees as deemed appropriate. The self-assessment shall be performed at least quarterly and shall include, but not be limited to, an examination of the following:

1. Appropriateness of services provided to residents;
2. Results of resident care;
3. Degree of individual resident participation in decisions regarding the care and services provided to him;
4. Unacceptable or unexpected trends or occurrences;
5. Degree of satisfaction of residents and their families;
6. Appropriateness of complaint resolution;
7. Employee concerns;
8. Findings and recommendations from the health care oversight required by 22 VAC 40-72-480 and actions taken as a result;
9. Incident reports and other occurrences as required in 22 VAC 40-72-100; and
10. Findings of department inspections and actions taken to correct violations.

C. The facility shall use the findings of the self-assessment to improve the quality and appropriateness of care and services to residents. The facility shall develop and implement appropriate plans of action to:

1. Correct identified deficiencies and their causes;
2. Resolve systemic problems;
3. Revise policies and practices, as necessary; and
4. Improve overall care and services.

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D. The facility shall document compliance with these requirements and the outcomes of the plans of action. Relevant dates and the signature of the administrator indicating review of the documentation shall be included. The documentation for at least the most recent three-year period shall be maintained at the facility.

## **22 VAC 40-72-90. Infection control program.**

A. The assisted living facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to prevent the development and transmission of disease and infection.

B. The infection control program shall encompass the entire physical plant and grounds and all services.

C. The infection control program addressing the surveillance, prevention and control of infections shall include:

1. Establishing procedures to isolate the infecting organism;
2. Providing easy access to handwashing equipment for all employees and volunteers;
3. Training for and supervisory monitoring of all employees and volunteers in proper handwashing techniques, according to accepted professional standards, to prevent cross contamination;
4. Training for all employees and volunteers in appropriate implementation of standard precautions;
5. Prohibiting employees and volunteers with communicable diseases or infections from direct contact with residents or their food, if direct contact may transmit disease;
6. Monitoring employees' and volunteers' performance of infection control practices;
7. Handling, storing, processing and transporting linens, supplies and equipment in a manner that prevents the spread of infection;
8. Handling, storing, processing and transporting medical waste in accordance with applicable regulations;
9. Maintaining an effective pest control program; and
10. Providing employee and volunteer education regarding infection risk-reduction behavior.

D. The methods utilized for infection control shall be described in a written document that shall be available to all staff.

## **22 VAC 40-72-100. Incident and occurrence reports.**

A. Each facility shall report to the licensing office by the next working day any major incident that has negatively affected or could threaten the life, health, safety or welfare of any resident.

B. Each facility shall report to the licensing office by the next working day the following occurrences:

1. Absence/elopement of a resident from the facility when the resident cannot be located or has left the premises and there is sufficient reason to question his whereabouts;

2. An outbreak of a contagious disease or condition among residents, or an outbreak of food poisoning among residents;

3. Significant physical damage to the facility, disruption of utilities services, call to the fire department or evacuation of the building or any rooms in the building due to a fire, natural disaster or other emergency;

4. An occurrence that requires the services of a law-enforcement agency.

C. The report required in subsections A and B of this section shall include (i) the name of the facility, (ii) the name(s) of the resident(s) involved in the incident or occurrence, (iii) the name of the person making the report, (iv) the date of the incident or occurrence, (v) a description of the incident or occurrence, and (vi) the actions taken in response to the incident or occurrence.

D. The facility shall submit a written report of each incident or occurrence specified in subsections A and B of this section to the licensing office within seven days after the incident or occurrence took place. The report shall be signed and dated by the administrator and include the following information:

1. Name and address of the facility;
2. Name of the resident(s) involved in the incident or occurrence;
3. Date and time of the incident or occurrence;
4. Name, title, and signature of the person making the report;
5. Date of completion of the report;
6. Type of incident or occurrence;
7. Description of the incident or occurrence, the circumstances under which it happened, and when applicable, extent of injury or damage;
8. Location of the incident or occurrence;
9. Actions taken in response to the incident or occurrence;
10. Outcome resolution of the incident or occurrence, and if applicable follow-up actions or care;
11. Name of employee in charge at the time of the incident or occurrence;
12. Names, telephone numbers and addresses of witnesses to the incident or occurrence, if any.

E. The facility shall submit amendments to the written report when circumstances require, such as when additional actions are taken or there is resolution of the incident or occurrence after submission of the report or significant new information becomes available.

F. A copy of the written report of each incident or occurrence shall be maintained by the facility for at least two years.

## **22 VAC 40-72-110. Provision of data.**

As requested by the department, but not more than twice annually, the facility shall provide the department with

demographic and clinical data on its residents. Such data may include, but shall not be limited to, the average age of persons in care, number of private pay persons and number of public pay persons, and the number of persons meeting certain major medical and psychiatric diagnostic categories.

## **22 VAC 40-72-120. Conservator or guardian.**

The facility licensee/operator, facility administrator, relatives of the licensee/operator or administrator, or facility employees shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37.2 of the Code of Virginia.

## **22 VAC 40-72-130. Management and control of resident funds.**

Pursuant to § 63.2-1808 A 3 of the Code of Virginia, unless a conservator or guardian of a resident has been appointed (see 22 VAC 40-72-120), the resident shall be free to manage his personal finances and funds; provided, however, that the facility may assist the resident in such management in accordance with 22 VAC 40-72-140 and 22 VAC 40-72-150.

## **22 VAC 40-72-140. Resident accounts.**

The facility shall provide to each resident a monthly statement or itemized receipt of the resident's account and shall place a copy also in the resident's record. The monthly statement or itemized receipt shall itemize any charges made and any payments received during the previous 30 days or during the previous calendar month and shall show the balance due or any credits for overpayment on the resident's account.

## **22 VAC 40-72-150. Safeguarding residents' funds.**

A. If the resident delegates the management of personal funds to the facility, the following standards apply:

1. Residents' funds shall be held separately from any other moneys of the facility. Residents' funds shall not be borrowed, used as assets of the facility, or used for purposes of personal interest by the licensee/operator, administrator, or facility employee.
2. If the facility's accumulated residents' funds are maintained in a single interest-bearing account, each resident shall receive interest proportionate to his average monthly account balance. The facility may deduct a reasonable cost for administration of the account.
3. If any personal funds are held by the facility for safekeeping on behalf of the resident, a written accounting of money received and disbursed, showing a current balance, shall be maintained. Residents' funds and the accounting of the funds shall be made available to the resident or the legal representative or both upon request.

B. No facility administrator or employee shall act as either attorney-in-fact or trustee unless the resident has no other preferred designee and the resident himself expressly requests such service by or through facility personnel. Any facility administrator or employee so named shall be accountable at all times in the proper discharge of such fiduciary responsibility as provided under Virginia law, shall

provide a quarterly accounting to the resident, and, upon termination of the power of attorney or trust for any reason, shall return all funds and assets, with full accounting, to the resident or to his legal representative or to another responsible party expressly designated by the resident. See also 22 VAC 40-72-120 regarding conservators or guardians appointed by a court of competent jurisdiction.

## **PART III. PERSONNEL.**

## **22 VAC 40-72-160. Personnel policies and procedures.**

A. The facility shall develop and keep current a written job description for each position in the facility. The job description shall include:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills and abilities, experience, or educational or professional qualifications required for entry level.

B. Each employee shall be given a copy of his current job description and of the facility's current organizational chart.

C. The facility shall develop and implement procedures for verifying current professional licensing, registration, or certification and training of employees.

D. The facility shall develop and implement procedures for annually evaluating employee performance.

E. Individual training needs and plans shall be a part of the performance evaluation.

## **22 VAC 40-72-170. Employee general qualifications.**

A. All employees shall:

1. Be of good character and reputation;
2. Be physically and mentally capable of carrying out assigned responsibilities;
3. Be considerate and respectful of the rights, dignity and sensitivities of aged and disabled persons;
4. Be clean and well-groomed; and
5. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22 VAC 40-90).

B. All employees shall be able to communicate effectively in English both orally and in writing as applicable to their job responsibilities.

## **22 VAC 40-72-180. Employee orientation.**

A. The training and orientation required in subsections B, C and D of this section shall occur within the first seven days of employment and unless under the sight supervision of a trained direct care staff person or administrator, prior to assuming job responsibilities.

B. All employees shall be trained in:

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1. The purpose of the facility;
2. The services provided;
3. The daily routines;
4. The facility's policies and procedures;
5. Specific duties and responsibilities of their positions; and
6. Required compliance with regulations for assisted living facilities as it relates to their duties and responsibilities.

C. All employees shall be trained in the relevant laws, regulations, and the facility's policies and procedures sufficiently to implement the following:

1. Emergency and disaster plans for the facility;
2. Techniques of complying with emergency and disaster plans including evacuating residents when applicable;
3. Procedures for the handling of resident emergencies;
4. Use of the first aid kit and knowledge of its location;
5. Handwashing techniques, standard precautions, infection risk-reduction behavior, and other infection control measures specified in 22 VAC 40-72-90;
6. Confidential treatment of personal information;
7. Observance of the rights and responsibilities of residents;
8. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents and for mandated reporters, the consequences for failing to make a required report. (NOTE: Section 63.2-1606 of the Code of Virginia specifies requirements and procedures for reporting and consequences for not reporting.) (NOTE: See 22 VAC 40-72-10 for a definition of mandated reporter);
9. Procedures for reporting and documenting incidents and other occurrences as required in 22 VAC 40-72-100;
10. Methods of easing adjustment difficulties for common adjustment problems that may occur when a resident moves from one residential environment to another; and
11. For direct care staff, the needs, preferences and routines of the residents for whom they will provide care.

## **22 VAC 40-72-190. Administrator provisions and responsibilities.**

A. Each facility shall have an administrator of record. This does not prohibit the administrator from serving as the administrator of record for more than one facility.

B. The licensee shall notify the licensing office in writing within 10 working days of a change in a facility's administrator including, but not limited to, the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator.

C. When an administrator terminates employment, the licensee shall hire a new administrator within 90 days from the date of termination. Unless a new administrator is employed immediately, a qualified acting administrator shall be appointed when the administrator terminates employment.

D. It shall be the duty of the administrator to oversee the day-to-day operation of the facility. This shall include, but shall not be limited to, responsibility for:

1. Developing and implementing all policies and services as required by this chapter;
2. Ensuring employees and volunteers comply with residents' rights;
3. Maintaining buildings and grounds;
4. Recruiting, hiring, training, and supervising employees; and
5. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.

E. Either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on week days.

## **EXCEPTIONS:**

1. 22 VAC 40-72-220 allows a shared administrator for smaller facilities.
  2. In facilities licensed for both residential and assisted living care, if the designated assistant is performing as an administrator for fewer than 15 of the 40 hours or for fewer than four weeks due to the vacation or illness of the administrator, the requirements of 22 VAC 40-72-200 D shall be acceptable.
- F. The facility shall maintain a written schedule of the on-site presence of the administrator and, if applicable, the designated assistant or, as provided for in 22 VAC 40-72-220 and 22 VAC 40-72-230, the manager.
1. Any changes shall be noted on the schedule.
  2. The facility shall maintain a copy of the schedule for two years.

## **22 VAC 40-72-200. Administrator qualifications.**

- A. The administrator shall be at least 21 years of age.
- B. The administrator shall be able to read and write, and understand this chapter.
- C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.
- D. For facilities licensed for residential living care only, the administrator shall:
1. Be a high school graduate or shall have a General Education Development (GED) Certificate;
  2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education or (ii) have successfully completed a department-approved course specific to the administration of an assisted living facility; and

3. Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

**EXCEPTION:**

1. A licensed nursing home administrator who meets the qualifications under § 54.1-3103 of the Code of Virginia;
2. A licensed nurse who meets the experience requirements in subdivision 4 of this subsection;
3. An administrator of an assisted living facility employed prior to (insert the effective date of these standards) who met the requirements in effect when employed.

E. For facilities licensed for both residential and assisted living care, the administrator shall:

1. Be a graduate of a four-year college or university accredited by an association recognized by the U.S. Secretary of Education; or
2. Have successfully completed at least 60 credit hours of courses in human services or group care administration, from a college or university accredited by an association recognized by the U.S. Secretary of Education; or

*EXCEPTION:* Ten or fewer of the 60 credit hours may be in business courses.

3. Have successfully completed at least 30 credit hours of courses in human services or group care administration from a college or university accredited by an association recognized by the U.S. Secretary of Education and have successfully completed a department-approved course specific to the administration of an assisted living facility; and
4. Have completed at least one year of administrative or supervisory experience in caring for adults in a group care facility.

**EXCEPTIONS:**

1. A licensed nursing home administrator who meets the qualifications under § 54.1-3103 of the Code of Virginia;
2. A licensed nurse who meets the experience requirements in subdivision 4 of this subsection;
3. An administrator of an assisted living facility employed prior to (insert the effective date of these standards), who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

*EXCEPTION:* An administrator employed prior to February 1, 1996, who met the exception to the standards effective February 1, 1996, shall successfully complete within one year a department-approved course specific to the administration of an assisted living facility.

F. The administrator shall not be a resident of the facility.

**22 VAC 40-72-210. Administrator training.**

A. The administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within 12 months

from the date of employment and annually thereafter from that date. When adults with mental impairments reside in the facility, at least five of the required 20 hours of training shall focus on topics related to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include title of course, name of the institution that provided the training, date and number of hours.

B. Any administrator who has not previously undergone the training specified in 22 VAC 40-72-50 D shall be required to complete that training within two months of employment as administrator of the facility. The training may be counted toward the annual training requirement for the first year.

*EXCEPTION:* Administrators employed prior to (insert the effective date of these standards) are not required to complete this training.

C. Administrators shall be required to complete refresher training when standards are revised, unless the department determines that such training is not necessary.

D. If medication is administered to residents by medication aides as allowed in 22 VAC 40-72-660 1 b and c, the administrator shall successfully complete a medication training program approved by the Board of Nursing. The training shall be completed within four months of employment as an administrator and may be counted toward the annual training requirement for the first year. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications; or
2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

**22 VAC 40-72-220. Shared administrator for smaller facilities.**

The administrator may be awake and on duty on the premises for fewer than the minimum 40 hours per week, without a designated assistant, under the following conditions:

1. In facilities licensed for 10 or fewer residents:
  - a. The administrator shall be awake and on duty on the premises of each facility for at least 10 hours a week; and
  - b. The administrator shall serve no more than four facilities.
2. In facilities licensed for 11-19 residents:
  - a. The administrator shall be awake and on duty on the premises of each facility for at least 20 hours a week; and
  - b. The administrator shall serve no more than two facilities.
3. In facilities licensed for 10 or fewer residents as specified in subdivision 1 of this section and in facilities licensed for 11-19 residents as specified in subdivision 2 of this section:
  - a. The administrator shall serve as a full time administrator, i.e., shall be awake and on duty on the premises of more than one assisted living facility for at least 40 hours a week;

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b. Each of the facilities served shall be within a 30-minute average travel time of the other facilities;

c. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices;

d. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation and for a period of time that shall not exceed four weeks. The designated assistant shall meet the qualifications of the administrator;

e. There shall be a designated person who shall serve as manager and who shall be awake and on duty on the premises of each facility for the remaining part of the 40 required hours when the administrator is not present at the facility and who shall be supervised by the administrator. The manager shall meet the following minimum qualifications and requirements:

- (1) The manager shall be at least 21 years of age.
- (2) The manager shall be able to read and write, and understand this chapter.
- (3) The manager shall be able to perform the duties and to carry out the responsibilities of his position.
- (4) The manager shall:
  - (a) Be a high school graduate or shall have a General Education Development (GED) Certificate; and
  - (b) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education; or
  - (c) Have successfully completed a department-approved course specific to the administration of an assisted living facility; and
  - (d) Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

(5) The manager shall not be a resident of the facility;

f. The manager shall complete the training specified in 22 VAC 40-72-50 D within two months of employment as manager. The training may be counted toward the annual training requirement for the first year;

g. Managers shall be required to complete refresher training when standards are revised, unless the department determines that such training is not necessary;

h. The manager shall attend at least 16 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on topics related

to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include title of course, name of the institution that provided the training, date and number of hours;

i. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility;

j. Each facility shall maintain a schedule that specifies for both the administrator and the manager the days and times each shall be awake and on duty on the premises. Any changes shall be noted on the schedule, which shall be retained for two years;

k. The minimum of 40 hours required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours being during the day shift on week days.

4. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home, as provided for in 22 VAC 40-72-230.

### **22 VAC 40-72-230. Administrator of both assisted living facility and nursing home.**

A. Any person meeting the qualifications for a licensed nursing home administrator pursuant to § 54.1-3103 of the Code of Virginia may serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building and the requirements of subsections B and C of this section are met.

B. Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include, but not be limited to, the following:

1. Written policies and procedures that describe how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility;
2. If the administrator does not provide the direct management of the assisted living facility or only provides a portion thereof, the plan shall specify a designated individual who shall serve as manager and who shall be supervised by the administrator.

C. The manager referred to in subdivision B 2 of this section shall be on-site and meet the following minimum qualifications and requirements:

1. The manager shall be at least 21 years of age.
2. The manager shall be able to read and write, and understand this chapter.
3. The manager shall be able to perform the duties and carry out the responsibilities of his position.
4. The manager shall:

a. Be a high school graduate or shall have a General Education Development (GED) Certificate;

b. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education or (ii) have successfully completed a department-approved course specific to the administration of an assisted living facility; and

c. Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

*EXCEPTION:* A manager employed prior to (insert the effective date of these standards) who met the requirements in effect when employed and who has been continuously employed as a manager.

5. The manager shall not be a resident of the facility.

6. The manager shall complete the training specified in 22 VAC 40-72-50 D within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.

*EXCEPTION:* Managers employed prior to (insert the effective date of these standards) are not required to complete this training.

7. Managers shall be required to complete refresher training when standards are revised, unless the department determines that such training is not necessary.

8. The manager shall attend at least 16 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on residents who are mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, name of the institution that provided the training, date and number of hours.

**22 VAC 40-72-240. Designated staff person in charge.**

A. When the administrator or designated assistant who meets the qualifications of the administrator or the manager who meets the qualifications specified in 22 VAC 40-72-220 or 22 VAC 40-72-230 is not awake and on duty on the premises, there shall be a designated direct care staff member in charge, who has specific duties and responsibilities as determined by the administrator.

B. Prior to being placed in charge, the staff member shall be informed of and receive training on his duties and responsibilities, and be provided written documentation of such duties and responsibilities.

C. The staff member shall be awake and on duty on the premises while in charge.

D. The staff member in charge shall be capable of protecting the physical and mental well-being of the residents.

E. The administrator shall ensure that the staff member in charge is prepared to carry out his duties and responsibilities and respond appropriately in case of an emergency.

F. The staff member in charge shall not be a resident of the facility.

**22 VAC 40-72-250. Direct care staff qualifications.**

A. Direct care staff shall be at least 18 years of age unless certified in Virginia as a nurse aide.

B. Direct care staff who are responsible for caring for residents with special health care needs shall only provide services within the scope of their practice and training.

C. In facilities licensed for both residential and assisted living care, all direct care staff who care for residents who meet the criteria for assisted living care shall have satisfactorily completed, or within 30 days of employment shall enroll in and successfully complete within two months of employment, a training program consistent with department requirements, except as noted in subsections D and E of this section. Department requirements shall be met in one of the following five ways:

1. Registration in Virginia as a certified nurse aide.

2. Graduation from a Virginia Board of Nursing-approved educational curriculum from a Virginia Board of Nursing accredited institution for nursing assistant, geriatric assistant or home health aide.

3. Graduation from a personal care aide training program approved by the Virginia Department of Medical Assistance Services.

4. Graduation from a department-approved educational curriculum for nursing assistant, geriatric assistant or home health aide. The curriculum is provided by a hospital, nursing facility, or educational institution not approved by the Virginia Board of Nursing, e.g., out-of-state curriculum. To obtain department approval:

a. The facility shall provide to the department's representative an outline of the course content, dates and hours of instruction received, the name of the institution that provided the training, and other pertinent information.

b. The department will make a determination based on the above information and provide written confirmation to the facility when the course meets department requirements.

5. Successful completion of the department-approved 40-hour direct care staff training provided by a licensed health care professional acting within the scope of the requirements of his profession.

D. Licensed health care professionals acting within the scope of the requirements of their profession are not required to complete the training in subsection C of this section.

E. Direct care staff of the facility employed prior to February 1, 1996, shall not be required to complete the training in subsection C of this section if they (i) have been continuously employed as direct care staff in the facility since then and (ii) have demonstrated competency on a skills checklist dated and signed no later than February 1, 1997, by a licensed health care professional acting within the scope of the requirements of his profession.

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F. In respect to the requirements of subsection C of this section, the facility shall obtain a copy of the certificate issued to the certified nurse aide, the nursing assistant, geriatric assistant or home health aide, personal care aide, or documentation indicating the department-approved 40-hour direct care staff training has been successfully completed. The copy of the certificate or the appropriate documentation shall be retained in the staff member's file.

G. The administrator shall develop and implement a written plan for supervision of direct care staff who have not yet successfully completed the training program as allowed for in subsection C of this section.

## **22 VAC 40-72-260. Direct care staff training.**

A. In facilities licensed for residential living care only, commencing no later than 60 days after employment, all direct care staff shall attend at least eight hours of training annually (in addition to required first aid and CPR training).

1. The training shall be relevant to the population in care and shall be provided through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on the resident who is mentally impaired.

3. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual employee and is considered part of the staff member's record.

B. In facilities licensed for both residential and assisted living care, commencing no later than 60 days after employment, all direct care staff shall attend at least 16 hours of training annually (in addition to first aid and CPR training).

1. The training shall be relevant to the population in care and shall be provided through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on the resident who is mentally impaired.

3. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual employee and is considered part of the employee's record.

*EXCEPTION:* Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.

## **22 VAC 40-72-270. Employee duties performed by residents.**

A. Any resident who performs any employee duties shall meet the personnel and health requirements for that position.

B. There shall be a written agreement between the facility and any resident who performs employee duties.

1. The agreement shall specify duties, hours of work, and compensation.

2. The agreement shall not be a condition for admission or continued residence.

3. The resident shall enter into such an agreement voluntarily.

## **22 VAC 40-72-280. Volunteers.**

A. Any volunteers used shall:

1. Have qualifications appropriate to the services they render; and

2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an assisted living facility without the permission of or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

C. The facility shall maintain the following written documentation on volunteers:

1. Name.

2. Address.

3. Telephone number.

4. Emergency contact information.

D. Duties and responsibilities of all volunteers shall be clearly differentiated from those of persons regularly filling employee positions.

E. At least one employee shall be assigned responsibility for overall selection, supervision and orientation of volunteers.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation including information on their duties and responsibilities, resident rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements.

G. All volunteers shall be under the direct supervision of a designated employee when residents are present.

## **22 VAC 40-72-290. Employee records and health requirements.**

A. A record shall be established for each employee. It shall not be destroyed until at least two years after employment is terminated.

B. All employee records shall be retained at the facility, treated confidentially, kept in a locked area, and made available for inspection by the department's representative upon request.

*EXCEPTION:* Emergency contact information required by subdivision C 14 of this section shall also be kept in an easily accessible place.

C. Personal and social data to be maintained on employees and included in the employee record are as follows:

1. Name;



2. Birthdate;
3. Current address and telephone number;
4. Social security number;
5. Position title, job description and date employed;
6. Verification that the employee has received a copy of his job description and the organizational chart;
7. Most recent previous employment;
8. For persons employed after November 9, 1975, copies of at least two references or notations of verbal references, obtained prior to employment, reflecting the date of the reference, the source and the content;
9. For persons employed after July 1, 1992, an original criminal record report and a sworn disclosure statement;
10. Previous experience or training or both;
11. Verification of current professional license, certification, registration, or completion of a required approved training course;
12. Annual employee performance evaluations;
13. Any disciplinary action taken;
14. Name and telephone number of person to contact in an emergency;
15. Documentation of formal training received following employment, including orientation, in-services and workshops; and
16. Date and reason for termination of employment, when applicable.

D. Health information required by these standards shall be maintained at the facility and included in the employee record for the administrator and each employee, and also shall be maintained at the facility for each household member who comes in contact with residents.

1. Initial tuberculosis examination and report.

a. Each employee at the time of hire and each household member prior to coming in contact with residents shall submit the results of a risk assessment, documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it. The risk assessment shall be no older than 30 days.

b. An evaluation shall not be required for an employee who (i) has separated from employment with a facility licensed or certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits a copy of the original statement of tuberculosis screening to his new employer.

2. Subsequent tuberculosis evaluations and reports.

a. Any employee or household member required to be evaluated who comes in contact with a known case of infectious tuberculosis shall be screened as determined

appropriate based on consultation with the local health department.

b. Any employee or household member required to be evaluated who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

c. Each employee or household member required to be evaluated shall annually submit the results of a risk assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion the current screening form published by the Virginia Department of Health or a form consistent with it.

3. Any individual suspected to have infectious tuberculosis shall not be allowed to return to work or have any contact with the residents and personnel of the facility until a physician has determined that the individual is free of infectious tuberculosis.

4. The facility shall report any active case of tuberculosis developed by an employee or household member required to be evaluated to the local health department.

E. At the request of the administrator of the facility or the department, a report of examination by a licensed physician shall be obtained when there are indications that the safety of residents in care may be jeopardized by the physical or mental health of a specific individual.

F. Any individual who, upon examination or as a result of tests, shows indication of a physical or mental condition that may jeopardize the safety of residents in care or that would prevent performance of duties:

1. Shall be removed immediately from contact with residents; and

2. Shall not be allowed contact with residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

**22 VAC 40-72-300. First aid and CPR certification.**

A. There shall be at least one employee on the premises at all times who has current certification in first aid from the American Red Cross, American Heart Association, National Safety Council, or who has current first aid certification issued within the past three years by a community college, a hospital, a volunteer rescue squad, a fire department, or other designated program approved by the department, unless the facility has an on-duty registered nurse or licensed practical nurse. The certification must either be in Adult First Aid or include Adult First Aid.

B. There shall be at least one employee on the premises at all times who has current certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, American Heart Association, National Safety Council, or who has current CPR certification issued within the past two years by a community college, a hospital, a volunteer rescue squad, a fire department, or other designated program approved by the department. The certification must either be in Adult CPR or include Adult CPR.

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C. Each direct care staff member shall receive certification in first aid from an organization listed in subsection A of this section within 60 days of employment and maintain current certification in first aid as specified in subsection A of this section.

D. In facilities licensed for over 100 residents, at least one additional employee who meets the requirements of subsection B of this section shall be available for every 100 residents, or portion thereof. More employees who meet the requirements subsection B of this section shall be available if necessary to assure quick access to residents in the event of the need for CPR.

E. A listing of all employees who have current certification in first aid or CPR, in conformance with subsections A, B, C, and D of this section shall be posted in the facility so that the information is readily available to all employees at all times. The listing must indicate by employee whether the certification is in first aid or CPR or both and must be kept up-to-date.

F. An employee with current certification in first aid and CPR shall be present during facility-sponsored activities off the facility premises.

G. An employee with current certification in first aid and CPR shall be present when an employee transports a resident.

## **22 VAC 40-72-310. Direct care staff training when aggressive or restrained residents are in care.**

The following training is required for staff in assisted living facilities that accept, or have in care, residents who are or who may be aggressive or restrained:

### 1. Aggressive residents.

a. Direct care staff shall be trained in methods of dealing with residents who have a history of aggressive behavior or of dangerously agitated states prior to being involved in the care of such residents.

b. This training shall include, at a minimum, information, demonstration, and practical experience in self-protection and in the prevention and de-escalation of aggressive behavior.

### 2. Restrained residents.

a. Prior to being involved in the care of residents in restraints, direct care staff shall be appropriately trained in caring for the health needs of such residents.

b. This training shall include, at a minimum, information, demonstration and experience in:

(1) The proper techniques for applying and monitoring restraints;

(2) Skin care appropriate to prevent redness, breakdown, and decubiti;

(3) Active and active assisted range of motion to prevent contractures;

(4) Assessment of blood circulation to prevent obstruction of blood flow and promote adequate blood circulation to all extremities;

(5) Turning and positioning to prevent skin breakdown and keep the lungs clear;

(6) Provision of sufficient bed clothing and covering to maintain a normal body temperature; and

(7) Provision of additional attention to meet the physical, mental, emotional, and social needs of the restrained resident.

3. The training described in subdivisions 1 and 2 of this section shall meet the following criteria:

a. Training shall be provided by a qualified health professional.

b. A written description of the content of this training, a notation of the person/agency/organization or institution providing the training and the names of direct care staff receiving the training shall be maintained by the facility except that, if the training is provided by the department, only a listing of direct care staff trained and the date of training are required.

4. Refresher training for all direct care staff shall be provided at least annually or more often as needed.

a. The refresher training shall encompass the techniques described in subdivision 1 or 2 of this section, or both.

b. A record of the refresher training and a description of the content of the training shall be maintained by the facility.

## PART IV. STAFFING AND SUPERVISION.

### **22 VAC 40-72-320. Staffing.**

A. The assisted living facility shall have employees adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to assure compliance with this chapter.

B. The assisted living facility shall maintain a written plan that specifies the number and type of direct care staff required to meet the day-to-day, routine direct care needs and any identified special needs for the residents in care. This plan will not be fee-based but shall be directly related to actual resident acuity levels and individualized care needs. The direct care staffing plan shall:

1. Meet all applicable minimum requirements as established in this chapter;

2. Comply with any additional applicable state, federal, local law or regulation;

3. Identify and utilize a system to address fluctuations in actual resident acuity levels and direct care requirements that might necessitate increased staffing levels above the minimums specified in the plan;

4. Factor in other facility responsibilities such as admissions, transfers, discharges, laundry, meal preparation, housekeeping and maintenance, administrative

and support tasks, structured/scheduled activities programs, medication administration and treatments that may be expected of direct care staff in addition to direct care services;

5. Take into consideration the size and physical layout of the building;

6. Include general number, working job titles, and qualifications of staff on each shift; and

7. Identify the method that will be used to document actual staffing on a daily basis. In facilities with multiple floors, wings or units, this method must document dedicated staff for each operating unit and designate those who provide services across multiple units.

C. There shall be an adequate number of employees on the premises at all times to implement the approved emergency evacuation plan.

D. There shall be at least one direct care staff member awake and on duty at all times in each building when at least one resident is present.

E. Written work schedules shall be maintained and shall indicate the names and job classifications of all employees working each shift. Schedules shall indicate absences and substitutions. Schedules shall be retained for at least two years.

**22 VAC 40-72-330. Communication among direct care staff.**

A method of written communication shall be utilized as a means of keeping direct care staff on all shifts informed of significant happenings or problems experienced by residents, including complaints, incidents or injuries related to physical or mental conditions. A record shall be kept of the written communication for at least the past two years.

PART V.  
ADMISSION, RETENTION AND DISCHARGE OF  
RESIDENTS.

**22 VAC 40-72-340. Admission and retention of residents.**

A. No resident shall be admitted or retained:

1. For whom the facility cannot provide or secure appropriate care;
2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or
3. If the facility does not have employees appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon the following information at a minimum:

1. The completed UAI;
2. The physical examination report;

3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the resident and his legal representative, if any;

NOTE: In some cases, medical conditions may create special circumstances that make it necessary to hold the interview on the date of admission.

4. An assessment of psychological, behavioral, and emotional functioning, conducted by a qualified mental health professional, if recommended by the UAI assessor, a health care professional, or the administrator or designee responsible for the admission and retention decision. This includes meeting the requirements of 22 VAC 40-72-360.

C. An assisted living facility shall only admit or retain residents as permitted by its use group classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report; and
2. Information contained in the most recent UAI.

D. Upon receiving the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall be kept in the resident's record.

E. All residents shall be 18 years of age or older.

F. No person shall be admitted without his consent and agreement, or that of his legal representative with demonstrated legal authority to give such consent on his behalf.

G. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;
2. Dermal ulcers III and IV except those stage III ulcers that are determined by an independent physician to be healing, as permitted in subsection H of this section;
3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia as permitted in subsection I or J of this section;
4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
5. Psychotropic medications without appropriate diagnosis and treatment plans;
6. Nasogastric tubes;

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7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection J of this section;
8. Individuals presenting an imminent physical threat or danger to self or others;
9. Individuals requiring continuous licensed nursing care;
10. Individuals whose physician certifies that placement is no longer appropriate;
11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance (12 VAC 30-10); or
12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.
- H. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's treatment plan.
- I. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.
- J. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs specified in subdivisions G 3 and 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs specified in subdivision G 7 of this section may also be provided to the resident by unlicensed direct care facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18 VAC 90-20-420 through 18 VAC 90-20-460 and subsection K of this section.
- NOTE: This standard does not apply to recipients of auxiliary grants.
- K. When care for gastric tubes is provided to the resident by unlicensed direct care facility staff as allowed in clause (ii) of subsection J of this section, the following criteria shall be met:
1. The care shall be provided by a direct care staff member who has successfully completed general and resident-specific training requirements and competencies in tube care from the delegating registered nurse, which has been documented by the nurse, and includes the following:
    - a. Type and amount of feeding and method of administration;
    - b. Necessary equipment and supplies;
    - c. Methods for determining the resident's tube remains properly placed and patent;
    - d. Acceptable parameters for residual contents – when to administer feedings and when to hold;
    - e. When, how often and with what amounts of water direct care staff are to flush tube;
    - f. How tube is to be clamped and secured;
    - g. How site is to be cleansed and dressed including frequency;
    - h. What information is to be documented; and
    - i. What information is to be reported and how soon (e.g., tube out or displaced, drainage around tube, signs of infection, nausea, vomiting, diarrhea, etc.).
2. Whenever administering a tube feeding, the direct care staff member is responsible for all of the following:
  - a. Confirming physician order for type and amount of feeding and method of administration;
  - b. Confirming written instructions from RN;
  - c. Gathering necessary equipment and supplies;
  - d. Identifying resident;
  - e. Explaining procedure to resident;
  - f. Confirming that feeding tube is in place and patent;
  - g. Elevating head of bed or positioning resident comfortably in chair;
  - h. Washing hands;
  - i. Preparing feeding according to physician order and written instructions from RN;
  - j. Checking residual to confirm amount falls within parameters specified by RN;
  - k. Administering feeding by gravity flow or other method as approved by physician and instructed by RN;
  - l. Flushing feeding tube with the amount of water specified by the RN;
  - m. Clamping and securing tube;
  - n. Cleansing and covering site as instructed;
  - o. Documenting feeding;
  - p. Confirming patient comfort, e.g., leaving head of bed elevated or patient positioned comfortably in chair for 30-60 minutes; and
  - q. Documenting resident's tolerance of feeding and any other observations related to the condition and care of the site.
3. Prior to independently administering any tube feedings, the direct care staff person shall successfully demonstrate competency without prompting and without assistance in all of the procedures specified in subdivision 2 of this

subsection. The delegating RN shall observe and document a minimum of two successful demonstrations before authorizing in writing the direct care staff member to perform the tube feeding independently.

NOTE: The authorization only applies for more than one resident when the delegating RN has verified and documented that the same type of feeding tube, feeding, and method of administration are used for each resident.

4. Written protocols that encompass the basic policies and procedures for the performance of gastric tube feedings shall be available to any direct care staff member responsible for tube feedings.

5. Contact information for the delegating RN shall be readily available to all staff responsible for tube feedings when an RN or LPN is not present in the facility.

6. The facility shall have a written back-up plan to ensure that a person who is qualified as specified in this subsection is available if the direct care staff member who usually provides the care is absent.

L. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

M. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident.

## **22 VAC 40-72-350. Physical examination and report.**

A. A person shall have a physical examination by an independent physician, including screening for tuberculosis, within 30 days prior to the date of admission. The report of such examination shall be on file at the assisted living facility and shall contain the following:

1. The date of the physical examination;
2. Height, weight, and blood pressure;
3. Significant medical history;
4. General physical condition, including a systems review as is medically indicated;
5. Any diagnosis or significant problems;
6. Any allergies;
7. Any recommendations for care including medication, diet and therapy;
8. Results of a risk assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it;

9. A statement that the individual does not have any of the conditions or care needs prohibited by 22 VAC 40-72-340 G;

10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory; and

11. The signature of the examining physician or his designee.

NOTE: See 22 VAC 40-72-10, definition of "licensed health care professional" for clarification regarding "physician."

B. When a person is accepted for respite care or on an intermittent basis, the physical examination report shall be valid for six months.

C. Subsequent tuberculosis evaluations.

1. A risk assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

2. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

3. Any resident who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

4. If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

D. The department, at any time, may request a report of a current psychiatric or physical examination, giving the diagnoses or evaluation or both, for the purpose of determining whether the resident's needs may continue to be met in the assisted living facility. When requested, this report shall contain information as specified by the department.

## **22 VAC 40-72-360. Mental health assessment.**

A. If there are observed behaviors or patterns of behavior indicative of mental illness, mental retardation, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified mental health professional. The evaluation shall include an assessment of the person's psychological, behavioral, and emotional functioning. Conditions for which an evaluation is required include, but are not limited to:

1. One or more acts of aggression against self, others, or property, that resulted in the resident being hospitalized, jailed, forced to leave a residence, or retained by the facility but managed using emergency measures;
2. Alcohol or drug abuse;
3. Noncompliant with psychotropic medications to the extent that intervention by a qualified mental health professional was required to prevent or reduce the risk of decompensation;

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4. Disturbance in thinking, reasoning, and judgment that placed the resident or others at risk for harm;

5. Bizarre or maladaptive behavior such as reacting to irrational beliefs, visual or auditory hallucinations or engaging in behaviors such as pacing, rocking, mumbling to self, speaking incoherently, avoiding social interactions;

6. Significant dysfunction in two or more of the following areas: interpersonal communication, problem-solving, personal care, independent living, education, vocation, leisure, community awareness, self-direction, and self-preservation; and

7. Any other condition for which an assessment is recommended by the administrator, a case manager or other assessor.

B. The administrator or designated staff member shall ensure that an assessment of a person's psychological, behavioral, and emotional functioning is or has been conducted by a qualified mental health professional when at least one of the behaviors or conditions noted in subsection A of this section has occurred within the past six months. The sources of such information regarding behaviors or conditions may include, but are not limited to, the uniform assessment instrument, family members, the referring agency, or a facility staff person.

C. The administrator shall ensure that the evaluation or assessment required by subsections A and B of this section meets the following criteria:

1. If required for the purpose of making an admission decision, the assessment is not more than three months old.

2. The assessment covers at least the following areas of the person's current functioning and functioning for the six months prior to the date of the assessment:

- a. Cognitive functions;
- b. Thought and perception;
- c. Mood/affect;
- d. Behavior/psychomotor;
- e. Speech/language;
- f. Appearance;
- g. Alcohol and drug dependence/abuse;
- h. Medication compliance; and
- i. Psychosocial functioning.

3. The assessment is completed by a qualified mental health professional having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.

4. A copy of the assessment, if the person is admitted or is a current resident, is filed in the resident's record.

D. If the evaluation or assessment indicates a need for mental health, mental retardation, substance abuse, or behavioral disorder services, the facility shall provide:

1. A notification of the resident's need for such services to the authorized contact person of record when available; and

2. A notification of the resident's need for such services to the community services board or behavioral health authority that serves the city or county in which the facility is located, or other appropriate licensed provider.

E. As part of the process for determining appropriateness of admission, when a person with a mental health disability is referred by a state or private hospital, community services board, behavioral health authority, or long-term care facility, collateral information and supporting documentation, e.g., progress notes, shall be collected on the person's psychological, behavioral, and emotional functioning. In the case where the person is coming from a private residence, only collateral information shall be required and may be gathered from an interview with someone involved in the primary care of the person.

1. The collateral information and supporting documentation shall cover a period of not less than six months of the person's care or treatment at the referring facility, or if the person's stay at the facility is less than six months, then the collateral information and documentation shall cover the person's entire stay.

2. The administrator shall document that the collateral information and supporting document were reviewed and used to help determine the appropriateness of the person's admission.

3. The administrator shall ensure that a copy of collateral information and supporting documentation, if the person is admitted, is filed in the resident's record.

NOTE: When applicable, see 22 VAC 40-72-510 regarding high risk behavior.

## **22 VAC 40-72-370. Emergency placement.**

A. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or an independent physician or a Virginia adult protective services worker for private pay individuals.

B. When an emergency placement occurs, the person shall remain in the assisted living facility no longer than seven working days unless all the requirements for admission have been met and the person has been admitted.

## **22 VAC 40-72-380. Resident personal and social information.**

A. Prior to or at the time of admission to an assisted living facility, the following personal and social information on a person shall be obtained and placed in the individual's record:

1. Name;
2. Last home address, and address from which resident was received, if different;
3. Date of admission;
4. Social security number;

5. Birthdate (if unknown, estimated age);
6. Birthplace, if known;
7. Marital status, if known;
8. Name, address and telephone number of all legal representatives, if any;
9. Copies of current legal documents that show proof of each legal representative's authority to act on behalf of the resident and that specify the scope of the representative's authority to make decisions and to perform other functions;
10. Name, address and telephone number of next of kin, if known (two preferred);

11. Name, address and telephone number of designated contact person authorized by the resident or legal representative, if appropriate, for notification purposes, including emergency notification and notification of the need for mental health, mental retardation, substance abuse, or behavioral disorder services (if resident or legal representative willing to designate an authorized contact person);

NOTE: There may be more than one designated contact person.

NOTE: The designated contact person may also be listed under another category, such as next of kin or legal representative.

12. Name, address and telephone number of the responsible individual stipulated in 22 VAC 40-72-550 G, if needed;
13. Name, address and telephone number of personal physician, if known;
14. Name, address and telephone number of personal dentist, if known;
15. Name, address and telephone number of clergyman and place of worship, if applicable;
16. Name, address and telephone number of local department of social services or any other agency, if applicable, and the name of the assigned case manager or caseworker;
17. Service in the armed forces, if applicable;
18. Special interests and hobbies;
19. Information concerning advance directives, Do Not Resuscitate (DNR) orders, or organ donation, if applicable; and
20. For residents who meet the criteria for assisted living care, additional information to be included:
  - a. Description of family structure and relationships;
  - b. Previous mental health/mental retardation services history, if any, and if applicable for care or services;
  - c. Current behavioral and social functioning including strengths and problems; and

- d. Any substance abuse history if applicable for care or services.

## **22 VAC 40-72-390. Resident agreement with facility.**

A. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care that specifies:
  - a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;
  - b. Description of all accommodations, services, and care that the facility offers and any related charges;
  - c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;
  - d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;
  - e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and
  - f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.
2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his legal representative.
3. Acknowledgment that the resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.
4. Acknowledgment that the resident has been informed of the policy required by 22 VAC 40-72-840 J regarding weapons.
5. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.
6. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22 VAC 40-72-550 G has reviewed a copy of § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.
7. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22 VAC 40-72-550 G has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

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8. Acknowledgment that the resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council. (See 22 VAC 40-72-810.)

9. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer, if the facility has such a policy.

10. Acknowledgment that the resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22 VAC 40-72-800.

11. Acknowledgment that the resident has been informed of the policy regarding the administration and storage of medications and dietary supplements.

B. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and as appropriate, his legal representative and shall be retained in the resident's record.

C. The facility shall review annually with the resident the terms of the written agreement/acknowledgment of notification required in subsection A of this section. Evidence of this review shall be the resident's written acknowledgement of having been so informed, which shall include the date of the review and which shall be filed in his record.

D. A new agreement shall be signed or the original agreement shall be updated and signed by the licensee or administrator and the resident or his legal representative when there are changes in financial arrangements, services, or requirements governing the resident's conduct. If the original agreement provides for specific changes in financial arrangements, services, or requirements, this standard does not apply.

### **22 VAC 40-72-400. Orientation and related information for residents.**

A. Upon admission, the assisted living facility shall provide an orientation for new residents and their legal representatives including but not limited to emergency response procedures, mealtimes, and use of the call system. If needed, the orientation shall be modified as appropriate for residents with serious cognitive impairments. Acknowledgment of having received the orientation shall be signed and dated by the resident and as appropriate, his legal representative and such documentation shall be kept in the resident's record.

B. Upon admission and upon request, the assisted living facility shall provide to the resident and, if appropriate, his legal representative, a written description of the types of employees working in the facility and the services provided, including the hours such services are available.

### **22 VAC 40-72-410. Acceptance back in facility.**

A. An assisted living facility shall establish a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.2-809 of the Code of Virginia is accepted back in the assisted living facility if the resident is not

involuntarily committed pursuant to § 37.2-814 through 37.2-816 of the Code of Virginia.

B. If an assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.

### **22 VAC 40-72-420. Discharge of residents.**

A. When actions, circumstances, conditions, or care needs occur that will result in the discharge of a resident, discharge planning shall begin immediately. The resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility shall document the reason and the efforts that have been made.

B. As soon as discharge planning begins, the assisted living facility shall notify the resident and the resident's legal representatives and designated contact person if any, of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances as referenced in subsection A of this section. Notification of the actual discharge date shall occur at least 14 calendar days prior to the date that the resident will be discharged.

C. The assisted living facility shall adopt and conform to a written policy regarding the number of calendar days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days.

D. The facility shall assist the resident and his legal representative, if any, in the discharge or transfer processes. The facility shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his legal representative.

E. When a resident's condition presents an immediate and serious risk to the health, safety or welfare of the resident or others and emergency discharge is necessary, 14-day notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.

F. Under emergency conditions, the resident's legal representative, designated contact person, the family, caseworker, social worker or other agency personnel, as appropriate, shall be informed as rapidly as possible, but by the close of the business day following discharge, of the reasons for the move.

G. If the resident's uniform assessment instrument has been completed by a public human services agency assessor, the assisted living facility shall notify such assessor of the date and place of discharge as well as when a resident dies, within 10 days of the resident's discharge or death.

H. Discharge statement.

1. At the time of discharge, except as noted in subdivision 2 of this subsection, the assisted living facility shall provide to



the resident and, as appropriate, his legal representative and designated contact person a dated statement signed by the licensee or administrator that contains the following information:

- a. The date on which the resident, his legal representative or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified;
- b. The reason or reasons for the discharge;
- c. The actions taken by the facility to assist the resident in the discharge and relocation process; and
- d. The date of the actual discharge from the facility and the resident's destination.

2. When the termination of care is due to emergency conditions, the dated statement shall contain the above information as appropriate and shall be provided or mailed to the resident, his legal representative, or designated contact person as soon as practicable and within 48 hours from the time of the decision to discharge.

3. A copy of the written statement shall be retained in the resident's record.

I. When the resident is discharged and moves to another caregiving facility, the assisted living facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the assisted living facility from which the resident was discharged. The assisted living facility shall maintain a listing of all information shared with the receiving facility.

J. Within 60 days of the date of discharge, each resident or his legal representative shall be given a final statement of account, any refunds due, and return of any money, property or things of value held in trust or custody by the facility.

PART VI.  
RESIDENT CARE AND RELATED SERVICES.

**22 VAC 40-72-430. Uniform assessment instrument (UAI).**

A. All residents of and applicants to assisted living facilities shall be assessed face-to-face using the uniform assessment instrument pursuant to the requirements in Assessment in Adult Care Residences (22 VAC 40-745). Assessments shall be completed prior to admission, annually, and whenever there is a significant change in the resident's condition.

1. For private pay individuals, the UAI shall be completed by one of the following qualified assessors:

- a. An assisted living facility employee who has successfully completed state-approved training on the uniform assessment instrument and level of care criteria for either public or private pay assessments, provided the administrator or the administrator's designated representative approves and then signs the completed UAI, and the facility maintains documentation of the completed training;

*EXCEPTION:* An assisted living facility employee who began employment at the facility prior to (insert the effective date of the standards) and who had documented training that was not state-approved in the completion of the UAI and application of level of care criteria shall meet the requirements for state approved training within one year from (insert the effective date of the standards);

- b. An independent physician;
- c. A qualified public human services agency assessor.

2. For public pay individuals, the UAI shall be completed by a case manager or qualified assessor as specified in 22 VAC 40-745.

B. The UAI shall be completed within 90 days prior to the date of admission to the assisted living facility except that if there has been a change in the resident's condition since the completion of the UAI that would affect the admission, a new UAI shall be completed.

C. When a resident moves to an assisted living facility from another assisted living facility or other long-term care setting that uses the UAI, if there is a completed UAI on record, another UAI does not have to be completed except that a new UAI shall be completed whenever:

1. There is a significant change in the resident's condition; or
2. The assessment was completed more than 12 months ago.

D. The assessor is responsible for being knowledgeable of the criteria for level of care and authorizing the individual for the appropriate level of care for admission to and for continued stay in an assisted living facility based on the information in the UAI.

E. For private pay individuals, the assisted living facility shall ensure that the uniform assessment instrument is completed as required by 22 VAC 40-745.

F. For private pay residents, the assisted living facility shall be responsible for coordinating with an independent physician or a qualified human services agency assessor to ensure that UAIs are completed as required.

G. The assisted living facility shall be in compliance with all requirements set forth in 22 VAC 40-745.

H. The facility shall maintain the completed UAI in the resident's record.

I. At the request of the assisted living facility, the resident, the resident's legal representative, the resident's physician, the department, or the local department of social services, an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the assisted living facility. The assisted living facility shall assist the resident in obtaining the independent assessment as requested.

*NOTE:* An independent assessment is one that is completed by a qualified entity other than the original assessor.

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J. During an inspection or review, staff from the department, the Department of Medical Assistance Services, or the local department of social services may initiate a change in level of care for any assisted living facility resident for whom it is determined that the resident's UAI is not reflective of the resident's current status.

K. The facility shall ensure that facility employees and independent physicians who are qualified assessors advise orally and in writing all applicants to and residents of assisted living facilities of the right to appeal the outcome of the assessment, the annual reassessment, or determination of level of care.

### **22 VAC 40-72-440. Individualized service plans.**

A. The licensee/administrator who has completed an individualized service plan (ISP) training program approved by the department or his designee who has completed such a program shall develop and implement an individualized service plan to meet the resident's service needs. The licensee/administrator or designee shall develop and implement the ISP in conjunction with the resident, and as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers or other persons. The plan shall be designed to maximize the resident's level of functional ability.

NOTE: An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

B. The service plan to address the immediate needs of the resident shall be completed within 72 hours of admission. The comprehensive plan shall be completed within 30 days after admission and shall include the following:

1. Description of identified needs based upon the (i) UAI; (ii) admission physical examination; (iii) interview with resident; (iv) assessment of psychological, behavioral and emotional functioning, if appropriate; and (v) other sources;
2. A written description of what services will be provided and who will provide them;
3. When and where the services will be provided; and
4. The expected outcome and date of expected outcome.

C. The individualized service plan shall reflect the resident's assessed needs and support the principles of individuality, personal dignity, freedom of choice and home-like environment and shall include other formal and informal supports that may participate in the delivery of services. Whenever possible, residents shall be given a choice of options regarding the type and delivery of services.

D. The intervention plan developed to address high risk behavior, as specified in 22 VAC 40-72-510, shall be incorporated into the individualized service plan.

E. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate, establish and agree upon a coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

F. The individualized service plan shall be signed and dated by the licensee/administrator or his designee, i.e., the person who has developed the plan, and by the resident or his legal representative. The plan shall also be signed and dated by any other individuals who contributed to the development of the plan. Each person signing the plan shall note his title or relationship to the resident next to his signature. These requirements shall also apply to reviews and updates of the plan.

G. The master service plan shall be filed in the resident's record. A current copy shall be maintained in a location accessible at all times to direct care staff, but that protects the confidentiality of the contents of the service plan. Extracts from the plan may be filed in locations specifically identified for their retention, e.g., dietary plan in kitchen.

H. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident.

EXCEPTION: There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided. Deviation from the plan shall be documented in writing, including a description of the circumstances, the date it occurred, and the signatures of the parties involved, and the documentation shall be retained in the resident's record.

NOTE TO EXCEPTION: The facility may not start, change or discontinue medications, diets, medical procedures or treatments without an order from the physician.

I. Outcomes shall be noted on the individualized plan or on a separate document as outcomes are achieved, and progress toward reaching expected outcomes shall be noted on the service plan or other document at least annually. Personnel making such notes shall sign and date them.

J. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed as the condition of the resident changes. The review and update shall be performed by a staff person who has completed an ISP training program approved by the department, in conjunction with the resident, and as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers or other persons.

### **22 VAC 40-72-450. Personal care services and general supervision and care.**

A. The facility shall assume general responsibility for the health, safety and well-being of the residents.

B. Care provision and service delivery shall be resident-centered to the maximum extent possible, and include:

1. Resident participation in decisions regarding the care and services provided to him; and
2. Personalization of care and services tailored to the resident's circumstances and preferences.

C. Care shall be furnished in a way that fosters the independence of each resident and enables him to fulfill his potential.

D. The facility shall provide supervision of resident schedules, care and activities, including attention to specialized needs, such as prevention of falls and wandering off the premises.

E. The facility shall regularly observe each resident for changes in physical, mental, emotional and social functioning.

1. Any notable change in a resident's condition or functioning, including illness, injury, or altered behavior and action taken shall be documented in the resident's record.

2. The facility shall provide appropriate assistance when observation reveals unmet needs.

F. Employees shall promptly respond to resident needs as reasonable to the circumstances.

G. The facility shall notify the next of kin, legal representative, designated contact person, and any responsible social agency, as appropriate, of any incident of a resident falling or wandering from the premises, whether or not it results in injury. This notification shall occur as soon as possible but at least within 24 hours from the time of initial discovery or knowledge of the incident. The resident's record shall include documentation of the notification, including date, time, caller, and person notified.

*EXCEPTION:* If the whereabouts of a resident are unknown and there is reason to be concerned about his safety, the facility shall immediately notify the appropriate law-enforcement agency, the resident's next of kin, legal representative, designated contact person, and any responsible social agency, as appropriate.

H. The facility shall provide care and services to each resident by employees who are able to communicate with the resident in a language the resident understands; or the facility shall make provisions for communications between employees and residents to ensure an accurate exchange of information.

I. The facility shall ensure that personal assistance and care are provided to each resident as necessary so that the needs of the resident are met, including but not limited to assistance or care with:

1. The activities of daily living:
  - a. Bathing (at least twice a week, but more often if needed or desired);
  - b. Dressing;
  - c. Toileting;
  - d. Transferring;
  - e. Bowel control;
  - f. Bladder control; and
  - g. Eating/feeding;
2. The instrumental activities of daily living:
  - a. Meal preparation;

b. Housekeeping;

c. Laundry; and

d. Managing money;

3. Ambulation;

4. Hygiene and grooming:

a. Shampooing, combing and brushing hair;

b. Shaving;

c. Trimming fingernails and toenails (certain medical conditions necessitate that this be done by a licensed health care professional);

d. Daily tooth brushing and denture care; and

e. Skin care at least twice daily for those with limited mobility;

5. Functions and tasks:

a. Arrangements for transportation;

b. Arrangements for shopping;

c. Use of the telephone; and

d. Correspondence.

J. Each resident shall be dressed in clean clothing and be free of odors. Each resident shall be encouraged to wear day clothing when out of bed.

K. Residents who are incontinent shall have a full or partial bath, clean clothing and linens each time their clothing or bed linen is soiled or wet.

L. The facility shall ensure each resident is able to obtain individually preferred personal care items when:

1. The preferred personal care items are reasonably available; and

2. The resident is willing and able to pay for the preferred items.

## **22 VAC 40-72-460. Health care services.**

A. The facility shall ensure, either directly or indirectly, that the health care service needs of residents are met. The ways in which the needs may be met include, but are not limited to:

1. Employees of the facility providing health care services;

2. Persons employed by a resident providing health care services; or

3. The facility assisting residents in making appropriate arrangements for health care services.

a. When a resident is unable to participate in making appropriate arrangements, the resident's family, legal representative, designated contact person, cooperating social agency or personal physician shall be notified of the need.

b. When mental health care is needed or desired by a resident, this assistance shall include securing the services of the local community mental health and mental

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retardation services board, state or federal mental health clinic or similar facility or agent in the private sector.

B. A resident's need for skilled nursing treatments within the facility shall be met by the facility's employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

C. Services shall be provided to prevent clinically avoidable complications, including, but not limited to:

1. Pressure ulcer development or worsening of an ulcer;
2. Contracture;
3. Loss of continence;
4. Dehydration; and
5. Malnutrition.

D. When the resident suffers serious accident, injury, illness, or medical condition, or there is reason to suspect that such has occurred, medical attention from a licensed health care professional shall be secured immediately. The circumstances involved and the medical attention received shall be documented in the resident's record. The date and times of occurrence, as well as the personnel involved shall be included in the documentation.

1. The resident's physician (if not already involved), next of kin, legal representative, designated contact person, case manager, and any responsible social agency, as appropriate, shall be notified as soon as possible but at least within 24 hours of the situation and action taken.

2. A notation shall be made in the resident's record of such notice, including the date, time, caller and person notified.

E. If a resident refuses medical attention, the facility shall notify the resident's physician immediately, and next of kin, legal representative, designated contact person, case manager, and any responsible social agency, as appropriate, as soon as possible but at least within 24 hours. A notation shall be made in the resident's record of such refusal and notification, including the date, time, caller and person notified.

F. If a resident refuses medical attention, the facility shall assess whether it can continue to meet the resident's needs.

## **22 VAC 40-72-470. Restorative, habilitative and rehabilitative services.**

A. Facilities shall assure that all restorative care and habilitative service needs of the residents are met. Employees who are responsible for planning and meeting the needs shall have been trained in restorative and habilitative care. Restorative and habilitative care includes, but is not limited to, range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

B. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations set by physicians' orders;

2. Encouraging residents to achieve independence in the activities of daily living;

3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in particular activities;

4. Assisting residents to carry out prescribed physical therapy exercises between appointments with the physical therapist; and

5. Maintaining a bowel and bladder training program.

C. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be indicated to evaluate the appropriateness and individual response to the use of assistive technology.

D. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

E. The physician's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

F. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

## **22 VAC 40-72-480. Health care oversight.**

A. Each assisted living facility shall retain a licensed health care professional who has at least two years of experience in adult residential or day care, either by direct employment or on a contractual basis, to provide health care oversight.

1. For residents who meet the criteria for residential living care, the licensed health care professional, acting within the scope of the requirements of his profession, shall be on-site at least every six months and more often if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition.

2. For residents who meet the criteria for assisted living care, the licensed health care professional, acting within the scope of the requirements of his profession, shall be on-site at least every three months and more often if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition.

B. The responsibilities of the licensed health care professional while on-site shall include at least every three months or every six months as specified in subsection A of this section:

1. *Recommending in writing changes to a resident's service plan whenever the plan does not appropriately address the current health care needs of the resident.*

2. *Monitoring of direct care staff performance of health-related activities, including the identification of any significant gaps in the staff person's ability to function competently.*

3. *Advising the administrator of the need for employee training in health-related activities or the need for other actions when appropriate to eliminate problems in competency level.*

4. *Providing consultation and technical assistance to employees as needed.*

5. *Directly observing every resident for whom the assisted living facility is receiving reimbursement from the Department of Medical Assistance Services for intensive assisted living services and recommending in writing any needed changes in the care provided or in the resident's service plan. The monitoring will be in accordance with the specifications of the Department of Medical Assistance Services.*

6. *Reviewing documentation regarding health care services, including medication and treatment records to assess that services are being provided in accordance with physicians' orders, and informing the administrator of any problems.*

7. *Monitoring of conformance to the facility's medication management plan and the maintenance of required medication reference materials, and advising the administrator of any concerns.*

8. *Monitoring of infection control measures and advising the administrator of any concerns.*

9. *Reviewing the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination, and advising the administrator of any concerns.*

10. *Documenting that the requirements of this section were met, including the signature(s) of the licensed health care professional(s) who provided each of the services and the date(s) the service was provided. Documentation for the past two years shall be maintained at the facility.*

## **22 VAC 40-72-490. Community services board access.**

*All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, local government departments with policy-advisory community services boards or behavioral health authorities as defined in § 37.2-100 of the Code of Virginia for the purposes of:*

1. *Assessing or evaluating clients residing in the facility;*
2. *Providing case management or other services or assistance to clients residing in the facility; or*
3. *Monitoring the care of clients residing in the facility.*

*Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.*

## **22 VAC 40-72-500. Mental health services coordination, support, and agreement.**

A. *For each resident requiring mental health services, the services of the local community mental health, mental retardation and substance abuse services board, or a public or private mental health clinic, rehabilitative services agency, treatment facility or agent shall be secured as appropriate based on the resident's current evaluation.*

B. *The assisted living facility shall assist the resident in obtaining the services recommended in the initial evaluation and in the progress reports.*

C. *The facility shall enter into a written agreement with all providers of mental health services utilized by residents in the facility to assure that the services outlined in subsection D of this section are provided.*

1. *Providers of mental health services shall include the local community mental health, mental retardation, and substance abuse services board; public or private mental health clinic, treatment facility or agent; private psychiatrist, psychologist, therapist, or other appropriate mental health professional.*

2. *The facility shall maintain contact information for providers currently serving residents as a resource for other residents who may need mental health services.*

3. *A copy of the agreement shall remain on file in the assisted living facility.*

D. *Services to be included in the agreement shall at least be the following:*

1. *Diagnostic, evaluation and referral services in order to identify and meet the needs of the resident;*

2. *Appropriate community-based mental health, mental retardation and substance abuse services;*

3. *Services and support to meet emergency mental health needs of a resident; and*

4. *Completion of written progress reports as follows:*

a. *The facility shall obtain written progress reports on each resident receiving services from the local community mental health, mental retardation and substance abuse services board, or a public or private mental health clinic, treatment facility or agent; private psychiatrist, psychologist, therapist, or other appropriate mental health professional.*

b. *The progress reports shall be obtained at least every six months until it is stated in a report that services are no longer needed.*

c. *The progress reports shall contain at a minimum:*

(1) *A statement that continued services are or are not needed.*

(a) *If continued services are still required, a summary of progress.*

(b) *The status of any identified high risk behavior.*

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(2) Recommendations, if any, for continued services and the expected therapeutic outcomes;

(3) A statement that the resident's needs can continue to be met in an assisted living facility; and

(4) A statement of any recommended services to be provided by the assisted living facility.

d. Copies of the progress reports shall be filed in the resident's record.

E. If the facility is unsuccessful in obtaining the recommended services, it must document:

1. Whether it can continue to meet all other needs of the resident.

2. How it plans to ensure that the failure to obtain the recommended services will not compromise the health, safety, or rights of the resident and others who come in contact with the resident.

3. The offices, agencies and individuals who were contacted and explanation of outcomes.

4. Details of additional steps the facility will take to find alternative services to meet the resident's needs.

## **22 VAC 40-72-510. Intervention for high risk behavior.**

A. At any time that facility staff observe that the resident is exhibiting or verbalizing an intent to engage in high risk behavior, and it is:

1. Believed that a crisis situation has occurred as a result of the person's behaviors or thinking that has caused harm or presents the potential to cause harm to the person or others, the administrator shall ensure that the local community services board (CSB) is immediately contacted to request an evaluation for emergency intervention services; or

2. Believed that the person's behaviors or thinking may not rise to the level that would require professional emergency intervention, the administrator shall ensure that the responsible mental health professional is contacted regarding the concerns with the person's behaviors or thinking within 24 hours of observation.

a. If there is no one currently responsible for the treatment of the person exhibiting the mental health disturbance, a referral shall be made within 24 hours of observing the disturbance to the local CSB, or to a qualified mental health professional of the resident's choice, to determine whether there is a need for mental health services.

b. The facility shall document the referral made to the CSB or other mental health agency and note the availability and date that services can be rendered.

B. Following the initial notification of the CSB or other qualified mental health professional, the facility and the mental health treatment provider shall decide on the need for an intervention plan that shall be designed for and implemented by the facility. If there is a need for an intervention plan, the plan shall:

1. Include a behavioral management tracking form that:

a. Is developed, in consultation with the facility, by a qualified mental health treatment provider and when possible, in consultation with the resident or his legal representative.

b. Incorporates, at a minimum, the following information:

(1) Target or problem behaviors identified;

(2) Identified triggers, motivators, behaviors or conditions associated with target behaviors, including medication side effects;

(3) Interventions prescribed by mental health professionals or a facility supervisor to be employed by direct care staff;

(4) Dates and times behaviors were last observed;

(5) Impact of interventions on behaviors, or if prescribed interventions were not used, an explanation of the reason;

(6) General description of, and detailed when possible, any subsequent actions that must be considered by the facility following a negative outcome of the prescribed interventions;

(7) General description of, and detailed when possible, any subsequent actions that must be considered by the mental health treatment provider based on the presentation of the problems by the facility;

(8) Consideration of the need for an updated mental health evaluation.

c. Is maintained at the facility with:

(1) The original being filed in the record with the ISP for each resident.

NOTE: Should the tracking forms exceed five, the facility may choose to maintain the five most recent forms in the resident's current record and all others in an overflow record maintained for each resident.

(2) A duplicate copy being filed for each resident, in an identifiable binder to permit timely access to information by facility employees so that it might be used to help manage or prevent problem behaviors from escalating or recurring.

2. Be referenced in the ISP.

3. Be reviewed and incorporated, to include information obtained from the behavioral management tracking form, in the written progress report required by 22 VAC 40-72-500 D 4.

C. The facility shall have procedures in place to ensure that direct care staff members who have direct care responsibilities for residents with high risk behaviors are:

1. Provided training on monitoring (such as when using the behavioral management tracking form) and intervening when high-risk behaviors are exhibited;

2. Kept informed of the status of high-risk behaviors exhibited by residents;

D. The facility shall not implement a restrictive behavioral management plan, which limits or prevents a person from freely exercising targeted rights or privileges, unless:

1. The resident or legal representative has been informed of the need and description of the plan; and

2. The plan is approved and supervised by a qualified mental health professional with no financial interest in the facility.

## **22 VAC 40-72-520. Activity/recreational requirements.**

A. In facilities licensed for residential living care only, there shall be at least 11 hours of scheduled activities available to the residents each week for no less than one hour each day.

B. In facilities licensed for both residential and assisted living care, there shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day.

C. Activities shall be varied and shall include, but not necessarily be limited to, the following categories: physical, social, cognitive/intellectual/creative, productive, sensory, reflective/contemplative, outdoor, and nature/natural world. Community resources as well as facility resources may be used to provide activities.

NOTE: Any given activity may fall under more than one category.

D. Activities shall be planned under the supervision of the administrator or his designee who shall encourage involvement of residents and employees in the planning.

E. The activities shall take into consideration individual differences in age, health status, sensory deficits, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities, and skills by providing opportunities for a variety of types of activities and levels of involvement.

F. Activities shall:

1. Meaningfully support the physical, social, mental, and emotional abilities and skills of residents; and

2. Promote or maintain the resident's highest level of independence or functioning.

G. There shall be a written schedule of activities that meets the following criteria:

1. The schedule of activities shall be developed at least monthly.

2. The schedule shall include:

a. Group activities for all residents or small groups of residents; and

b. The name, type, date and hour of the activity.

3. If one activity is substituted for another, the change shall be noted on the schedule.

4. The current month's schedule shall be posted in a conspicuous location in the facility or otherwise be made available to residents and their families.

5. The schedule of activities for the past six months shall be kept at the facility.

6. If a resident requires an individual schedule of activities, that schedule shall be a part of the individualized service plan.

H. Adequate supplies and equipment appropriate for the program activities shall be available in the facility.

I. Resident participation in activities.

1. Residents shall be encouraged but not forced to participate in activity programs offered by the facility and the community.

2. During an activity, each resident shall be encouraged but not coerced to join in at his level, to include observing.

3. Any restrictions on participation imposed by a physician shall be documented in the resident's record.

J. During a programmed activity, there shall be an adequate number of employees or volunteers to lead the activity, to assist the residents with the activity, to supervise the general area, and to re-direct any individuals who require different activities.

K. All equipment and supplies used shall be accounted for at the end of the activity so that a safe environment can be maintained.

L. The employee or volunteer leading the activity shall have a general understanding of the following:

1. Attention spans and functional levels of the residents in the group;

2. Methods to adapt the activity to meet the needs and abilities of the residents;

3. Various methods of engaging and motivating individuals to participate; and

4. The importance of providing appropriate instruction, education, and guidance throughout the activity.

## **22 VAC 40-72-530. Freedom of movement.**

A. Any resident who does not have a serious cognitive impairment with an inability to recognize danger or protect his own safety and welfare shall be allowed to freely leave the facility. A resident who has a serious cognitive impairment and an inability to recognize danger or protect his own safety and welfare shall be subject to the provisions set forth in 22 VAC 40-72-1020 A or 22 VAC 40-72-1130 A.

B. Doors leading to the outside shall not be locked from the inside or secured from the inside in any manner that amounts to a lock, except that doors may be locked or secured in a manner that amounts to a lock in special care units as provided in 22 VAC 40-72-1130 A.

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*NOTE: Any devices used to lock or secure doors in any manner must be in accordance with applicable building and fire codes.*

*C. The facility shall provide freedom of movement for the residents to common areas and to their personal spaces. The facility shall not lock residents out of or inside their rooms.*

## **22 VAC 40-72-540. Visiting in the facility.**

*A. Daily visits to residents in the facility shall be permitted.*

*B. If visiting hours are restricted, daily visiting hours shall be posted in a place conspicuous to the public.*

*C. The facility shall encourage regular family involvement with the resident and shall provide ample opportunities for family participation in activities at the facility.*

## **22 VAC 40-72-550. Resident rights.**

*A. The resident shall be encouraged and informed of appropriate means as necessary to exercise his rights as a resident and a citizen throughout the period of his stay at the facility.*

*B. The resident has the right to voice or file grievances, or both, with the facility and to make recommendations for changes in the policies and services of the facility. The residents shall be protected by the licensee or administrator, or both, from any form of coercion, discrimination, threats, or reprisal for having voiced or filed such grievances.*

*C. Any resident of an assisted living facility has the rights and responsibilities as provided in § 63.2-1808 of the Code of Virginia and this chapter.*

*D. The operator or administrator of an assisted living facility shall establish written policies and procedures for implementing § 63.2-1808 of the Code of Virginia.*

*E. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name, title and telephone number of the appropriate regional licensing supervisor of the department, the Adult Protective Services' toll-free telephone number, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (local) ombudsman program serving the area, and the toll-free telephone number of the Virginia Office for Protection and Advocacy.*

*F. The rights and responsibilities of residents in assisted living facilities shall be reviewed annually with each resident or his legal representative or responsible individual as stipulated in subsection G of this section and each employee. Evidence of this review shall be the resident's, his legal representative's or responsible individual's, or employee's written acknowledgment of having been so informed which shall include the date of the review and shall be filed in the resident's or employee's record.*

*G. If a resident is unable to fully understand and exercise the rights and responsibilities contained in § 63.2-1808 of the Code of Virginia, the facility shall require that a legal representative or a responsible individual, of the resident's choice when possible, designated in writing in the resident's*

*record, annually be made aware of each item in § 63.2-1808 and the decisions that affect the resident or relate to specific items in § 63.2-1808.*

*1. A resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.*

*2. The facility shall seek a determination and reasons for the determination from a resident's physician regarding the resident's capability to understand and exercise these rights when there is reason to believe that the resident may not be capable of such.*

*H. The facility shall make its policies and procedures for implementing § 63.2-1808 of the Code of Virginia available and accessible to residents, relatives, agencies, and the general public.*

## **22 VAC 40-72-560. Resident records.**

*A. The facility shall establish written policy and procedures for documentation and recordkeeping to ensure that the information in resident records is accurate and clear and that the records are well-organized.*

*B. Any forms used for recordkeeping shall contain at a minimum the information specified in this chapter. Model forms, which may be copied, will be supplied by the department upon request.*

*C. Any physician's notes and progress reports in the possession of the facility shall be retained in the resident's record.*

*D. Copies of all agreements between the facility and the resident and official acknowledgment of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided to the resident, and to persons whose signatures appear on the document.*

*E. All records that contain the information required by these standards for residents shall be retained at the facility and kept in a locked area, except that information shall be made available as noted in subsection F of this section.*

*F. The licensee shall assure that all records are treated confidentially and that information shall be made available only when needed for care of the resident. All records shall be made available for inspection by the department's representative.*

*G. Residents shall be allowed access to their own records.*

*H. The resident's record shall be kept current and the complete record shall be retained for at least two years after the resident leaves the facility.*

*I. A current picture of each resident shall be readily available for identification purposes, or if the resident refuses to consent to a picture, there shall be a narrative physical description, which is annually updated, maintained in his file.*



## **22 VAC 40-72-570. Release of information from resident's record.**

A. The resident or the appropriate legal representative has the right to release information from the resident's record to persons or agencies outside the facility.

B. The licensee is responsible for making available to residents and legal representatives, a form which they may use to grant their written permission to release information to persons or agencies outside the facility. The facility shall retain a copy of any signed release of information form in the resident's record.

NOTE: A model form, which may be copied, may be obtained from the department.

C. Only under the following circumstances is a facility permitted to release information from the resident's records or information regarding the resident's personal affairs without the written permission of the resident or his legal representative, where appropriate:

1. When records have been properly subpoenaed;
2. When the resident is in need of emergency medical care and is unable or unwilling to grant permission to release information or his legal representative is not available to grant permission;
3. When the resident moves to another caregiving facility;
4. To representatives of the department; or
5. As otherwise required by law.

D. When a resident is hospitalized or transported by emergency medical personnel, information necessary to the care of the resident, on such matters as medications, advance directives, and organ donation, shall be furnished by the facility to the hospital or emergency medical personnel, if appropriate.

NOTE: See previous subsections in this section to determine whether or not written permission from the resident or his legal representative is needed.

## **22 VAC 40-72-580. Food service and nutrition.**

A. When any portion of an assisted living facility is subject to inspection by the State Department of Health, the facility shall be in compliance with those regulations, as evidenced by an initial and subsequent annual reports from the State Department of Health. The report shall be retained at the facility for a period of at least two years.

B. All meals shall be served in the dining area as designated by the facility, except that:

1. If the facility offers routine or regular room service, residents shall be given the option of having meals in the dining area or in their rooms, provided that:
  - a. If a resident chooses to have meals in his room, there is a written agreement to this effect, signed and dated by both the resident and the licensee or administrator, and the agreement is filed in the resident's record.

- b. If a resident's individualized service plan, physical examination report, mental health status report or any other document indicates that the resident has a psychiatric condition that contributes to self-isolation, a qualified mental health professional shall make a determination in writing whether the person should have the option of having meals in his room. If the determination is made that the resident should not have this option, then the resident shall have his meals in the dining area.

2. Under special circumstances, such as temporary illness or temporary incapacity, or temporary agitation of a resident with serious cognitive impairment, meals may be served in a resident's room.

3. When meals are served in a resident's room, a sturdy table must be used.

C. Residents with independent living status who have kitchens equipped with stove, refrigerator and sink within their individual apartments may have the option of obtaining meals from the facility or from another source.

1. The facility must have an acceptable health monitoring plan for these residents and provide meals both for other residents and for residents identified as no longer capable of maintaining independent living status.

2. An acceptable health monitoring plan includes assurance of adequate resources, accessibility to food, a capability to prepare food, and availability of meals when the resident is sick or temporarily unable to prepare meals for himself.

D. Personnel shall be available to help any resident who may need assistance in reaching the dining room or when eating.

E. A minimum of 30 minutes shall be allowed for each resident to complete a meal. If a resident has been assessed on the UAI as dependent in eating/feeding, his individualized service plan shall indicate an approximate amount of time needed for meals to ensure needs are met.

F. Facilities shall develop and implement a policy to monitor each resident's food consumption for:

1. Warning signs of changes in physical or mental status related to nutrition; and
2. Compliance with any needs determined by the individualized service plan or prescribed by a physician, nutritionist or health care professional.

G. Facilities shall implement automatic interventions as soon as a nutritional problem is suspected. These interventions shall include, but are not limited to the following:

1. Weighing residents at least monthly to determine whether the resident has significant weight loss (5.0% weight loss in one month, 7.5% in three months, or 10% in six months); and
2. Notifying the attending physician if a significant weight loss is identified in any resident who is not on a physician-approved weight reduction program, and obtain, document and follow the physician's instructions regarding nutritional care.

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## **22 VAC 40-72-590. Observance of religious dietary practices.**

A. The resident's religious dietary practices shall be respected.

B. Religious dietary laws (or practices) of the administrator or licensee shall not be imposed upon residents unless mutually agreed upon in the admission agreement between administrator or licensee and resident.

## **22 VAC 40-72-600. Time interval between meals.**

A. Time between the evening meal and breakfast the following morning shall not exceed 15 hours.

B. There shall be at least four hours between breakfast and lunch and at least four hours between lunch and supper.

C. When multiple seatings are required due to limited dining space, scheduling shall ensure that these time intervals are met for all residents. Schedules shall be made available to residents, legal representatives, employees, volunteers and any other persons responsible for assisting residents in the dining process.

## **22 VAC 40-72-610. Number of meals.**

A. At least three well-balanced meals, served at regular intervals, shall be provided daily to each resident, unless contraindicated as documented by the attending physician in the resident's record or as provided for in 22 VAC 40-72-580 C.

B. Bedtime and between meal snacks shall be made available for all residents desiring them, or in accordance with their service plans, and shall be listed on the daily menu. Vending machines shall not be used as the only source for snacks.

## **22 VAC 40-72-620. Menus for meals and snacks.**

A. Food preferences of residents shall be considered when menus are planned.

B. Menus for the current week shall be dated and posted in an area conspicuous to residents.

C. Any menu substitutions or additions shall be recorded on the posted menu.

D. A record shall be kept of the menus served for three months.

E. Minimum daily menu.

1. Unless otherwise ordered in writing by the resident's physician, the daily menu, including snacks, for each resident shall meet the current guidelines of the U.S. Department of Agriculture's food guidance system or the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, taking into consideration the age, sex and activity of the resident.

2. Other foods may be added.

3. Second servings and snacks shall be provided, if requested, at no additional charge.

4. At least one meal each day shall include a hot main dish.

F. Special diets. When a diet is prescribed for a resident by his physician, it shall be prepared and served according to the physician's orders.

G. There shall be on-site quarterly oversight of special diets by a dietitian or nutritionist, each of whom must meet the requirements of § 54.1-2731 of the Code of Virginia and 18 VAC 75-30, Regulations Governing Standards for Dietitians and Nutritionists. The quarterly oversight shall include a review of the physician's order and the preparation and delivery of the special diet for each resident who has such a diet. The quarterly oversight shall also include an evaluation of the adequacy of each resident's special diet and the resident's acceptance of the diet. The dietitian or nutritionist shall provide a written report within two weeks to the facility administrator of his findings and recommendations, and include the date of the oversight, the date of the report, and his signature. The report shall be retained at the facility for at least two years.

NOTE: Special diets may also be referred to as medical nutrition therapy or diet therapy.

H. A copy of a diet manual containing acceptable practices and standards for nutrition shall be kept current and on file in the dietary department.

I. Hydration. The facility shall make drinking water readily available to all residents. Direct care staff shall know which residents need help getting water or other fluids and drinking from a cup or glass. Direct care staff shall encourage and assist residents who do not have medical conditions with physician ordered fluid restrictions to drink water or other beverages frequently.

## **22 VAC 40-72-630. Medication management plan and reference materials.**

A. The facility shall have, and keep current, a written plan for medication management. The facility's medication plan shall address procedures for administering medication and shall include:

1. Methods to ensure an understanding of the responsibilities associated with medication management;
2. Standard operating procedures and any general restrictions specific to the facility;
3. Methods to prevent the use of outdated, damaged or contaminated medications;
4. Methods to maintain an adequate supply of medication;
5. Methods for verifying that medication orders have been accurately transcribed to Medication Administration Records (MARs);
6. Methods for monitoring medication administration and the effective use of the MARs for documentation;
7. Methods to ensure that employees who are responsible for administering medications meet the qualification and training requirements of this section;
8. Methods to ensure that employees who are responsible for administering medications are adequately supervised;

9. A plan for proper disposal of medication; and

10. Identification of the employee responsible for routinely communicating the effectiveness of prescribed medications and any adverse reactions or suspected side effects to the prescribing physician.

B. The facility's written medication management plan and any subsequent changes shall be approved by the department.

C. In addition to the facility's written medication management plan, the facility shall maintain, as reference materials for medication aides, a current copy of "A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act," approved by the Virginia Board of Nursing, and at least one pharmacy reference book, drug guide or medication handbook for nurses that is no more than two years old. Other information shall also be maintained to assist with safe administration of medication, such as pharmacy information sheets, product information from drug packages, or printed information from prescribing physicians.

## **22 VAC 40-72-640. Physician's order.**

A. No medication, dietary supplement, diet, medical procedure or treatment shall be started, changed or discontinued by the facility without a valid order from the physician.

NOTE: Medications include prescription, over-the counter and sample medications.

NOTE: Whenever a resident is admitted to a hospital for treatment of any condition, the facility shall obtain new orders for all medications and treatments prior to or at the time of the resident's return to the facility. The facility shall ensure that the primary physician, if not the prescribing physician, is aware of all new medication orders.

B. The resident's record shall contain the physician's written order or a dated notation of the physician's oral order.

C. Physician orders, both written and oral, for administration of all prescription and over-the-counter medications and dietary supplements shall include the name of the resident, the date of the order, the name of the drug, route, dosage, strength, how often medication is to be given, and identify the diagnosis, condition, or specific indications for administering each drug.

D. Physician's oral orders shall:

1. Be charted by the individual who takes the order. That individual must be one of the following:

a. A licensed health care professional acting within the scope of his profession; or

b. An individual who has successfully completed the medication training program developed by the department and approved by the Board of Nursing.

2. Be reviewed and signed by a physician within 10 working days.

## **22 VAC 40-72-650. Storage of medications.**

A. A medicine cabinet, container or compartment shall be used for storage of medications and dietary supplements

prescribed for residents when such medications and dietary supplements are administered by the facility.

1. The storage area shall be locked.

2. Controlled substances must be kept under a double lock, e.g., a locked cabinet within a locked storage area or a locked container within a locked cabinet.

3. The individual responsible for medication administration shall keep the keys to the storage area on his person.

4. When in use, the storage area shall have adequate illumination in order to read container labels, but it shall remain darkened when closed.

5. The storage area shall not be located in the kitchen or bathroom, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.

6. When required, medications shall be refrigerated.

a. It is permissible to store dietary supplements and foods and liquids used for medication administration in a refrigerator that is dedicated to medication storage, if the refrigerator is in a locked storage area.

b. When it is necessary to store medications in a refrigerator that is routinely used for food storage, the medications shall be stored together in a locked container in a clearly defined area.

B. A resident may be permitted to keep his own medication in a secure place in his room if the UAI has indicated that the resident is capable of self-administering medication. The medication and any dietary supplements shall be stored so that they are not accessible to other residents. This does not prohibit the facility from storing or administering all medication and dietary supplements

## **22 VAC 40-72-660. Qualifications, training, and supervision of staff administering medications.**

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control Act. All staff responsible for medication administration shall:

a. Be licensed by the Commonwealth of Virginia to administer medications; or

b. (i) Have successfully completed one of the five requirements specified in 22 VAC 40-72-250 C 1 through 5 and (ii) have successfully completed the medication training program developed by the department and approved by the Board of Nursing.

EXCEPTION: Staff responsible for medication administration prior to (insert the effective date of these standards) who would otherwise be subject to completion of one of the five requirements specified in 22 VAC 40-72-250 C 1 through 5 do not have to meet any of the requirements listed in 22 VAC 40-72-250 C 1 through 5 in order to administer medication.

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2. All staff who have met the requirements of subdivisions 1 b and c of this section shall be listed in the department's database for medication aides.

3. All staff who have successfully completed the medication training program approved by the Board of Nursing shall also successfully complete:

a. Annual in-service training provided by a licensed health care professional, acting within the scope of the requirements of his profession, on side effects of the medications prescribed to the residents in care and on recognizing and reporting adverse medication reactions.

b. The most current refresher course developed by the department that is based on the curriculum approved by the Board of Nursing. The refresher course shall be completed every three years.

4. Staff who have successfully completed the medication training program approved by the Board of Nursing shall be supervised on-site on all shifts by:

a. A licensed health care professional, acting within the scope of the requirements of his profession;

b. The administrator who has successfully completed the medication training program approved by the Board of Nursing;

c. The designated assistant administrator who has successfully completed the medication training program approved by the Board of Nursing;

d. The manager as specified in this chapter who has successfully completed the medication training program approved by the Board of Nursing; or

e. The person in charge as specified in this chapter who has successfully completed the medication training program approved by the Board of Nursing.

### **22 VAC 40-72-670. Administration of medications and related provisions.**

A. Drugs shall be administered to those residents who are dependent in medication administration as documented on the UAI.

B. All medications shall be removed from the pharmacy container by an authorized person and administered by the same authorized person. Pre-pouring is not permitted.

C. All medications shall be administered in accordance with the physician's instructions and consistent with the standards of practice outlined in the current "A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act," approved by the Virginia Board of Nursing.

D. All medications shall remain in the pharmacy issued container, with the legible prescription label or direction label attached, until administered.

E. Sample medications shall remain in the original packaging, labeled by a physician or pharmacist with the resident's name, the name of the medication, the strength, dosage, route and frequency of administration, until administered.

F. Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container if unit dose packaging is used, until administered.

G. In the event of an adverse drug reaction or a medication error:

1. First aid shall be administered as directed by a physician, pharmacist or the Virginia Poison Control Center.

2. The resident's physician of record shall be notified as soon as possible.

3. The direct care staff person shall document in the resident's record actions taken.

H. The facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications, and dietary supplements. The MAR shall include:

1. Name of the resident;

2. Date prescribed;

3. Drug product name;

4. Strength of the drug;

5. Dosage;

6. Diagnosis, condition, or specific indications for administering the drug or supplement;

7. Route (for example, by mouth);

8. How often medication is to be taken;

9. Date and time given and initials of direct care staff administering the medication;

10. Dates the medication is discontinued or changed;

11. Any medication errors or omissions;

12. Significant adverse effects;

13. For PRN medications:

a. Symptoms for which medication was given;

b. Exact dosage given; and

c. Effectiveness; and

14. The name, signature and initials of all direct care staff administering medications.

I. The performance of all medical procedures and treatments ordered by a physician shall be documented and the documentation shall be retained in the resident's record.

J. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;

2. Licensed health care professionals are responsible for medication administration and management; or

3. The facility has obtained from the resident's physician detailed written instructions or a staff person as allowed in 22 VAC 40-72-640 D has telephoned the doctor prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration. The physician's instructions shall include symptoms that might indicate the use of the medication, exact dosage, the exact timeframes the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

K. Medications ordered for PRN administration shall be available, properly labeled and properly stored at the facility.

L. An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. A stat-drug box may be used in those facilities in which only those persons licensed to administer are administering drugs and shall be subject to the conditions specified in 18 VAC 110-20-550 of the regulations of the Virginia Board of Pharmacy.

NOTE: Stat-drug boxes may not be used in facilities in which medication aides administer medications. Medication aides hold a certificate, but are not licensed.

## **22 VAC 40-72-680. Medication review.**

A. For each resident assessed for residential living care, except for those who self-administer all of their medications, a licensed health care professional, acting within the scope of the requirements of his profession, shall perform an annual review of all the medications of the resident.

B. For each resident assessed for assisted living care, a licensed health care professional, acting within the scope of the requirements of his profession, shall perform a review every six months of all the medications of the resident.

C. The medication review shall include both prescription and over-the-counter medications and supplements.

D. If deemed appropriate by the licensed health care professional, the review shall include observation of or interview with the resident.

E. The review shall include, but not be limited to, the following:

1. All medications that the resident is taking and medications that he could be taking if needed (PRNs).
2. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.
3. Documentation of actual and consideration of potential interactions of drugs with one another.
4. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.
5. Documentation of actual and consideration of potential negative affects of drugs resulting from a resident's medical condition other than the one the drug is treating.
6. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

7. Consideration of whether the resident needs additional monitoring or testing.

8. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

9. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

F. Any concerns or problems or potential problems shall be reported to the resident's attending physician and to the facility administrator.

G. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. The health care professional shall also document any reports made as required in subsection F of this section. Action taken in response to the report shall also be documented. The documentation required by this subsection shall be retained in the resident's record.

## **22 VAC 40-72-690. Oxygen therapy.**

When oxygen therapy is provided, the following safety precautions shall be met and maintained:

1. The facility shall have a valid physician's order that includes the following:
  - a. The oxygen source (such as compressed gas or concentrators);
  - b. The delivery device (such as nasal cannula, reservoir nasal cannulas or masks); and
  - c. The flow rate deemed therapeutic for the resident.
2. The facility shall post "No Smoking-Oxygen in Use" signs and enforce the smoking prohibition in any room of a building where oxygen is in use.
3. The facility shall ensure that only oxygen from a portable source shall be used by residents when they are outside their rooms. The use of long plastic tether lines to the source of oxygen is not permitted.
4. The facility shall make available to employees the emergency numbers to contact the resident's physician and the oxygen vendor for emergency service or replacement.
5. The facility shall demonstrate that all direct care staff responsible for assisting residents who use oxygen supplies have had training or instruction in the use and maintenance of resident-specific equipment.

## **22 VAC 40-72-700. Restraints.**

A. Restraints shall not be used for purposes of discipline or convenience. Restraints may only be used to treat a resident's medical symptoms or symptoms from mental illness or mental retardation.

B. The facility may only impose physical restraints when the resident's medical symptoms or symptoms from mental illness

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or mental retardation warrant the use of restraints, if the restraint is:

1. Necessary to ensure the physical safety of the resident or others;
2. Imposed in accordance with a physician's written order that specifies the condition, circumstances and duration under which the restraint is to be used, except in emergency circumstances until such an order can reasonably be obtained; and
3. Not ordered on a standing, blanket, or "as needed" (PRN) basis.

C. Whenever physical restraints are used, the following conditions shall be met:

1. A restraint shall be used only to the minimum extent necessary to protect the resident or others;
2. Restraints shall only be applied by direct care staff who have received training in their use as specified by subdivision 2 of 22 VAC 40-72-310;
3. The facility shall closely monitor the resident's condition, which includes checking on the resident at least every 30 minutes;
4. The facility shall assist the resident as often as necessary, but no less than 10 minutes every hour, for his hydration, safety, comfort, range of motion, exercise, elimination, and other needs;
5. The facility shall release the resident from the restraint as quickly as possible;
6. Direct care staff shall keep a record of restraint usage, outcomes, checks, any assistance required in subdivision 4 of this subsection, and note any unusual occurrences or problems;
7. In nonemergencies (as defined in 22 VAC 40-72-10):
  - a. Restraints shall be used as a last resort and only if the facility, after completing, implementing and evaluating the resident's comprehensive assessment and service plan, determines and documents that less restrictive means have failed;
  - b. Restraints shall be used in accordance with the resident's service plan, which documents the need for the restraint and includes a schedule or plan of rehabilitation training enabling the progressive removal or the progressive use of less restrictive restraints when appropriate;
  - c. The facility shall explain the use of the restraint and potential negative outcomes to the resident or his legal representative and the resident's right to refuse the restraint; and shall obtain the written consent of the resident or his legal representative;
  - d. Restraints shall be applied so as to cause no physical injury and the least possible discomfort; and
  - e. The facility shall notify the resident's legal representative or designated contact person as soon as

practicable, but no later than 24 hours after the initial administration of a nonemergency restraint. The facility shall keep the legal representative or designated contact person informed about any changes in restraint usage. A notation shall be made in the resident's record of such notice, including the date, time, caller and person notified.

8. In emergencies (as defined in 22 VAC 40-72-10):

- a. Restraints shall not be used unless they are necessary to alleviate an unanticipated immediate and serious danger to the resident or other individuals in the facility;
- b. An oral or written order shall be obtained from a physician within one hour of administration of the emergency restraint and the order shall be documented;
- c. In the case of an oral order, a written order shall be obtained from the physician as soon as possible;
- d. The resident shall be within sight and sound of direct care staff at all times;
- e. If the emergency restraint is necessary for longer than two hours, the resident shall be transferred to a medical or psychiatric inpatient facility or monitored in the facility by a mental health crisis team until his condition has stabilized to the point that the attending physician documents that restraints are not necessary; and
- f. The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 12 hours after administration of an emergency restraint. A notation shall be made in the resident's record of such notice, including the date, time, caller and person notified.

D. The use of chemical restraints is prohibited.

## **22 VAC 40-72-710. Do Not Resuscitate (DNR) Orders.**

A. Do Not Resuscitate Orders for withholding cardiopulmonary resuscitation from an individual in the event of cardiac or respiratory arrest shall only be carried out in a licensed assisted living facility when:

1. A valid written order has been issued by the resident's attending physician;
2. The written order is included in the individualized service plan; and
3. There is an employee with a current certification in cardiopulmonary resuscitation (CPR) (See provision from § 63.2-1807 of the Code of Virginia in this section) or a licensed nurse available to implement the order.

B. Durable DNR Orders shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

C. Section 63.2-1807 of the Code of Virginia states that the owners or operators of any assisted living facility may provide that their employees who are certified in CPR shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the resident's attending physician

and has been included in the resident's individualized service plan.

PART VII.  
RESIDENT ACCOMMODATIONS AND RELATED  
PROVISIONS.

**22 VAC 40-72-720. Personal possessions.**

A. Each resident shall be permitted to keep reasonable personal property in his possession at a facility in order to maintain individuality and personal dignity. These possessions may include, but are not limited to:

1. Clothing. A facility shall ensure that each resident has his own clothing.

a. The use of a common clothing pool is prohibited.

b. If necessary, resident's clothing shall be inconspicuously marked with his name to avoid getting mixed with others.

c. Residents shall be allowed and encouraged to select their daily clothing and wear clothing to suit their activities and appropriate to weather conditions.

2. Personal care items. Each resident shall have his own personal care items. Toilet paper and soap shall be provided for residents at all commonly shared face/hand washing sinks and bathrooms at no additional charge.

B. Each facility shall develop and implement a written policy regarding procedures to be followed when a resident's clothing or other personal possession, such as jewelry, television, radio or other durable property, is reported missing. Attempts shall be made to determine the reason for the loss and any reasonable actions shall be taken to recover the item and to prevent or discourage future losses. Documentation shall be maintained regarding all items that were reported missing and resulting actions that were taken.

**22 VAC 40-72-730. Resident rooms.**

A. The resident shall be encouraged to furnish or decorate his room as space and safety considerations permit and in accordance with this chapter.

B. Bedrooms shall contain the following items:

1. A separate bed with comfortable mattress, springs and pillow for each resident. Provisions for a double bed for a married couple shall be optional;

2. A table or its equivalent accessible to each bed;

3. An operable bed lamp or bedside light accessible to each resident;

4. A sturdy chair for each resident (wheelchairs do not meet the intent of this standard);

5. Drawer space for clothing and other personal items. If more than one resident occupies a room, ample drawer space shall be assigned to each individual;

6. At least one mirror; and

7. Window coverings for privacy.

C. Adequate and accessible closet or wardrobe space shall be provided for each resident.

D. The facility shall have sufficient bed and bath linens in good repair so that residents always have clean:

1. Sheets;

2. Pillowcases;

3. Blankets;

4. Bedspreads;

5. Towels;

6. Washcloths; and

7. Waterproof mattress covers when needed.

**22 VAC 40-72-740. Living room or multipurpose room.**

A. Sitting rooms or recreation areas or both shall be equipped with:

1. Comfortable chairs (e.g., overstuffed, straight-backed, and rockers);

2. Tables;

3. Lamps;

4. Television (if not available in other areas of the facility);

5. Radio (if not available in other areas of the facility);

6. Current newspaper; and

7. Materials appropriate for the implementation of the planned activity program, such as books or games.

B. Space other than sleeping areas shall be provided for residents for sitting, for visiting with one another or with guests, for social and recreational activities, and for dining. These areas may be used interchangeably.

**22 VAC 40-72-750. Dining areas.**

Dining areas shall have a sufficient number of sturdy dining tables and chairs to serve all residents, either all at one time or in reasonable shifts.

**22 VAC 40-72-760. Laundry and linens.**

A. Residents' clothing shall be kept clean and in good repair.

B. Table coverings and napkins shall be clean at all times.

C. Bed and bath linens shall be changed at least every seven days and more often if needed. In facilities with common bathing areas, bath linens shall be changed after each use.

D. Table and kitchen linens shall be laundered separately from other washable goods.

E. When bed, bath, table and kitchen linens are washed, the water shall be above 140°F or the dryer shall heat the linens above 140°F as verified by the manufacturer or a sanitizing agent shall be used according to the manufacturer's instructions.

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## **22 VAC 40-72-770. Transportation.**

The resident shall be assisted in making arrangements for transportation as necessary.

## **22 VAC 40-72-780. Incoming and outgoing mail.**

A. Incoming and outgoing mail shall not be censored.

B. Incoming mail shall be delivered promptly.

C. Mail shall not be opened by employees or volunteers except upon request of the resident or written request of the legal representative.

## **22 VAC 40-72-790. Telephones.**

A. Each building shall have at least one operable, nonpay telephone easily accessible to employees. There shall be additional telephones or extensions as may be needed to summon help in an emergency.

B. The resident shall have reasonable access to a nonpay telephone on the premises.

C. Privacy shall be provided for residents to use a telephone.

## **22 VAC 40-72-800. Smoking.**

A. Smoking by residents, employees, volunteers, and visitors shall be done only in areas designated by the facility and approved by the State Fire Marshal or local fire official. Smoking shall not be allowed in a kitchen or food preparation areas.

NOTE: A facility may prohibit smoking on its premises.

B. All designated smoking areas shall be provided with suitable ashtrays.

C. Residents shall not be permitted to smoke in or on their beds.

D. All common areas shall have smoke-free areas designated for nonsmokers.

## **22 VAC 40-72-810. Resident councils.**

A. The facility shall permit and encourage the formation of a resident council by residents, and shall assist the residents in its establishment.

B. The resident council shall be composed of residents of the facility and the council may extend membership to family members, advocates, friends, and others. Residents shall be encouraged, but shall not be compelled to attend meetings.

C. The facility shall assist residents in maintaining the resident council, including, but not limited to:

1. Scheduling regular meetings;
2. Providing space for meetings;
3. Posting notice for meetings;
4. Providing assistance in attending meetings for those residents who request it; and
5. Preparing written reports of meetings for dissemination to all residents.

D. In order to promote a free exchange of ideas, at least part of each meeting shall be allowed to be conducted without the presence of any facility personnel.

E. The purposes of the resident council shall be to:

1. Work with the administration in improving the quality of life for all residents by enriching the activity program;
2. Discuss the services offered by the facility and make recommendations for resolution of identified problems or concerns;
3. Review the facility's policies and procedures, and recommend changes or additions; and
4. Perform other functions as determined by the council.

F. If there is no council, the facility shall annually remind residents that they may establish a resident council and that the facility would assist in its formation and maintenance. The general purpose of the council shall also be explained at this time.

## **22 VAC 40-72-820. Pets living in the assisted living facility.**

If an assisted living facility allows pets to live on the premises, the facility shall:

1. Develop, implement and disclose to potential and current residents policies regarding:
  - a. The types of pets that are permitted in the assisted living facility; and
  - b. The conditions under which pets may be in the assisted living facility.
2. Maintain documentation of disclosure of pet policies in the resident's record.
3. Ensure that before being allowed to live on the premises, the animal shall have had all recommended or required immunizations and shall be certified by a licensed veterinarian to be free of diseases transmittable to humans.
4. Ensure that animals living on the assisted living facility premises:
  - a. Have regular examinations and immunizations, appropriate for the species, by a licensed veterinarian.
  - b. Are restricted from central food preparation areas.
5. Ensure that common household pets, exotic pets, animals, birds, insects, reptiles, and fish are well treated and cared for in compliance with state regulations and local ordinances.
6. Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal.
7. Ensure any animal living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, employees, volunteers, or visitors.



## **22 VAC 40-72-830. Pets visiting the assisted living facility.**

If an assisted living facility allows pets to visit the premises, the facility shall:

1. Ensure that any pet or animal present at the home, indoors or outdoors, is in good health and shows no evidence of carrying any disease;
2. Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal; and
3. Ensure any animal is well-treated while visiting on the premises, has a suitable temperament and otherwise poses no significant health or safety risks to residents, employees, volunteers, or visitors.

### **PART VIII. BUILDINGS AND GROUNDS.**

## **22 VAC 40-72-840. General requirements.**

A. Buildings licensed for ambulatory residents or nonambulatory residents shall be classified by and meet the specifications for the proper use group as required by the Virginia Statewide Building Code (13 VAC 5-63).

B. A certificate of occupancy shall be obtained as evidence of compliance with the applicable edition of the Virginia Statewide Building Code.

C. Before construction begins or contracts are awarded for any new construction, remodeling, or alterations, plans shall be submitted to the department for review.

D. Doors and windows.

1. All doors shall open and close readily and effectively.
2. Any doorway or window that is used for ventilation shall be effectively screened.

E. There shall be enclosed walkways between residents' rooms and dining and sitting areas that are adequately lighted, heated, and ventilated.

F. There shall be an ample supply of hot and cold water from an approved source available to the residents at all times.

G. Hot water at taps available to residents shall be maintained within a range of 105°F to 120°F.

H. Where there is an outdoor area accessible to residents, such as a porch or lawn, it shall be equipped with furniture in season.

I. Cleaning supplies and other hazardous materials shall be stored in a locked area. This safeguard shall be optional in an independent living environment.

J. Each facility shall develop and implement a written policy regarding weapons on the premises of the facility that will ensure the safety and well-being of all residents and staff. Any facility permitting any type of firearm on the premises must include procedures to ensure that ammunitions and firearms are stored separately and in locked locations.

## **22 VAC 40-72-850. Maintenance of buildings and grounds.**

A. The interior and exterior of all buildings shall be maintained in good repair.

B. The interior and exterior of all buildings shall be kept clean and shall be free of rubbish.

C. All buildings shall be well-ventilated and free from foul, stale and musty odors.

D. Adequate provisions for the collection and legal disposal of garbage, ashes and waste material shall be made.

1. Covered, vermin-proof, watertight containers shall be used.
2. Containers shall be emptied and cleaned at least once a week.

E. Buildings shall be kept free of flies, roaches, rats and other vermin. The grounds shall be kept free of their breeding places.

F. All furnishings and equipment, including sinks, toilets, bathtubs, and showers, shall be kept clean and in good repair.

G. Heating, cooling, and lighting features required by 22 VAC 40-72-860 and 22 VAC 40-72-870 shall be kept in safe, operable condition.

H. All inside and outside steps, stairways and ramps shall have nonslip surfaces.

I. Grounds shall be properly maintained to include mowing of grass and removal of snow and ice.

J. Handrails shall be provided on all stairways, ramps, elevators, and at changes of floor level.

K. Elevators, where used, shall be kept in good running condition and shall be inspected at least annually. The signed and dated certificate of inspection issued by the local authority, by the insurance company, or by the elevator company shall be evidence of such inspection.

L. The facility shall develop and implement a schedule of inspection and preventive maintenance and a schedule for inspection and cleaning and housekeeping tasks to ensure that the requirements of this section are met.

## **22 VAC 40-72-860. Heating, ventilation, and cooling.**

A. Rooms extending below ground level shall not be used for residents unless they are dry and well-ventilated. Bedrooms below ground level shall have required window space and ceiling height.

B. At least one movable thermometer shall be available in each building for measuring temperatures in individual rooms that do not have a fixed thermostat that shows the temperature in the room.

C. Heat.

1. Heat shall be supplied from a central heating plant or by an approved electrical heating system.
2. Provided their installation or operation has been approved by the state or local fire authorities, space

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heaters, such as but not limited to, wood burning stoves, coal burning stoves, and oil heaters, or portable heating units either vented or unvented, may be used only to provide or supplement heat in the event of a power failure or similar emergency. These appliances shall be used in accordance with the manufacturer's instructions.

3. When outside temperatures are below 68°F, a temperature of at least 72°F shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours, when residents are asleep, a temperature of at least 68°F shall be maintained. This standard applies unless otherwise mandated by federal or state authorities.

## D. Cooling devices.

1. Cooling devices shall be made available in those areas of buildings used by residents when inside temperatures exceed 82°F.

2. Cooling devices shall be placed to minimize drafts.

3. Any electric fans shall be screened and placed for the protection of the residents.

4. When air conditioners are not provided in all areas used by residents, the facility shall develop and implement a plan to protect residents from heat-related illnesses.

5. As of (insert six months after the effective date of these regulations), the largest common area used by residents shall have air conditioning equipment. The temperature in this common area shall not exceed 82°F.

6. As of (insert the effective date of these regulations), in all buildings approved for new construction or change in use group, or in additions approved for new construction, the facility shall provide an air conditioning system for all areas used by residents, including residents' bedrooms and common areas. Temperatures in all areas used by residents shall not exceed 82°F.

7. As of six years after the effective of these regulations, the facility shall provide in all buildings an air conditioning system for all areas used by residents, including residents' bedrooms and common areas. Temperatures in all areas used by residents shall not exceed 82°F.

a. The facility shall develop an implementation plan, which includes the type of system to be utilized, equipment needed, and costs and funding resources for equipment, installation and operation.

b. The implementation plan shall be filed with the department's licensing inspector by (insert two years after the effective date of these standards).

## 22 VAC 40-72-870. Lighting and lighting fixtures.

A. Artificial lighting shall be by electricity.

B. All areas shall be well lighted for the safety and comfort of the residents according to the nature of activities.

C. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

D. Hallways, stairwells, foyers, doorways, and exits utilized by residents shall be kept well-lighted at all times residents are present in the building.

E. Additional lighting, as necessary to provide and ensure presence of contrast, shall be available for immediate use in areas that may present safety hazards, such as, but not limited to, stairways, doorways, passageways, changes in floor level, kitchen, bathrooms and basements.

F. Glare shall be kept at a minimum in rooms used by residents. When necessary to reduce glare, coverings shall be used for windows and lights.

G. If used, fluorescent lights shall be replaced if they flicker or make noise.

## 22 VAC 40-72-880. Sleeping areas.

Resident sleeping quarters shall provide:

1. For not less than 450 cubic feet of air space per resident;

2. For square footage as provided in this subdivision:

a. As of February 1, 1996, all buildings approved for construction or change in use group, as referenced in the Virginia Statewide Building Code (13 VAC 5-63), shall have not less than 100 square feet of floor area in bedrooms accommodating one resident; otherwise not less than 80 square feet of floor area in bedrooms accommodating one resident shall be required.

b. As of February 1, 1996, all buildings approved for construction or change in use group, as referenced in the Virginia Uniform Statewide Building Code, shall have not less than 80 square feet of floor area per person in bedrooms accommodating two or more residents; otherwise not less than 60 square feet of floor area per person in bedrooms accommodating two or more persons shall be required;

3. For ceilings at least 7-1/2 feet in height;

4. For window areas as provided in this subdivision:

a. There shall be at least eight square feet of glazed window area above ground level in a room housing one person; and

b. There shall be at least six square feet of glazed window area above ground level per person in rooms occupied by two or more persons;

5. For occupancy as provided in this subdivision:

a. As of (insert the effective date of these regulations), in all buildings approved for new construction or change in use group, or in additions approved for new construction, there shall be no more than two residents residing in a bedroom.

b. Unless the provisions of subdivision a of this subdivision apply, there shall be no more than four residents residing in a bedroom;

6. For at least three feet of space between sides and ends of beds that are placed in the same room;

7. That no bedroom shall be used as a corridor to any other room;

8. That all beds shall be placed only in bedrooms; and

9. That household members and employees shall not share bedrooms with residents.

**22 VAC 40-72-890. Toilet, face/hand washing and bathing facilities.**

A. In determining the number of toilets, face/hand washing sinks, bathtubs or showers required, the total number of persons residing on the premises shall be considered. Unless there are separate facilities for household members or employees, they shall be counted in determining the required number of fixtures, except that for bathtubs or showers, the employee count shall include only live-in employees.

1. As of (insert the effective date of these standards), in all buildings or parts thereof approved for new construction or change in use group, on each floor where there are residents' bedrooms, there shall be:

a. At least one toilet for each four persons, or portion thereof;

b. At least one face/hand washing sink for each four persons, or portion thereof;

c. At least one bathtub or shower for each seven persons, or portion thereof;

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than four persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

2. Unless the provisions of subdivision 1 of this subsection apply, on each floor where there are residents' bedrooms, there shall be:

a. At least one toilet for each seven persons, or portion thereof;

b. At least one face/hand washing sink for each seven persons, or portion thereof;

c. At least one bathtub or shower for each 10 persons, or portion thereof;

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than seven persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

3. As of (insert the effective date of these standards), in all buildings or parts thereof approved for new construction or change in use group, when residents' rooms are located on the same floor as the main living or dining area, in addition to the requirements of subdivision 1 of this section, there shall be at least one more toilet and face/hand washing

sink, which is available for common use. The provisions of subdivision 4 c of this subsection shall also apply.

4. On floors used by residents where there are no residents' bedrooms there shall be:

a. At least one toilet;

b. At least one face/hand washing sink;

c. Toilets and face/hand washing sinks in separate rooms for men and women in facilities where there are 10 or more residents. Bathrooms equipped to accommodate more than one person at a time shall be designated by gender. Gender designation of bathrooms must remain constant during the course of a day.

B. Bathrooms shall provide for privacy for such activities as bathing, toileting, and dressing.

C. There shall be ventilation to the outside in order to eliminate foul odors.

D. The following sturdy safeguards shall be provided:

1. Handrails by bathtubs;

2. Grab bars by toilets; and

3. Handrails inside and stools available to stall showers.

EXCEPTION: These safeguards shall be optional for individuals with independent living status.

E. Bathtubs and showers shall have nonskid surfacing or strips.

F. The face/hand washing sink shall be in the same room as the toilet or in an adjacent private area that is not part of a common use area of the assisted living facility.

G. The assisted living facility shall provide private or common-use toilet, face/hand washing and bathing facilities to meet the needs of each resident.

**22 VAC 40-72-900. Toilet and face/hand washing sink supplies.**

A. The facility shall have an adequate supply of toilet tissue and soap. Toilet tissue shall be accessible to each commode and soap shall be accessible to each face/hand washing sink.

B. Common face/hand washing sinks shall have paper towels or an air dryer, and liquid soap for hand washing.

**22 VAC 40-72-910. Provisions for signaling/call systems.**

A. All assisted living facilities shall have a signaling device that is easily accessible to the resident in his bedroom or in a connecting bathroom that alerts the direct care staff that the resident needs assistance.

B. In facilities licensed to care for 20 or more residents under one roof, there shall be a signaling device that terminates at a central location that is continuously staffed and permits employees to determine the origin of the signal or is audible and visible in a manner that permits employees to determine the origin of the signal.

C. In facilities licensed to care for 19 or fewer residents, if the signaling device does not permit employees to determine the

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origin of the signal as specified in subsection B of this section, direct care staff shall make rounds at least once each hour to monitor for emergencies or other unanticipated resident needs. These rounds shall begin when the majority of the residents have gone to bed each evening and shall terminate when the majority of the residents have arisen each morning, and shall be documented as follows:

1. A written log shall be maintained showing the date and time rounds were made and the signature of the direct care staff member who made rounds.
2. Logs for the past three months shall be retained.

## **22 VAC 40-72-920. Fire safety: compliance with state regulations and local fire ordinances.**

A. An assisted living facility shall comply with the Virginia Statewide Fire Prevention Code (13 VAC 5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the annual inspections shall be retained at the facility for at least two years.

B. An assisted living facility shall comply with any local fire ordinance.

### PART IX. EMERGENCY PREPAREDNESS.

## **22 VAC 40-72-930. Emergency preparedness and response plan.**

A. The facility shall develop, in accordance with a department-approved manual, a written emergency preparedness and response plan that shall address:

1. Documentation of contact with the local emergency coordinator to determine local disaster risks and communitywide plans to address different disasters and emergency situations.
2. Analysis of the facility's potential hazards, including severe weather, fire, loss of utilities, flooding, work place violence or terrorism, severe injuries, or other emergencies that would disrupt the normal course of service delivery.
3. Written emergency management policies outlining specific responsibilities for provision of:
  - a. Administrative direction and management of response activities;
  - b. Coordination of logistics during the emergency;
  - c. Communications;
  - d. Life safety of residents, employees, volunteers, and visitors;
  - e. Property protection;
  - f. Continued provision of services to residents;
  - g. Community outreach; and
  - h. Recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting residents, employees, volunteers,

visitors, equipment, medications, and vital records; and restoring services. Emergency procedures shall address:

- a. Alerting emergency personnel and employees;
- b. Warning and notification of residents, including sounding of alarms when appropriate;
- c. Providing emergency access to secure areas and opening locked doors;
- d. Conducting evacuations or sheltering in place, as appropriate, and accounting for all residents;
- e. Locating and shutting off utilities when necessary;
- f. Operating the emergency generator, and if available on-site, testing it periodically;
- g. Communicating with employees and community emergency responders during the emergency; and
- h. Conducting relocations to emergency shelters or alternative sites when necessary and accounting for all residents.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, memoranda of understanding with relocation sites, and list of major resources such as suppliers of emergency equipment.

6. Written procedures for quarterly testing of the implementation of the plan. The testing shall be divided evenly among shifts and the facility shall maintain a record of the dates of the tests for two years.

7. Written procedures for an evaluation immediately following each quarterly test of the plan in order to determine the effectiveness of the test. The licensee or administrator shall immediately correct any problems identified in the evaluation.

B. Employees and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

C. The provider shall develop and implement an orientation and quarterly review on emergency preparedness and response for all employees, residents, and volunteers. The orientation and review shall cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation, shelter in place, and relocation procedures;
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency medical information, equipment, and medications for residents;
5. Locating and shutting off utilities; and
6. Utilizing community support services.

D. The provider shall review the emergency preparedness plan annually or more often as needed and make necessary revisions. Such revisions shall be communicated to employees, residents, and volunteers and incorporated into

the orientation and quarterly review for employees, residents, and volunteers.

E. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the provider shall take appropriate action to protect the health, safety and welfare of the residents and take appropriate actions to remedy the conditions as soon as possible.

F. After the disaster/emergency is stabilized, the provider shall:

1. Notify family members and legal representatives; and
2. Report the disaster/emergency to the licensing office by the next working day as specified in 22 VAC 40-72-100.

### **22 VAC 40-72-940. Emergency evacuation plan.**

A. Assisted living facilities shall have a written plan for emergency building evacuation that is to be followed in the event of a fire or other emergency that requires evacuation. The plan shall be approved by the appropriate fire official.

B. An emergency evacuation drawing shall be posted in a conspicuous place on each floor of each building used by residents. The drawing shall show primary and secondary escape routes, areas of refuge, assembly areas, telephones, fire alarm boxes, and fire extinguishers, as appropriate.

C. The telephone numbers for the fire department, rescue squad or ambulance, and police shall be posted by each telephone shown on the evacuation plan.

NOTE: In assisted living facilities where all outgoing telephone calls must be placed through a central switchboard located on the premises, this information may be posted by the switchboard rather than by each telephone, providing this switchboard is manned 24 hours each day.

D. Employees and volunteers shall be fully informed of the approved evacuation plan, including their duties, and the location and operation of fire extinguishers, fire alarm boxes, and any other available emergency equipment.

### **22 VAC 40-72-950. Evacuation drills.**

A. At least one evacuation drill shall be held each month for the staff on duty and all residents who are in the building at the time of the drill to practice meeting the requirements of the approved emergency evacuation plan. During a three-month period:

1. At least one evacuation drill shall be held between the hours of 7 a.m. and 3 p.m.;
2. At least one evacuation drill shall be held between the hours of 3 p.m. and 11 p.m.; and
3. At least one evacuation drill shall be held between the hours of 11 p.m. and 7 a.m.

B. Additional evacuation drills may be held at the discretion of the administrator or licensing inspector and must be held when there is any reason to question whether all residents can meet the requirements of the approved emergency evacuation plan.

C. Each required drill shall be unannounced.

D. Immediately following each required evacuation drill, there shall be an evaluation of the drill by the staff in order to determine the effectiveness of the drill. The licensee or administrator shall immediately correct any problems identified in the evaluation.

E. A record of the required evacuation drills shall be kept in the facility for two years. Such record shall include:

1. The date and time of the drill;
2. The number of employees participating;
3. The number of residents participating;
4. The names of any residents who were present in the facility who did not take part in the drill, and the reasons;
5. The time it took to complete the drill;
6. Weather conditions; and
7. Problems encountered, if any.

### **22 VAC 40-72-960. Emergency equipment and supplies.**

A. A complete first aid kit shall be on hand at the facility, located in a designated place that is easily accessible to employees but not to residents. The kit shall include, but not be limited to, the following items:

1. Activated charcoal (use only if instructed by physician or Poison Control Center);
2. Adhesive tape;
3. Antiseptic ointment;
4. Band-aids (assorted sizes);
5. Blankets (disposable or other);
6. Disposable single use breathing barriers/shields for use with rescue breathing or CPR (CPR mask or other type);
7. Cold pack;
8. Disposable single use waterproof gloves;
9. Gauze pads and roller gauze (assorted sizes);
10. Hand cleaner (e.g., waterless hand sanitizer or antiseptic towelettes);
11. Plastic bags;
12. Scissors;
13. Small flashlight and extra batteries;
14. Syrup of ipecac (use only if instructed by physician or Poison Control Center);
15. Thermometer;
16. Triangular bandages;
17. Tweezers; and
18. The first aid instructional manual.

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B. In facilities that have a motor vehicle that is used to transport residents, there shall be a first aid kit on the vehicle, located in a designated place that is accessible to employees but not residents, that includes items as specified in subsection A of this section.

C. First aid kits shall be checked at least quarterly to assure that all items are present and items with expiration dates are replaced as necessary.

D. Each facility with six or more residents shall be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity to provide the services listed below in the event of an emergency that disrupts electrical power to the facility. The installation of the emergency power source shall be in compliance with the Virginia Statewide Building Code, 13 VAC 5-63.

1. The emergency electrical power shall be sufficient to provide the following services:

a. Heating and cooling as required by 22 VAC 40-72-860 in an area that provides no less than 40 square feet of floor area per resident;

b. Lighting as required by 22 VAC 40-72-870 in an area that provides no less than 40 square feet of floor area per resident;

c. Refrigeration adequate to preserve food and medications that require refrigeration; and

d. Operation of any necessary medical equipment.

2. The provision of emergency electrical power may be supplied by:

a. An emergency generator available on-site; or

b. A written contractual agreement with a company that will provide an emergency generator within four hours of notification.

E. The following emergency lighting shall also be available at all times:

1. Flashlights or battery lanterns with one light for each employee directly responsible for resident care who is on duty between 6 p.m. and 6 a.m.

2. One operable flashlight or battery lantern for each bedroom used by residents and for the living and dining area unless there is a provision for emergency lighting in the adjoining hallways.

3. Open flame lighting is prohibited.

F. There shall be an alternative form of communication in addition to the telephone such as a cell phone, two-way radio, or ham radio.

G. The facility shall ensure the availability of a 96-hour supply of emergency food and drinking water, emergency generator fuel, and oxygen for residents using oxygen.

## **22 VAC 40-72-970. Plan for resident emergencies and practice exercise.**

A. Assisted living facilities shall have a plan for resident emergencies that includes:

1. Procedures for handling medical emergencies including identifying the employee responsible for (i) calling the rescue squad, ambulance service, or resident's physician and (ii) providing first aid and CPR, if appropriate.

2. Procedures for handling mental health emergencies such as, but not limited to, catastrophic reaction or the need for a temporary detention order.

3. Procedures for making pertinent medical information and history available to the rescue squad and hospital, including but not limited to information on medications and any advance directives.

4. Procedures to be followed in the event that a resident is missing, including but not limited to (i) involvement of facility employees, appropriate law-enforcement agency, and others as needed; (ii) areas to be searched; (iii) expectations upon locating the resident; and (iv) documentation of the event.

5. Procedures for notifying the resident's family, legal representative, designated contact person, and any responsible social agency.

6. Procedures for notifying the licensing office as specified in 22 VAC 40-72-100.

B. At least once every six months, all employees on each shift shall participate in a exercise in which the procedures for resident emergencies are practiced. Documentation of each exercise shall be maintained in the facility for at least two years.

C. The plan for resident emergencies shall be readily available to all employees.

### **PART X.**

#### **ADDITIONAL REQUIREMENTS FOR FACILITIES THAT CARE FOR ADULTS WITH SERIOUS COGNITIVE IMPAIRMENTS WHO CANNOT RECOGNIZE DANGER OR PROTECT THEIR OWN SAFETY AND WELFARE.**

##### **Article 1.**

##### **Subjectivity.**

## **22 VAC 40-72-980. Subjectivity.**

All facilities that care for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare shall be subject to either Article 2 (22 VAC 40-72-990 et seq.) or Article 3 (22 VAC 40-72-1060 et seq.) of this part. All facilities that care for residents with serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to Article 2 of this part.

NOTE: Serious cognitive impairment is defined in 22 VAC 40-72-10.

Article 2.  
Mixed Population.

**22 VAC 40-72-990. Applicability.**

The requirements in this article apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit as provided for in Article 3 (22 VAC 40-72-1060 et seq.) of this part; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The requirements in this article also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by Article 3 of this part, these requirements apply to the entire facility unless specified otherwise.

**EXCEPTION:** The requirements in this article do not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments, when the residents cannot recognize danger or protect their own safety and welfare. Each prospective resident or his legal representative shall be notified of this exception prior to admission.

**22 VAC 40-72-1000. Staffing.**

A. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents.

B. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

**22 VAC 40-72-1010. Employee training.**

A. Commencing immediately upon employment and within three months, the administrator shall attend 12 hours of training in cognitive impairment that meets the requirements of subsection C of this section. This training is counted toward the annual training requirement for the first year. Previous training that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required 12 hours but not toward the annual training requirement.

B. Commencing immediately upon employment and within six months, direct care staff shall attend four hours of training in cognitive impairment that meets the requirements of subsection C of this section. This training is counted toward meeting the annual training requirement for the first year. Previous training that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward

the required four hours but not toward the annual training requirement.

C. Curriculum for the training in cognitive impairment for direct care staff and administrators shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care and shall include, but need not be limited to:

1. Explanation of cognitive impairments;
2. Resident care techniques;
3. Behavior management;
4. Communication skills;
5. Activity planning; and
6. Safety considerations.

D. Within the first month of employment, employees other than the administrator and direct care staff shall complete one hour of training on the nature and needs of residents with cognitive impairments relevant to the population in care.

**22 VAC 40-72-1020. Doors and windows.**

A. Doors leading to the outside shall have a system of security monitoring of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare, such as door alarms, cameras, constant employee oversight, security bracelets that are part of an alarm system, or delayed egress mechanisms. Residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and an inability to recognize danger or protect his own safety and welfare.

B. There shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare and on windows in common areas accessible to these residents to prevent the windows from being opened wide enough for a resident to crawl through.

**22 VAC 40-72-1030. Outdoor area.**

The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare are outside.

**22 VAC 40-72-1040. Indoor walking area.**

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

**22 VAC 40-72-1050. Environmental precautions.**

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with serious cognitive impairments who cannot

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recognize danger or protect their own safety and welfare. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment who cannot recognize danger or protect his own safety and welfare, these materials or objects shall be inaccessible to the resident except under employee supervision.

Article 3.  
Safe, Secure Environment.

## 22 VAC 40-72-1060. Applicability.

In order to be admitted or retained in a safe, secure environment as defined in 22 VAC 40-72-10, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare. The requirements in this article apply when such residents reside in a safe, secure environment. These requirements apply only to the safe, secure environment.

*EXCEPTION:* A resident's spouse, parent, adult sibling or adult child who otherwise would not meet the criteria to reside in a safe, secure environment may reside in the special care unit if the spouse, parent, sibling or child so requests in writing, the facility agrees in writing and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling or child is considered a resident of the facility and as such 22 VAC 40-72 applies. The requirements of this section do not apply to this article.

## 22 VAC 40-72-1070. Assessment.

A. Prior to his admission to a safe, secure environment, the resident shall have been assessed by an independent clinical psychologist licensed to practice in the Commonwealth or by an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare. The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments, e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry. The assessment shall be in writing and shall include, but not be limited to, the following areas:

1. Cognitive functions, e.g., orientation, comprehension, problem-solving, attention/concentration, memory, intelligence, abstract reasoning, judgment, insight;
2. Thought and perception, e.g., process, content;
3. Mood/affect;
4. Behavior/psychomotor;
5. Speech/language; and
6. Appearance.

B. The assessment required in subsection A of this section shall be maintained in the resident's record.

## 22 VAC 40-72-1080. Approval.

A. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, the facility shall obtain the written approval of one of the following persons, in the following order of priority:

1. The resident, if capable of making an informed decision;
2. A guardian or other legal representative for the resident if one has been appointed;
3. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order: (i) spouse, (ii) adult child, (iii) parent, (iv) adult sibling, (v) adult grandchild, (vi) adult niece or nephew, (vii) aunt or uncle; or
4. If the resident is not capable of making an informed decision and a guardian, legal representative or relative is unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

B. The obtained written approval shall be retained in the resident's file.

C. The facility shall document that the order of priority specified in subsection A of this section was followed and the documentation shall be retained in the resident's file.

*NOTE:* As soon as one of the persons in the order as prioritized above disapproves of placement or retention in the safe, secure environment, then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit. If the resident is not to be retained in the unit, the discharge requirements specified in 22 VAC 40-72-420 apply.

## 22 VAC 40-72-1090. Appropriateness of placement and continued residence.

A. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee/administrator or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

B. Six months after the completion of the initial uniform assessment instrument and thereafter at the time of completion of each subsequent uniform assessment instrument as required in 22 VAC 40-72-430, the licensee/administrator or designee shall perform a review of the appropriateness of each resident's continued residence in the special care unit. The licensee/administrator or designee shall also perform a review of the appropriateness of continued residence in the unit whenever warranted by a change in a resident's condition. The review shall be performed in consultation with the following persons, as appropriate: (i) the resident, (ii) a responsible family member, (iii) a guardian or other legal representative, (iv) designated contact person, (v) direct care staff who provide care and



supervision to the resident, (vi) the resident's mental health provider, (vii) the licensed health care professional required in 22 VAC 40-72-480, (viii) the resident's physician, and (ix) any other professional involved with the resident. The licensee/administrator or designee shall make a determination as to whether continued residence in the special care unit is appropriate at the time of each review required by this subsection. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

## **22 VAC 40-72-1100. Activities.**

A. Each week a variety of scheduled activities shall be available that shall include, but not necessarily be limited to, the following categories:

1. Cognitive/mental stimulation/creative activities, e.g., discussion groups, reading, story telling, writing;
2. Physical activities (both gross and fine motor skills), e.g., exercise, dancing, gardening, cooking;
3. Productive/work activities, e.g., practicing life skills, setting the table, making decorations, folding clothes;
4. Social activities, e.g., games, music, arts and crafts;
5. Sensory activities, e.g., auditory, visual, scent and tactile stimulation;
6. Reflective/contemplative activities, e.g., meditation, reminiscing, and poetry readings;
7. Outdoor activities, weather permitting; e.g., walking outdoors, field trips; and
8. Nature/natural world activities, such as interaction with pets, making flower arrangements, watering indoor plants, and having a picnic.

NOTE: Several of the examples listed above may fall under more than one category.

NOTE: These activities do not require additional hours beyond those specified in 22 VAC 40-72-520.

B. If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

C. Employees shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

D. In addition to the scheduled activities required by 22 VAC 40-72-520, there shall be unscheduled employee and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

E. Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

F. As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

G. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on-site in the special care unit at least

20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or an activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
3. Have one year full-time work experience, within the last five years, in an activities program in an adult care setting;
4. Be a qualified occupational therapist or an occupational therapy assistant; or
5. Prior to or within six months of employment, have successfully completed 40 hours of department-approved training in adult group activities and in recognizing and assessing the activity needs of residents.

NOTE: The required 20 hours on-site does not have to be devoted solely to managing or coordinating activities, neither is it required that the person responsible for managing or coordinating the activities program conduct the activities.

H. The facility shall obtain documentation of the qualifications as specified in subsection G of this section for the designated employee responsible for managing or coordinating the structured activities program. The documentation shall be retained in the employee's file. Written confirmation of department approval of training provided for in subdivision G 5 of this section shall also be retained in the employee's file, as appropriate.

## **22 VAC 40-72-1110. Staffing.**

A. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each special care unit who shall be responsible for the care and supervision of the residents.

EXCEPTION: Only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that supervision necessary to ensure the health, safety and welfare of residents throughout the building is not compromised.

B. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to residents.

## **22 VAC 40-72-1120. Employee training.**

A. Commencing immediately upon employment and within two months, the administrator and direct care staff shall attend at least four hours of training in cognitive impairments due to dementia. This training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

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1. Information about the cognitive impairment, including areas such as cause, progression, behaviors, management of the condition;
2. Communicating with the resident;
3. Managing dysfunctional behavior; and
4. Identifying and alleviating safety risks to residents with cognitive impairment.

Previous training that meets the requirements of this subsection and subsections C and D of this section that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

NOTE: In this subsection, for direct care staff, employment means employment in the safe, secure environment.

B. Within the first year of employment, the administrator and direct care staff shall attend at least six more hours of training, in addition to that required in subsection A of this section, in caring for residents with cognitive impairments due to dementia. The training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

1. Assessing resident needs and capabilities and understanding and implementing service plans;
2. Resident care techniques for persons with physical, cognitive, behavioral and social disabilities;
3. Creating a therapeutic environment;
4. Promoting resident dignity, independence, individuality, privacy and choice;
5. Communicating with families and other persons interested in the resident;
6. Planning and facilitating activities appropriate for each resident; and
7. Common behavioral problems and behavior management techniques.

Previous training that meets the requirements of this subsection and subsections C and D of this section that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required six hours but not toward the annual training requirement.

NOTE: In this subsection, for direct care staff, employment means employment in the safe, secure environment.

C. The training required in subsections A and B of this section shall be developed by:

1. A licensed health care professional acting within the scope of the requirements of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or
2. A person who has been approved by the department to develop the training.

D. The training required in subsections A and B of this section shall be provided by a person qualified under subdivision C 1 of this section or a person who has been approved by the department to provide the training.

E. Within the first month of employment, employees, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete one hour of training on the nature and needs of residents with cognitive impairments due to dementia.

## **22 VAC 40-72-1130. Doors and windows.**

A. Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including but not limited to, door alarms, cameras, constant employee oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. Residents who reside in safe, secure, environments may be prohibited from exiting the facility or the special care unit, if applicable building and fire codes are met.

B. There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through.

C. As of October 9, 2001, buildings approved for construction or change in use group, as referenced in 13 VAC 5-63, the Virginia Statewide Building Code, shall have a glazed window area above ground level in at least one of the common rooms, e.g., living room, multipurpose room, dining room. The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

## **22 VAC 40-72-1140. Outdoor area.**

The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents are outside.

## **22 VAC 40-72-1150. Indoor walking area.**

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

## **22 VAC 40-72-1160. Environmental precautions.**

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under employee supervision.

C. Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity

centers, rocking chairs, and visual contrast between plates/eating utensils and the table.

## DOCUMENTS INCORPORATED BY REFERENCE

*Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DMS-IV-TR), Copyright 2000, American Psychiatric Association, 1400 K Street NW, Washington, DC 20005, www.psych.org.*

**NOTICE:** The forms used in administering 22 VAC 40-72, Standards and Regulations for Licensed Assisted Living Facilities, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Social Services, 7 North Eighth Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

*Initial Application for a State License to Operate an Assisted Living Facility, 032-05-009/4 (rev. 9/02).*

*Renewal Application for a State License to Operate an Assisted Living Facility, 032-05-025/4 (rev. 9/02).*

VA.R. Doc. No. R05-134; Filed July 17, 2006, 9:07 a.m.

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**Title of Regulation:** **22 VAC 40-80. General Procedures and Information for Licensure (amending 22 VAC 40-80-60, 22 VAC 40-80-120, 22 VAC 40-80-340, 22 VAC 40-80-370, 22 VAC 40-80-430; adding 22 VAC 40-80-345).**

**Statutory Authority:** §§ 63.2-217, 63.2-1732, 63.2-1733 and 63.2-1734 of the Code of Virginia.

**Public Hearing Dates:** September 7, 2006 - 6 p.m. (Fredericksburg)  
September 11, 2006 - 6 p.m. (Williamsburg)  
September 13, 2006 - 6 p.m. (Roanoke)

Public comments may be submitted until October 6, 2006.  
(See Calendar of Events section for additional information)

**Agency Contact:** Kathryn Thomas, Program Development Consultant, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132.

**Basis:** Section 63.2-217 of the Code of Virginia gives broad authority for the board to adopt regulations as are necessary or desirable to carry out the purpose of Title 63.2. Sections 63.2-1732, 63.2-1733 and 63.2-1734 of the Code of Virginia give the board authority to adopt and enforce regulations to carry out the provisions of Title 63.2 regarding assisted living facilities, adult day care centers and child welfare agencies respectively.

**Purpose:** The regulation is being amended to promulgate a replacement regulation that will expire one year after final adoption of an emergency regulation. Most of the amendments are based on legislation enacted by the 2005 session of the General Assembly that were written specifically

to protect the health, safety and welfare of adults and children in licensed facilities. Other amendments will provide the department additional sanctions that can be used if facilities fail to maintain compliance with regulations or law. The greatest impact is on licensed assisted living facilities; however, some amendments affect all licensed programs.

**Substance:** The proposed amendments:

1. Add a standard that requires a facility to notify the department and return the license to the appropriate licensing office when plans are made to close or sell the facility.
2. Add requirements for posting (i) provisional licenses, (ii) notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility, (iii) a copy of any final order of summary suspension of all or part of an assisted living facility's license, and (iv) notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 63.2-1709.2 of the Code of Virginia (special orders), and a copy of any special order issued by the department.
3. Revise the requirement for posting of the most recent violation notice to require posting of the findings of the most recent inspection of the facility.
4. Add two new administrative sanctions: (i) requiring an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents; (ii) issuing a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in the Code of Virginia in conjunction with any proceedings for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of residents; and (iii) assessing a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety and welfare of residents are at risk. The aggregate amount of such civil penalties shall not exceed \$10,000 in any 24-month period.
5. Add procedures for issuing a summary order of suspension.
6. Make minor clarification changes.
7. Delete unnecessary and potentially confusing detail.

**Issues:** Most of the amendments to this regulation will make consumers more aware of violations of standards and laws that threaten the health, safety and welfare of children and adults in licensed facilities, particularly assisted living facilities. The amendments also establish additional administrative sanctions that the department can use if facilities fail to maintain compliance with standards and laws. There are no disadvantages to the public or to the Commonwealth because of this regulation.

**Department of Planning and Budget's Economic Impact Analysis:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in

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accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The State Board of Social Services (board) proposes to amend General Procedures and Information for Licensure in several ways:

1. The proposed regulation would require licensees who plan on selling or closing down their assisted living facility to notify the Department of Social Services (department) of their plans and to return their license to the department once the facility closes or its sale is finalized. A licensee, in this context, is an individual or organization that has applied for and received permission to provide out-of-home care for children or adults.
2. Licensees will be required to post certain disciplinary documents prominently and others both prominently and in specified locations.
3. proposed regulation also incorporates changes to § 63.2-1709 of the Code of Virginia. The department will be allowed to force licensees, in certain circumstances, to hire a department-approved administrator. The modified Code also sets limits for fines that the department may charge licensees who are out of compliance with regulatory requirements and allows the department to issue a summary order of license suspension when conditions in a care facility pose an immanent threat to the health or safety of clients.

Estimated economic impact. Current regulation directs that licenses will be issued to individuals or organizations and not to the facilities to be operated. Because of this, licenses are not transferable with the sale of a facility. There are no current provisions, however, that assure that a license will not be left in a facility that has been sold. The proposed regulation will require that an individual or organization license holder return that license once they will no longer be operating the referenced facility. This will allow the department to keep better track of which individuals and organizations in the Commonwealth hold licenses. This provision is likely to be beneficial to the citizens of the Virginia because it will give some assurance that facilities that appear to be run under a license actually are.

Current regulation requires that certain documents be posted prominently in facilities run by licensed individuals or organizations; the proposed regulation expands this list of documents and requires that some of the documents be displayed both prominently and at specific locations within the facility.

The proposed regulation establishes a new requirement to display any notices of the commissioner's intent to take

disciplinary action and copies of any special orders issued by the department.

The proposed regulation also specifies placement of some department-issued documents. Any provisional license, along with a list of the violations that led to the issuance of the provisional license, must be displayed prominently at each public entrance into a licensee's facility. The list of violations may be posted directly beside the provisional license or may be available for review on the facility's website or in some physical location within the facility. Either the list of violations or a notice of where to find the list of violations must be posted beside the provisional license. Final orders of summary suspension, notice of commissioner's intent to take disciplinary action and any special orders issued by the department must also be posted at each public entrance into any licensee's facility. For licensee owned assisted living facilities only, any notice of commissioner's intent to revoke or deny renewal of license must be displayed at every public entrance into a licensee's facility.

Licensees will incur the minimal costs associated with making enough copies of the relevant notices so that there will be one displayed at each entrance. Clients of these facilities and their guardians will greatly benefit from knowing the exact status of the facilities that are providing care for them. Implementation of this provision is likely to be beneficial for the citizens of the Commonwealth.

Other changes that are encompassed in this proposed regulation implement legislative mandates in § 63.2-1709 of the Code of Virginia.

Businesses and entities affected. All individuals who are licensed to operate facilities that provide out-of-home care for children or adults will be affected by the proposed regulation. There are 610 licensed assisted living facilities, 73 adult daycares, 7 child caring institutions, 2,613 child day centers, 1,766 family day homes, 72 child placing agencies, 89 children's residential facilities, 1 family day system and 4 independent foster homes in the Commonwealth.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation is likely to have little net effect on employment in the Commonwealth.

Effects on the use and value of private property. Licensees who are not complying with regulatory requirements will likely lose some revenue as more informed clients decide to move from facilities with problems to other facilities that are in compliance with regulatory requirements. Facilities that are in compliance will likely gain revenue. The net effect is likely to be negligible as long as the pool of clients in need of care remains the same.

Small businesses: costs and other effects. Most if not all of these licensee operated care facilities are small businesses. Licensees will incur the minimal costs associated with making enough copies of the relevant notices so that there will be one displayed at each entrance.

Small businesses: alternative method that minimizes adverse impact. The requirements of the proposed regulation are fairly

minimal. No other alternate proposal is likely to have a more minimal impact.

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

Summary:

*The proposed amendments add a requirement regarding notification to the department when a licensee plans to close or sell a facility; add additional items to the list of documents that must be posted in a facility; add additional administrative sanctions that the commissioner may impose upon licensed facilities when they fail to maintain compliance with regulations or laws; and add a new section that provides procedures for summary orders of suspension. Also included are minor changes to procedures for consent agreements, for clarification and to remove unnecessary detail.*

**22 VAC 40-80-60. General.**

A. A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to children or adults. An organization may be a partnership, association, corporation, limited liability company, or public entity.

B. Pursuant to § 63.2-1712 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates an assisted living facility, adult day care center, or child welfare agency shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the commissioner in the discharge of his licensing duties;
2. Makes to the commissioner or any representative of the commissioner any report or statement with respect to the operation of any assisted living facility, adult day care center, or child welfare agency that is known by such person to be false or untrue;
3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked or has expired and not been renewed; or
4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated in the license.

C. *When a licensee plans to close or sell a facility, the licensee shall notify the appropriate licensing office at least 60 days prior to the anticipated closure or sale date. When the facility closes or the sale is finalized, the license shall be returned to the appropriate licensing office.*

**22 VAC 40-80-120. Terms of the license.**

A. A facility or agency shall operate within the terms of its license, which are:

1. The operating name of the facility or agency;

2. The name of the individual, partnership, association, corporation, limited liability company, or public entity sponsoring the facility or agency;

3. The physical location of the facility or agency;

4. The maximum number of children or adults who may be in care at any time;

5. The period of time for which the license is effective;

6. For child care facilities or agencies, the age range of children for whom care may be provided; and

7. Any other limitations that the department may prescribe within the context of the regulations for any facility or agency.

B. The provisional license cites the standards with which the licensee is not in compliance.

C. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.

D. Prior to changes in operation that would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See 22 VAC 40-80-190.)

E. ~~The following documents shall be posted, when applicable, in a conspicuous place on the licensed premises so that they are visible to the public:~~ *Certain documents related to the terms of the license are required to be posted on the premises of each facility. These are:*

1. The most recently issued license. *Any provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;*

2. ~~The most recent violation notice findings of the most recent inspection of the facility;~~

3. ~~Probationary status announcements;~~

4. ~~Denial and revocation notices;~~ and 3. *Notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.*

4. *A copy of any final order of summary suspension of all or part of an assisted living facility's license shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed.*

5. *Notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of §*

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63.2-1709.2 of the Code of Virginia. Such notice will be provided by the department and a copy of the notice shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.

6. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations.

7. Any other documents required by the commissioner.

## 22 VAC 40-80-340. Administrative sanctions.

The commissioner may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation in assisted living facilities, adult day care centers and child welfare agencies as discovered through any inspection or investigation conducted by the Department of Social Services, the Virginia Department of Health, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;

2. Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for violation that adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of residents, or for permitting, aiding or abetting the commission of any illegal act in an adult care facility;

3. Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license;

4. Requiring an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents. This action shall be an attempt to bring the facility into compliance with all relevant requirements of law, regulation or any plan of correction approved by the commissioner. The contract shall be negotiated in accordance with the provisions of § 63.2-1709 of the Code of Virginia;

5. Issuing a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in § 63.2-1709 C of the Code of Virginia in conjunction with any proceedings for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of residents; and

6. Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709 D of the Code of Virginia. These include:

a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants or children are at risk;

b. Reducing the licensed capacity or prohibiting new admissions when the commissioner has determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;

~~c. Requiring that probationary status announcements, provisional licenses and denial and revocation notices be posted in a conspicuous place on the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violation;~~

d. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the commissioner has determined that the lack of such training has led directly to violations of regulations;

e. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of an adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;

f. Assessing a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk. The aggregate amount of such civil penalties shall not exceed \$10,000 in any 24-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, are developed by the board and are based upon the severity, pervasiveness, duration and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the commissioner in a consistent manner;

g. Requiring licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and

h. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

## 22 VAC 40-80-345. Summary suspension procedures.

A. In conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of the residents, the commissioner may issue a summary suspension of the license to operate an assisted living facility or of certain authority of the licensee to provide certain services or perform certain functions.

B. Upon determining that summary suspension is appropriate, the hearing coordinator will select a hearing officer from a list prepared by the Executive Secretary of the Supreme Court of Virginia and will schedule the time, date, and location of the hearing to determine whether the suspension is appropriate as required by § 63.2-1709 C of the Code of Virginia.

C. Simultaneously with the issuance of a notice of revocation, denial or other action, the commissioner will issue to the licensee a notice of summary order of suspension setting forth the following:

1. The procedures for the summary order of suspension;
2. The hearing and appeal rights as set forth below;
3. Facts and evidence that formed the basis for which the summary order of suspension is sought; and
4. The time, date, and location of the hearing.

D. Notice of the summary order of suspension will be served on the licensee or his designee by personal service or by certified mail, return receipt requested, to the address of record of the licensee as soon as practicable after issuance thereof.

E. The hearing shall take place in the locality where the assisted living facility operates unless the licensee or his designee expressly waives this venue provision.

1. The hearing shall be held no later than 15 business days after service of notice on the licensee. The hearing officer may grant a continuance upon written request and for good cause shown. In no event shall any continuance exceed 10 business days after the initial hearing date.
2. The hearing coordinator will forward a copy of the relevant licensing standards to the hearing officer.
3. The hearing will be conducted in accordance with the procedures set forth in 22 VAC 40-80-480 through 22 VAC 40-80-500.
4. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia.

F. Within 10 days of the conclusion of the hearing, the hearing officer shall provide to the commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended. The department shall have the burden of proof in any summary suspension hearing. The decision of the hearing officer shall be based on the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating.

G. Within 10 days of receipt of the hearing officer's report and recommendation, the commissioner shall either (i) adopt the hearing officer's recommendation or (ii) reject the hearing officer's recommendation if it would be an error of law or department policy to accept it.

H. The commissioner shall issue and shall serve on the licensee or his designee by personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) a detailed statement of the basis for rejecting the hearing officer's recommendation, if applicable, and (ii) notice that the licensee may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following service of the order; or

2. A final order that summary suspension is not warranted by the facts and circumstances presented.

I. A copy of any final order of suspension shall be prominently displayed at each public entrance of the facility as required in 22 VAC 40-80-120.

J. The signed, original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy.

**22 VAC 40-80-370. Appeal process.**

A. The applicant or licensee will receive a notice of the department's intent to impose an administrative sanction. This notice will describe the sanction or sanctions and the reasons for the imposition. Service of the notice of adverse action is achieved by certified mailing of the notice to the applicant or licensee, unless service is made by other means and acknowledged by the applicant or licensee. If the applicant or licensee wishes to appeal the notice of adverse action, he shall have 15 days after service receipt of the notice to note his appeal. ~~If service is accomplished by mail, three days shall be added to the 15-day period.~~

B. Upon receipt of the notice to impose an administrative sanction, the applicant or licensee has the right to appeal the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal will be outlined in the notice. The applicant or licensee shall submit any appeal of imposition of an administrative sanction in writing within 15 days of receipt of the notice.

C. If the applicant or licensee fails to appeal the notice of adverse action within 15 days of receipt of the notice, the ~~notice will constitute the department's final decision~~ final order will be entered. The decision will take effect 30 days after receipt of the notice.

D. The appeal process available is governed by law. Where the sanction is imposed by means of a special order as provided in § 63.2-1709 of the Code of Virginia, the case decision is issued by the commissioner following findings and conclusions resulting from the informal conference. Other sanctions include a provision for an administrative hearing, which is described in § 2.2-4020 of the Code of Virginia, prior to the issuance of the case decision. For ease of reference, the process steps are displayed in the following chart:

List of Sanctions with Appeal Provisions

	Informal Conference	Administrative Hearing	Circuit Court Review of Case Decision
ADMINISTRATIVE SANCTION			
Place licensee on probation	X		X
Reduce licensed capacity	X		X
Restrict admissions	X		X
Mandate training for licensee or staff	X		X

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Assess civil penalty	X		X
Require written contact with responsible persons	X		X
Prevent receipt of public funds	X		X
Deny application for new or renewal license	X	X	X
Revoke license	X	X	X
File petition for appointment of a receiver			X
Require assisted living facility to contract with administrator	X	X	X

## 22 VAC 40-80-430. Consent agreements.

A. A consent agreement may be proposed by a licensee in lieu of adverse action. The proposed consent agreement shall be submitted no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the informal conference. ~~The duration and terms of the consent agreement are negotiable. A licensing representative will negotiate the proposed agreement with the licensee and submit the proposed agreement to the division director, who will make the decision to accept or reject the consent agreement on behalf of the department or recommend such acceptance or rejection to the commissioner.~~

B. An acceptable consent agreement shall contain the following specific elements:

1. Dates of key actions, such as letter of sanction, timely appeal, the informal conference (if already held), and the names of the parties;
2. The assertion that all violations detailed in the letter of denial or revocation have been corrected or will be corrected by a time specified in the proposed agreement;
3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, including the methods the licensee has in place to prevent violations and to monitor results;
4. ~~A statement agreeing to future maintenance of substantial compliance with all regulations;~~
5. ~~Statements outlining and acknowledging the process and timelines for moving the proposed agreement through the steps that will follow submission of the proposal signed by the provider, including statements that (i) the Director of the Division of Licensing Programs will evaluate the proposal and respond by letter and (ii) the licensee understands that if the proposal is conditionally accepted, final approval and the division director's signature will be withheld until after satisfactory on-site verification of results, including the information that the duration of the agreement will begin when the director accepts and signs the document;~~

4. A stipulation by the licensee to the validity of the violations enumerated in the specified correspondence and waiver of right to hearing under the Administrative Process

Act (§ 2.2-4000 et seq. of the Code of Virginia) solely with respect to those violations.

6- 5. The duration of the consent agreement, including the information that the period begins when the division director signs;

7- 6. A statement that when the division director signs the agreement, signifying final acceptance, the division director is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and

8- 7. A statement outlining conditions for termination of the final agreement for cause and the nature of the licensee's appeal rights in that event.

## C. Recommendation and approval process.

1. ~~The department appointed negotiator will review the draft agreement and either make a final suggestion or advise the licensee that a recommendation will be made to the division director.~~

2. ~~Two originals of the final proposal, signed by the licensee and dated, shall be mailed to the negotiator.~~

3. ~~The negotiator will review the submissions to assure conformity with his expectations and return them to the division director with any recommendations.~~

4. ~~The division director will review the proposal and write to the licensee, copying the negotiator, either affirming conditional approval to proceed to verification stage or stating changes required before the proposal will be conditionally approved.~~

5. ~~Licensing staff will perform on-site verification, advise the division director of results, and submit a written recommendation with rationale.~~

6. ~~If the results warrant it, the division director will prepare a cover letter enclosing one of the original signed consent agreements, and will forward a copy to the licensing unit and all other parties who were copied on the adverse action letter.~~

7. ~~If the on-site inspection is unsatisfactory, the division director will advise the licensee by letter.~~

D. C. Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine whether the terms of the consent agreement are being implemented and whether its intended results are being achieved.

VA.R. Doc. No. R05-222; Filed July 17, 2006, 9:03 a.m.





**TITLE 24. TRANSPORTATION AND MOTOR VEHICLES**

**DEPARTMENT OF MOTOR VEHICLES**

Titles of Regulations: **24 VAC 20-120. Commercial Driver Training School Regulations (repealing 24 VAC 20-120-10 through 24 VAC 20-120-180).**

**24 VAC 20-121. Virginia Driver Training School Regulations (adding 24 VAC 20-121-10 through 24 VAC 20-121-220).**

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public Hearing Dates: August 30, 2006 - 11 a.m. (Abingdon)  
August 31, 2006 - 11 a.m. (Roanoke)  
September 12, 2006 - 11 a.m. (Virginia Beach)  
September 14, 2006 - 11 a.m. (Richmond)  
September 19, 2006 - 11 a.m. (Harrisonburg)  
September 21, 2006 - 11 a.m. (Springfield)

Public comments may be submitted until October 6, 2006.  
(See Calendar of Events section for additional information)

Agency Contact: Marc Copeland, Senior Policy Analyst, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, or e-mail marc.copeland@dmv.virginia.gov.

Basis: The statutory authority for repealing the existing driver training school regulations and promulgating new regulations is §§ 46.2-203 and 46.2-1703 of the Code of Virginia. The scope of the regulatory authority is general in § 46.2-203 and specific in § 46.2-1703 of the Code of Virginia. Section 46.2-203 of the Code of Virginia allows for the Department of Motor Vehicles to "adopt reasonable administrative regulations necessary to carry out the laws" it administers and may designate other agencies of the Commonwealth to enforce them. Section 46.2-1703 of the Code of Virginia allows the commissioner to "promulgate regulations necessary to enforce [and carry out] the provisions of [the commercial driver training school statutes and] to provide adequate training for [commercial driver training school] students.... These regulations shall include but need not be limited to curriculum requirements, contractual arrangements with students, obligations to students, facilities and equipment, qualifications of instructors, and financial stability of schools." In both cases, the rulemaking authority is discretionary. The recent statutory changes expanded this authority to include protections for students and public safety in general as well as specific requirements for instructors, school ownership and surety bonds. See Chapter 587 of the 2004 Virginia Acts of Assembly (Senate Bill 288) for all the recent statutory changes.

Purpose: The driving environment in Virginia and the rest of the nation has changed substantially over recent years: more vehicular traffic; more drivers; an increase in the number of larger, heavier-weight vehicles (both private and commercial); an increase in the number and type of in-car distractions that confront the driver; and an increase in the incidence of road

rage. Instruction and curriculum standards and practices as well as overall business practices at driver training schools must effectively respond to these changes in order to provide thorough, up-to-date driver education and maintain the safest driving environment possible.

Without proper, reasonable oversight, driver training schools could very well produce a host of inadequately trained drivers. These inadequately trained drivers could then end up operating vehicles throughout the Commonwealth, posing a significant health and safety threat to themselves and other drivers.

The purpose of the proposed regulations is to provide appropriate oversight over the driver training schools licensed by DMV. This oversight is statutorily mandated, and as explained above, the need for oversight is more critical now than ever before.

Driver education is required for driver's license applicants in Virginia under 19 years of age as well as for many older adult applicants. Some individuals receive the required driver training in local high schools. However, many also receive all or a portion of their required driver education through licensed driver training schools.

The role of Class B passenger vehicle driver training schools in training people to safely operate a motor vehicle has been steadily increasing. At the present time, there are 150 Class B schools licensed by DMV. This is an increase of more than 100% since 1982, when there were 68 Class B licensed schools. These schools currently employ more than 400 licensed instructors.

Through these regulations, DMV's oversight activities are intended to ensure that graduates of these schools are adequately prepared to safely and independently operate vehicles on the public roadways.

Substance: The proposed regulations will establish and maintain an oversight process that ensures services provided by driver training schools are uniform and of high quality. These oversight activities are intended to ensure that graduates of these schools are adequately prepared to safely and independently operate an automobile on the public roadways after obtaining a driver's license. DMV's oversight activities also will help provide for a safer, more secure and peer-oriented learning environment for those younger students attending these schools.

Perhaps the most important element to preparing students to drive safely is the in-car training they receive. To enable DMV to properly verify that the required types and amount of in-car training are being provided to students, the standard for training documentation should require information on the type of training provided and the skills covered during the session. Training also should be with other students in the same age group.

Instructor requirements also should be expanded to help ensure safe, qualified instruction. DMV currently has a number of requirements that instructors must meet in order to be licensed to teach in a driver training school. DMV has identified ways to enhance the current requirements to provide additional safeguards for students. These enhancements

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# Proposed Regulations

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include (i) requiring a national criminal background check instead of a state or local police department criminal background check, (ii) increasing the scope of the criminal convictions that could enable DMV to refuse to approve a license, and (iii) revising the restrictions related to instructors who receive demerit points for traffic infractions.

Insight into the operations and instructional practices of driver training schools statewide is provided primarily through the oversight activities of DMV. Areas that DMV believes need regulatory enhancements include the review of the schools' classroom and in-car instructional programs, vehicle inspections, and the use of monitoring visits between annual audits for selected schools.

Part of these enhancements will improve the way audits and reviews are conducted. These enhancements include utilizing an integrated data gathering process incorporating complimentary forms developed to help both the driver training schools and DMV capture the information needed to ensure appropriate and adequate training is taking place.

Poorly trained drivers only add to the increasing number of possible safety concerns faced by drivers when they take to the highways. In today's burgeoning transportation system, the safer each driver operates their vehicle, the safer the roads are for everyone. Since a significantly larger group of people is receiving driver training from driver training schools, the regulation of these schools is essential to protect the public's health, safety and welfare.

Issues: The primary advantages of these regulations to the public are as follows:

1. The creation of tougher, more consistent regulatory standards for school owners and instructors will result in a better quality of instruction and a better, safer training environment for students. It will also provide better oversight of, and remedies for, inappropriate business practices.
2. Better driver training and business practices translate into better-trained drivers on the highways of the Commonwealth, resulting in newly licensed drivers who are consistently safer.
3. Safer drivers help make the roads of the Commonwealth safer for themselves, the rest of the public using them and the public at large.

Perhaps the only disadvantage of the proposed new regulations would be a possible increase in the cost of doing business, which would then probably be passed on to the students. Should such an impact occur, it is expected to be minimal. There are no disadvantages to the public at large and the Commonwealth.

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

Summary of the proposed amendments to regulation. The Department of Motor Vehicles (DMV) proposes to repeal its existing driver training school regulations (24 VAC 20-120) and to promulgate new regulations. DMV proposes to add much new language to clarify requirements. The department believes that the additional clarifying language may help promote safety due to less confusion among the public. DMV

also proposes two significant changes of requirements in practice: (i) required national criminal records checks for driving instructors, and (ii) required annual one-day training sessions for instructors.

Result of analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated economic impact. Under the current regulations instructors seeking an initial license or license renewal must submit a criminal background check provided by their local law-enforcement agency. The current cost for the relevant local criminal background check is \$20. DMV proposes to require national criminal records checks instead of local checks. The national criminal background check costs \$18 per person. Thus, this proposed amendment creates a small cost savings. Additionally, DMV believes that the national check may catch some relevant legal violations that would not be found within a local criminal background check. The expanded knowledge gained from the national check may enable the department to refuse or suspend licensure for instructors who pose public safety threats. Given the potential benefit to public safety and cost savings, the proposal to require national criminal background checks in lieu of local criminal background checks will create a net benefit.

The current regulations do not include mandatory continuing education for driving instructors. The proposed regulations require that instructors attend annual training sessions provided by DMV.

These one-day training sessions shall be held in each of the department's regional districts every year, as deemed necessary by the department. These sessions shall include, as appropriate and necessary, updates on department forms, audit processes and other procedural changes, and new legislation that has implications for driver training. They also shall include discussions about any issues or concerns raised by either the department or the licensees. When available, these sessions shall also offer information about the latest in driver training instructional techniques as well as other new developments in driver training in order to enhance overall professional training skills and abilities.

The proposed regulations specify that there will be no fee for the training other than for the costs of materials provided by DMV. According to the department these costs will be minimal. Instructors and/or their employers will also incur travel and time costs associated with attending the one-day annual training sessions. Instructors who, without valid excuse, fail to attend and complete a scheduled training session or a scheduled make-up training session are subject to a minimum 30-day license suspension.

Depending on their content and success in conveying information, the mandatory training sessions can potentially result in improved competence and knowledge concerning teaching safe driving among instructors. Such training has yet to occur; consequently there is no evidence yet concerning how much benefit concerning competence and safety knowledge may be created. Hence, an accurate comparison

of the benefits with the costs of mandatory training cannot be made at this time.

**Businesses and entities affected.** The proposed amendments affect the 156 driving schools, 448 licensed instructors, 43,915 students, and tens of thousands of drivers who travel roads daily in the Commonwealth.<sup>1</sup> Most or all of the driving schools are small businesses.

**Localities particularly affected.** The proposed amendments affect all Virginia localities.

**Projected impact on employment.** The proposed amendments will not likely significantly affect total employment. A small number of individuals with criminal backgrounds may be refused licensure and employment due to the proposed national criminal background check.

**Effects on the use and value of private property.** Proposed mandatory annual training will cost driving schools and their instructors one day a year that could have been used for work or leisure. The proposed mandatory annual training sessions will raise costs by more than the proposed switch from local to national criminal background checks will save.

**Small businesses: costs and other effects.** All or most of the 156 driving schools in Virginia are small businesses. Thus, the costs imposed by mandatory annual training sessions apply.

**Small businesses: alternative method that minimizes adverse impact.** DMV may in the future wish to consider permitting driving instructors to receive their annual training online or via teleconference. This would permit savings in travel and time costs.

**Legal mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> Figures provided by DMV

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: As outlined in the economic impact analysis of the Department of Planning and Budget (DPB), the Department of Motor Vehicles (DMV) is proposing to repeal its existing driver training school regulations and promulgate new regulations. The purpose of these actions is to address the needs of novice drivers of passenger vehicles and commercial motor vehicles, and the driving public in general, in an ever-changing, increasingly dangerous driver environment.

The driving environment in Virginia and the rest of the nation has changed substantially over recent years. Among other things, there have been increases in:

1. The number of drivers and vehicular traffic;
2. The number of larger, heavier-weight vehicles, both private and commercial;
3. The number and type of in-car distractions that confront the driver; and
4. The incidence of road rage.

DMV licenses Class A (commercial motor vehicle training) and Class B (passenger vehicle training) driver training schools. Instruction and curriculum standards and practices as well as overall business practices at driver training schools for commercial and passenger vehicle drivers must effectively respond to these changes in order to provide thorough, up-to-date driver education and maintain the safest driving environment possible. Without proper, reasonable oversight, driver training schools could very well produce inadequately trained commercial and passenger vehicle drivers. These inadequately trained drivers could then end up operating vehicles throughout the Commonwealth, posing a significant health and safety threat to themselves and other drivers.

Recent statutory changes (Chapter 587 of the 2004 Virginia Acts of Assembly) and the proposed regulatory changes are intended to enhance DMV's oversight activities and ensure that graduates of these schools are adequately prepared to safely and independently operate motor vehicles on the public roadways. The overall regulatory goals are to:

1. Strengthen DMV training school standards and develop additional standards to ensure that the instruction provided is uniform and meets all established requirements;
2. Strengthen DMV's oversight process to ensure that reviews of training documentation are consistent, evaluation of school curriculums is expanded, and school audits are more comprehensive and less burdensome on driver training course providers; and
3. Implement additional changes intended to ensure that consistently high quality instruction is provided across the driver training school system and that the learning environment for younger students is safe, secure and peer-oriented.

DMV believes the DPB economic impact analysis embraces and supports these goals and intentions, and concurs with that analysis and the conclusions it is able to make at this time.

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# Proposed Regulations

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## Summary:

The Department of Motor Vehicles proposes to repeal its existing driver training school regulations and promulgate new regulations to address the needs of novice drivers of passenger vehicles and commercial motor vehicles, and the driving public in general.

The proposed regulations set forth licensing requirements for general driving instructors, and Class A (commercial motor vehicle training) and Class B (passenger vehicle training) driver training schools; establish business office and classroom requirements and business practices; specify recordkeeping requirements, including availability of records, and inspection and compliance reviews; establish school licensing requirements, including school license renewal and transfer provisions; set forth school contract requirements; establish a driver training school fee schedule; and provide for sanctions for violations of statutes or regulations. Notable changes to the existing regulations include requiring national criminal records checks and mandatory continuing education for driving instructors.

### CHAPTER 121.

#### VIRGINIA DRIVER TRAINING SCHOOLS REGULATIONS.

##### PART I. GENERAL PROVISIONS.

#### **24 VAC 20-121-10. Definitions.**

The terms "Class A licensee," "Class B licensee," "driver training school" or "school," and "instructor" are defined in § 46.2-1700 of the Code of Virginia. In addition to those definitions, the following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Class A license" means a license issued by the Department of Motor Vehicles to a driver training school that provides training in the operation of any type of commercial motor vehicle as defined in § 46.2-341.4 of the Code of Virginia.

"Class B license" means a license issued by the Department of Motor Vehicles to a driver training school that provides training in the operation of any type of motor vehicle other than motorcycles and commercial motor vehicles as defined in § 46.2-341.4 of the Code of Virginia.

"Commissioner" means the Commissioner of the Virginia Department of Motor Vehicles.

"Curriculum" means the courses of instruction and other relevant materials related to driver training offered by driver training schools.

"Department" means the Virginia Department of Motor Vehicles. For notification and document submission purposes, department shall specifically mean the Commercial Licensing Division at the headquarters office of the Virginia Department of Motor Vehicles in Richmond.

"General compliance review" means a formal review by the department of a driver training school's operations, facilities and records to determine compliance with statutory and regulatory requirements.

"In-vehicle instruction" means the delivery of information and experience by an instructor to a student who is in or driving a motor vehicle, and where observing the driving skills and actual driving experiences of other students is a major component.

"National criminal records check" means a criminal background check performed by the Department of State Police that includes all participating states and jurisdictions.

"Normal business hours" shall mean the normal business hours of the department, which are Monday through Friday, 8 a.m. to 5 p.m., and Saturdays, 8 a.m. to noon.

"Owner" means a person or persons, including a partnership, corporation or other business entities, that have a vested interest in and control over a school.

"Period of instruction" means 50 minutes of in-vehicle or classroom instruction.

"Revoke" or "revocation" means that school or instructor licenses revoked are not subject to renewal or restoration except through reapplication after (i) the expiration of the revocation period and (ii) any outstanding compliance requirements have been met.

"Safe mechanical condition" means the continual compliance with safety requirements of vehicles that are used to train school students, and have passed either a Virginia state safety inspection or a federal Motor Carrier Safety Administration inspection, and for vehicles used to train the disabled, be certified by the National Mobility Equipment Vendors Association, whichever is applicable based on the type of training provided by the school.

"Suspend" or "suspension" means that the school or instructor licenses suspended have been temporarily withdrawn, but may be reinstated after (i) the expiration of the suspension period and (ii) the licensee has met all outstanding compliance requirements.

#### **24 VAC 20-121-20. Business office and classroom requirements.**

A. No school license shall be issued unless the school has an established place of business in the Commonwealth that is owned, rented or leased by the school. Such established place of business shall:

1. Be the premises of the licensed location of the school;
2. Satisfy all local business licensing and zoning regulations;
3. Have office space devoted exclusively to the driver training school;
4. Contain all records that are required to be maintained under the provisions of these regulations unless the school has been permitted to maintain them elsewhere pursuant to 24 VAC 20-121-40;
5. Be equipped with a desk, chairs, filing space, working utilities and a working telephone listed in the name of the school;

6. Comply with federal, state and local health, fire and building code requirements, including the Americans with Disabilities Act (42 USC § 12101 et seq.);

7. Be open to the general public a minimum of eight hours per week during normal business hours; and

8. Not share space with a school classroom.

The school shall also provide to the department the street address and physical address of any other business offices maintained by the school in addition to the licensed location office.

In addition to business office addresses, all addresses and physical locations of classrooms, driving ranges, driving simulators or any other facilities used by the school shall be provided to the department in writing. Schools shall not use classrooms, driving ranges, driving simulators or other driver training facilities prior to receiving approval for their use from the department.

A school owner's residence may, in part, be used as the licensed location of a school if it qualifies for a federal tax deduction of expenses related to the business use of part of the residence and meets the established place of business requirements set forth in these regulations.

B. Any school that engages in classroom instruction shall provide a classroom with the following:

1. Seating arrangements and writing surfaces for each student and a minimum of 10 square feet per student attending at any given time;
2. Blackboards or other visual aids that shall be visible from all seating positions;
3. Driver education reference books, including current curriculum guides and appropriate textbooks for each student;
4. Appropriate audio/video equipment and screen in good working order; and
5. Restroom facilities that are clean, accessible and in good working order.

C. Office and instruction hours shall be posted in a conspicuous location outside the licensed location and any other business office and shall be easily accessible to the public.

D. The school license and any notice of the department that limits or restricts training shall be prominently posted at the licensed location office. A copy of the school license and notice, if applicable, also shall be prominently posted in each school classroom and any other business office maintained by the school.

In addition, schools shall display, in a conspicuous location in all their classrooms and their business offices, signs provided by the department that notify students and the public about the department's toll-free hotline.

E. Any school licensed by the department shall notify the department, in writing, 30 days prior to a change of address for the licensed location, any other business office or

classroom or other instructional facility. The department will issue a revised license reflecting such changes. The school shall return the current license to the department upon receipt of a revised school license. All school-related business, classroom and instructional locations are subject to approval by the department, as required in these regulations.

F. The location of a school's licensed location, other business offices, classrooms or practice driver training areas shall be a distance of at least 1,500 feet from any property owned, leased or maintained by the department for examining motor vehicle operators. Such distance shall be measured in a straight line from the nearest point of the primary building of the department's property to the nearest point of the school licensed location, business office, classroom or practice driver training area, whichever is closest. This distance requirement may be waived by the department if the licensed location, other business office, classroom or practice driver training area has been previously allowed to be within the 1,500 foot limit as a result of an action or omission on the part of the department. All school-related business, classroom or instructional locations must be approved by the department prior to use.

## **24 VAC 20-121-30. Business practices.**

A. A school shall not use any name other than that shown on its school license. Schools using the same or similar name of another current or former school or similar business, or using names considered to be offensive in nature, as determined by the department, shall not be licensed by the department.

B. A school that utilizes "Department of Motor Vehicles" or "DMV" in any form of advertising including, but not limited to, telephone directories and websites shall use only the words "Licensed by the Department of Motor Vehicles (DMV) of the Commonwealth of Virginia." A school shall not refer to any other state agency or board in any documentation or advertisement. Schools with websites shall notify the department of their web addresses when applying for or renewing their license or when the site becomes operational, whichever is sooner.

C. A school shall not use false, deceptive or misleading information in any advertisement or provide this type of information to prospective students.

D. A school, instructor, owner or any other person employed by or otherwise associated with a school shall not:

1. Assert or imply that it will guarantee that any student will pass the state driver's license examination;
2. Assert or imply that the student can secure a driver's license;
3. Assert or imply that the student will be guaranteed employment upon completion of any course of instruction;
4. Transact or solicit driver training school business on property owned, leased or maintained by the department;
5. Provide translation services for any individual who is taking the department's driver's license knowledge examination;

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6. Falsify forms, certificates or other documents for use by students or other individuals in order to obtain a driver's license;
  7. Possess, use, provide, sell or give the department's driver licensing test questions to students or other individuals;
  8. Assist or facilitate the creation of false identification documents of any kind or false residency certification for any individual;
  9. Provide instruction at a site not formally approved by the department;
  10. Contract or subcontract, without written approval of the parents or legal guardians, with other driver training schools or driver training organizations to provide classroom or in-vehicle instruction for students under 18 years of age who are not married or emancipated;
  11. Have, use, keep or be under the influence of alcohol, illegal drugs or other substances, legal or illegal, on the premises of or in vehicles used by the school that would affect a person's ability to drive a vehicle or provide or receive instruction; or
  12. Conduct themselves in a manner not suitable or compatible with school-related activities. Such prohibited conduct includes, but is not limited to:
    - a. Touching in a manner that would be considered inappropriate by a reasonable person;
    - b. Telling jokes or making statements or comments that a reasonable person would consider (i) to be hateful or demeaning to a particular race or ethnicity, or (ii) to have sexual or otherwise vulgar content or connotation;
    - c. Displaying objects or materials that a reasonable person would consider unpleasant, distasteful, nasty, disgusting, hateful or otherwise unsuitable;
    - d. Berating or otherwise harassing students or other persons;
    - e. Running errands;
    - f. Except for emergency situations, using telecommunications or any other audio or video equipment during periods of in-vehicle or classroom instruction that are not part of the course of instruction. If an emergency situation occurs during in-vehicle instruction, such use should, whenever possible, be made once the vehicle is safely off the road and stopped;
    - g. Eating during periods of instruction;
    - h. Use of tobacco products during periods of instruction;
    - i. Creating a training environment considered hostile or otherwise intimidating to a reasonable person; or
    - j. Allowing any student to engage in such prohibited conduct outlined above.
- E. Except when full tuition has not been satisfied, a school shall provide, within five business days of the successful completion of program requirements, an original certificate of

completion needed by the student (i) to obtain a driver's license, (ii) for insurance verification purposes, or (iii) for employment purposes. No fee shall be charged by the school for the original certificate.

F. Schools shall operate in accordance with the driver training school operations manual as provided and updated by the department.

G. No school vehicles shall park on the department's owned, leased or maintained property except for the purposes of conducting official business with the department during normal business hours. At no time whatsoever shall a school provide training to a student on the department's owned, leased or maintained property or over its test routes.

### **24 VAC 20-121-40. Records to be maintained.**

Except as otherwise provided in this section, all records shall be maintained at the licensed location of the school. The commissioner may, on written request from a school, permit records to be maintained at a location other than the licensed location for good cause shown.

Schools shall maintain accurate, complete, legible and up-to-date records, as required under §§ 46.2-1701.2 and 46.2-1701.3 of the Code of Virginia. Such records shall include:

1. All student records;
2. All business records;
3. All records relating to:
  - a. Compliance with or proof of exemption from local business licensing and zoning regulations;
  - b. Federal, state and local health, fire and building code requirements; and
  - c. Size and space requirements for places of business and classrooms; and
4. Any other records required by the department in a manner prescribed by the department.

All records shall be retained by the school for a minimum of three years after their creation. Copies of such records shall be provided to the department upon request.

### **24 VAC 20-121-50. Availability of records; inspections and compliance reviews.**

A. All records shall be open and available for inspection by any employee of the department during normal business hours or at a reasonable time agreeable to the department employee. Schools shall have someone, who is employed by or otherwise associated with the school and who can access all records, available to assist the department employee, as necessary. If copies of such records are not readily available, the department employee may secure and remove these records in order to review, photocopy them or use them in a hearing. The department shall return those records it removes after the review or photocopying is completed, or at the conclusion of the hearing process, including any related court action, when used for that purpose.

B. Each applicant for licensing as a driver training school shall permit the department to inspect its operations, facilities and records as they relate to its driver training program for the purpose of determining whether the applicant is qualified for licensing.

The department shall perform its inspections during normal business hours with or without prior notice to the driver training schools. The department shall prepare a written report on the results of each inspection, and provide a copy of the report to and review it with the applicant. At the conclusion of the review of the report, the applicant shall provide signed written documentation to the representative of the department conducting the inspection that indicates the school has received and reviewed the report.

C. Each school shall permit the department, from time to time, to inspect and conduct a general compliance review of its business offices, classrooms, vehicles and any other records or properties associated with the operation of the school to determine whether the school remains in compliance with licensing requirements.

D. The department shall perform its inspections and general compliance reviews during normal business hours with or without prior notice to the driver training schools. The department shall prepare a written report on the results of each inspection and general compliance review, and provide a copy of the report to and review it with the owner or business manager of the school. At the conclusion of the review of the report, the owner or business manager of the school shall provide signed written documentation to the representative of the department conducting the inspection or general compliance review that indicates the school has received and reviewed the report.

E. Any school owner, employee or instructor who meets with department employees for the purposes of inspecting or otherwise obtaining records is subject to the conduct requirements set forth in these regulations. Any school owner, employee or instructor who violates the conduct requirements set forth in these regulations during such meetings shall be subject to the sanctions set forth in these regulations.

F. Each student's record shall be open and available for inspection by the respective current or former student 18 years of age or older and by the parents and legal guardians of current or former students under 18 years of age during normal business hours or at a reasonable time agreeable to both the school and the student or parents or legal guardians of students under 18 years of age.

Under no circumstances shall a school owner, employee or instructor meet, for the purposes of inspecting records, or for any other purpose, with current or former students under 18 years of age at the time of the meeting without a parent or legal guardian being present unless the student is married or emancipated. Any school owner, employee or instructor who meets with students, parents or legal guardians for the purposes of inspecting records is subject to the conduct requirements set forth in these regulations. Any school owner, employee or instructor who violates the conduct requirements set forth in these regulations during such meetings with

students, parents or legal guardians shall be subject to the sanctions set forth in these regulations.

## **24 VAC 20-121-60. School licensing requirements.**

A. Schools seeking a license shall file with the department, as required by these regulations, a completed application for a driver training school license along with any associated fees and other documentation required by the department. In addition, each school shall collect and submit to the department, as required by these regulations, the instructor applications for those instructors that they employ along with any associated fees and other documentation required by the department.

B. The following shall accompany the school licensing application and shall be in addition to any other application requirements of the department:

1. An application fee;
2. A certificate of insurance;
3. A surety bond;
4. Instructor applications;
5. A local business license or zoning document, or a letter from local authorities indicating none is required; and
6. A national criminal records check completed within 60 days of the application deadline for each individual providing instruction or otherwise employed by or managing the school.

In addition, each owner or principal of the owner of a driver training school shall submit a national criminal records check with the school license application package.

C. The application package shall be submitted to the department at the address shown on the application. All proper applications will be either approved or denied within 30 business days of receipt by the department.

D. School licenses shall be valid for a period of 12 months and shall display the validity period on the face of the license. The school license shall expire on the last day of the last valid month of the license period.

E. Schools seeking a license shall file with the department evidence of insurance, with a company authorized to do business in the Commonwealth of Virginia, on all vehicles used by schools to provide instruction, in the minimum amounts as required by § 46.2-472 of the Code of Virginia.

The school shall provide and maintain evidence of insurance coverage on a certificate of insurance form provided by the department. The certificate shall be filed upon application and at other times of the licensure period as requested by the department. The certificate shall stipulate the make, model, year, vehicle identification number, vehicle color and license plate number for all vehicles and shall also stipulate that the department will be notified by the insurance carrier (i) 10 calendar days before the school's insurance policy expires or (ii) on the same day that the policy is canceled or not maintained in full force.

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Schools shall provide to the department written verification from their insurance company that the insurance company is aware the vehicles are used for driver training instruction and are operated by student drivers. Schools shall notify the department in writing of any change in liability insurance coverage not later than the effective date of the change.

Each school shall provide written notice to the department's driver training school section in the event that any motor vehicle is added to or deleted from the insurance policy during the coverage period. The notice shall include the make, model, year, vehicle identification number, vehicle color and the license plate number. The notice shall be received by the department prior to using any added motor vehicle for driver education instruction. Failure to maintain required liability insurance for school vehicles or failure to comply with insurance certification requirements shall result in the suspension or revocation of the school's license or the imposition of other sanctions, or both, as set forth in these regulations.

F. All licensed schools shall file with the department a surety bond in the sum set by statute for Class A and Class B schools, payable to the Commonwealth of Virginia, issued by a corporation licensed to transact surety business in the Commonwealth. The surety bond shall be filed with each application and must provide coverage for the entire licensure period.

G. The department may refuse to approve any application, including originals or renewals, in which the owner or any principal of the owner, or any of the school's employees or instructors (i) have previously been or would be subject to any sanctions prescribed by these regulations or (ii) has been convicted of a felony, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth or any other jurisdiction, or a conviction of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other jurisdiction, or any misdemeanor or felony involving:

1. Sexual assault as established in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;
2. Obscenity and related offenses as established in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia;
3. Drugs as established in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia;
4. Crimes of moral turpitude;
5. Contributing to the delinquency of a minor;
6. Taking indecent liberties with a minor;
7. The physical or sexual abuse or neglect of a child;
8. Similar offenses in other jurisdictions; or
9. Other offenses, as determined by the department, which would impact ownership, operation or instruction by a school.

Any school license issued may be suspended or revoked if such a conviction occurs during any licensure period.

H. To avoid any conflict of interest, the department will not approve any Class A school license for any applicant that is certified by DMV as a Third Party Tester for the commercial driver's license (CDL) skills testing.

I. Requests to change (i) the name or address of a school or (ii) a school license to add to or eliminate a licensed location, or any other business offices, classrooms or other instructional facilities during the licensure period shall be made to the department at least 30 days prior to such change. Such changes shall be subject to a processing fee, as set forth in these regulations, and the issuance of a modified license, as requested. The expiration on any modified license issued shall be the same as the current license.

## **24 VAC 20-121-70. School license renewal required.**

A. Every licensed school applying for renewal shall return the following to the department at the address shown on the application on or before the 15th day of the month in which the current license expires:

1. A renewal application;
2. A certificate of insurance, as required under these regulations;
3. A photocopy of a current business license, if required by the locality, or a letter from the locality that indicates no business license is required;
4. National criminal records checks completed within 60 days of the application deadline for each individual providing instruction or otherwise employed by or managing the school, as required by these regulations; and
5. A fee for each license renewal application, as set forth in these regulations.

If the original surety bond is no longer in force, a new surety bond must also accompany the renewal application.

B. The department will make every effort to mail a renewal notice to the licensee outlining the procedures for renewal at least 90 days prior to the expiration of their license and to mail a follow-up reminder notice 45 days prior to the expiration of their license. Failure to receive these notices shall not relieve the licensee of the obligation to apply if a continuation of the license is desired.

## **24 VAC 20-121-80. Transferability of school licenses.**

A. A change in ownership shall require an application for an original license along with the documents and fees required under these regulations, which shall be submitted to the department at least 30 days in advance of the effective date of the change. The school shall not operate under the change in ownership until an original license has been issued by the department reflecting the new ownership.

B. School licenses are not transferable; they shall not be sold, loaned, bartered or given by a licensee or an agent of a licensee to another school, individual, association, partnership or corporation.



## **24 VAC 20-121-90. School contracts.**

A. All contracts between any school and any individual or group attending the school shall be in a standard format approved by the department. A school shall not make any changes to the format without review and approval by the department. A copy of the signed contract must be provided to each student who signs the contract for those students 18 years of age or older and those students under 18 years of age who are either married or emancipated. For students under 18 years of age who are not married or emancipated, a copy of the signed contract must be provided to the parents or legal guardians who sign the contract.

Excluding transcripts and certificates of completion, all written correspondence from schools to current or former students and their parents or legal guardians related in any way to course work or the contract between the school and the student shall include standard information about the department's toll-free telephone hotline. The department shall specify to the schools, as part of the school license application package, the content and the font requirements for this hotline information.

Schools may not include any statements in their contracts that place the financial responsibility for accidents occurring in school-owned vehicles during periods of instruction on the student or on the parents or legal guardians of students operating the vehicles.

B. The required elements for all contracts between schools and their independent contractors shall be provided by the department as part of the school license application package.

C. Addenda to any contracts between a school and its students or a school and its independent contractors shall be approved by the department.

D. Licensed driver training schools may conduct training courses at private schools, subject to existing statutory and regulatory requirements. Driver training schools offering such training shall provide the department with a copy of the written contract between the driver training school and the private school that includes the dates and times for the courses along with written confirmation that the classroom portion of the training is being conducted at the private school.

## **24 VAC 20-121-100. General instructor licensing requirements.**

A. Individuals seeking an instructor's license shall submit, as required by these regulations, a completed application along with any associated fees and other appropriate documentation to the school with which they are employed. Schools shall be responsible for submitting the instructor applications, along with any associated fees and other appropriate documentation, to the department, as required by these regulations. Applicants seeking an original or a renewal of an instructor's license shall submit with their application a national criminal records check completed within 60 days of the submission date of the application.

B. Applicants must be at least 21 years of age and must be able to document with driving records at least five years of licensed driving experience, two years of which shall be experience in the United States or a territory thereof. These

driving records must exhibit the individual's name, the driver's license number, the date of issue, the issuing jurisdiction, the date of expiration and notations of any convictions, license withdrawals, suspensions, revocations, cancellations, disqualifications or restrictions. In the event an applicant uses driving records from a foreign country to substantiate licensed driving experience, such records must be translated into English by an appropriate authority, as approved by the department, at the applicant's expense.

C. Individuals seeking an instructor's license must be employed by a licensed school. No instructor shall be employed by more than one school unless all the schools are owned by the same person. Instructors employed by more than one school shall have an application and other appropriate documentation and fees submitted to the department by each school that employs them.

D. Individuals licensed as instructors or seeking an instructor's license must be able to effectively communicate in English in an easily understood and comprehensible manner to their students and the department, as determined by the department.

E. Individuals seeking an instructor's license to teach in-vehicle instruction shall hold a valid driver's license from their state of domicile at the time of licensing and throughout the entire licensure period. If such driver's licenses are from another state or jurisdiction, the applicant must provide to the department a copy of their driving record from that jurisdiction with their application and every three months thereafter if they receive an instructor's license. Such driving record must be produced within 30 days of its submission to the department.

All applicants for a license to teach in-vehicle instruction and those persons who are currently licensed to teach in-vehicle instruction must also provide written notice to the department of any traffic accidents, convictions of traffic infractions, misdemeanors, or felonies, as well as any administrative actions relating to driving or any driver's license revocation, suspension, cancellation, disqualification or other loss of driving privileges within 15 calendar days of the conviction or administrative action, or within 15 calendar days of the imposition of the revocation, suspension, cancellation, disqualification or other loss of driving privileges.

Applicants for a license to teach in-vehicle instruction shall not be approved if their current driving privileges are expired, suspended, revoked, cancelled or disqualified. Persons required to submit to periodic medical reviews may also be denied an in-vehicle instructor's license if, as determined by the department, their conditions are considered to pose a threat to the safety, health or welfare of driver training students or the public while these persons operate a motor vehicle.

F. Individuals who obtain an instructor's license shall at the time of licensing have a driving record with no more than six demerit points. After licensing, instructors shall maintain a driving record with no more than six demerit points. If during the licensure period the driving record of such individual accumulates more than six demerit points based on violations occurring in a 12-month period, the department shall suspend the person's instructor license and shall notify the instructor

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and the driver training school where the instructor is employed of such suspension. Safe driving points shall not be used to reduce the accumulated demerit points. In the event that the driving record is from another state, the department will apply Virginia's equivalent demerit points to convictions noted on such record.

Whenever the driver's license of such individual is suspended or revoked, or such person is convicted in any court of reckless driving, driving under the influence or driving while intoxicated, the department shall suspend the person's instructor license and shall notify the person and the driver training school where the instructor is employed of the suspension.

G. The department may refuse to approve any application, including originals or renewals, in which the applicant has been convicted of a felony, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth or any other jurisdiction, or a conviction of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other jurisdiction, or any misdemeanor or felony conviction involving:

1. Sexual assault as established in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;
2. Obscenity and related offenses as established in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia;
3. Drugs as established in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia;
4. Crimes of moral turpitude;
5. Contributing to the delinquency of a minor;
6. Taking indecent liberties with a minor;
7. The physical or sexual abuse or neglect of a child;
8. Similar offenses in other jurisdictions; or
9. Other offenses, as determined by the department, which would indicate that the applicant may present a danger to the safety of students or the public.

Instructor licenses may be suspended or revoked if a conviction for any of the offenses outlined in this subsection occurs during any licensure period.

H. Instructor applicants shall not be issued a license if they have a conviction of driving under the influence, reckless driving, refusal to submit to a breath or blood test under § 18.2-268.2 of the Code of Virginia, or vehicular or involuntary manslaughter, or of any similar offense from any other jurisdiction within a period of five years prior to the date of the application. If the applicant's driving privileges were revoked for any such conviction, then the five-year period shall be measured from the license restoration date rather than the conviction date. Instructor licenses issued shall be revoked if a conviction, as outlined in this subsection, occurs during the licensure period.

I. Except as otherwise provided in these regulations, an individual seeking an instructor's license shall have at least a

high school diploma or equivalent. After initial licensure or renewal, instructors shall attend annual training sessions provided by the department. These one-day training sessions shall be held in each of the department's regional districts every year, as deemed necessary by the department.

These sessions shall include, as appropriate and necessary, updates on department forms, audit processes and other procedural changes, and new legislation that has implications for driver training. They also shall include discussions about any issues or concerns raised by either the department or the licensees.

When available, these sessions shall also offer information about the latest in driver training instructional techniques as well as other new developments in driver training in order to enhance overall professional training skills and abilities.

The schedule for such training sessions shall be developed by the department and provided to each instructor through the school that employs them at least 30 days in advance of the scheduled sessions. The schedule also shall include provisions for a make-up training session for those licensees who could not attend the training session in their region. Attendance shall be mandatory and shall be at no cost to licensed instructors, other than those costs associated with (i) travel to and from the training session, including lodging and meals, and (ii) any materials provided by the department during the training session, as deemed necessary by the department.

Each licensed instructor who, without valid excuse, fails to attend and complete a scheduled training session or a scheduled make-up training session shall be subject to a minimum 30-day license suspension, which shall not be lifted until the instructor has completed a special make-up training session. Special make-up training sessions shall be provided only when necessary, and instructors attending such sessions will be required to pay the department's cost for providing the special make-up training session.

J. All instructors shall complete training on the current curriculum and other course work, as required and approved by the department, prior to instructing students. Evidence of such training shall be maintained by the school employing the instructor and provided to the department upon request.

K. The fee for an instructor license shall be set pursuant to these regulations. The instructor's license period shall expire when the respective school license expires. At the discretion of the department, instructor licensing fees may be prorated on a monthly basis.

L. The instructor license application package shall be submitted by the school employing the instructor to the department at the address shown on the application. All proper applications will be either approved or denied by the department within 30 business days of receipt from the school employing the instructor.

M. All licensed instructors shall have their instructor's license in their possession at all times while providing instruction.

N. Each instructor licensed by the department shall notify the department in writing within 30 days of establishing a new residential address.

O. In the event that a school licensed by the department changes its name or address, the school shall, no later than 30 days prior to such change (i) notify the department of the school's name or address change, (ii) request revised instructor's licenses for the instructors it employs reflecting the change and (iii) submit to the department the processing fees set forth in these regulations for revising and reissuing an instructor's license for each of its instructors.

After receiving the processing fees, the department will revise and reissue the instructor's licenses, as requested, and will cancel the previously issued licenses. Once it receives the revised licenses from the department, the school shall return the cancelled instructor's licenses to the department.

**24 VAC 20-121-110. Instructor license renewal.**

A. Each school employing a licensed instructor applying for renewal shall return to the department for each of its instructors a renewal application, a current national criminal records check completed within 60 days of the application and the instructor license fee to the department at the address shown on the application, on or before the 15th day of the month in which the current license expires. Each instructor's license shall expire when the respective school license expires. Thirty days prior to the end of the 12 months of the licensure period, each instructor's license renewal applicant shall provide to the school employing them, for submission to the department, a national criminal records check completed within 60 days of the application deadline.

B. No instructor shall be permitted to continue instructing students upon the expiration of the instructor's license. The department shall not renew the instructor's license if the school license of the school employing an instructor is not renewed.

C. The department will make every effort to mail a renewal notice outlining the procedures for renewal at least 45 days prior to the expiration of an instructor's license to the licensee at the school's licensed location. Failure to receive this notice shall not relieve the licensee of the obligation to apply for renewal of the license through the school if continuation is desired.

**24 VAC 20-121-120. Change in instructor employment.**

Instructor licenses shall not be transferred from one licensed school to another licensed school. If an instructor changes schools, a new license application and the appropriate fee, as set forth in these regulations, shall be submitted to the department.

**24 VAC 20-121-130. Notice required to the department.**

A. Each school shall notify the department in writing no later than 15 calendar days after the termination of employment of any licensed instructor. The school shall make every reasonable attempt to return to the department the instructor's license.

B. In the event of cessation of business, the school shall submit to the department, within 15 calendar days of such date, a written statement indicating the business is closing, and forward to the department within 30 calendar days after cessation of business the school license, all instructors'

licenses, all student records and any materials furnished to the school by the department. The department will retain such records for a period of three years from the date they are received to ensure such records are available to students and other persons or entities who may want or need access to them.

C. All schools shall notify the department of any proposed structural or other modifications to an existing school, classroom or driving range 30 days prior to initiating such modifications.

**24 VAC 20-121-140. Fees.**

All fees related to school and instructor licensing under the driver training program shall be, as determined by the department, set at levels that will provide reasonable fiscal support for the operations and activities of the Commercial Licensing Division of the department. Such licensing fees shall be based, in part, on the number of business office, classroom and instructional locations that are part of the license or license application at a given time.

A schedule of such fees, as follows, shall be provided to (i) all school license applicants at time of initial application and (ii) all licensed schools at least 30 days prior to their license renewal date.

School license for one year, original and renewal	\$100
Instructor license for one year, original and renewal	\$50
Upgrade school license during licensure period to teach students under age 19	\$25
Transfer instructor license from one school to another	\$25
Penalty for failure to renew school license prior to expiration date	\$100
Penalty for failure to renew instructor license prior to expiration date	\$50
Processing fee for change of address	\$3/change

All such fees shall be nonrefundable. All check payments for fees shall be made on an active account containing sufficient funds for the amount of the payment.

**24 VAC 20-121-150. General equipment requirements.**

A. Each school shall provide all necessary equipment and materials required for classroom and in-vehicle instruction, including motor vehicles that are in safe mechanical condition and that are properly registered and insured.

B. Each vehicle shall also carry minimum safety equipment as determined by the department, including, but not limited to reflective triangles and flares, first aid kit, flashlight, secured fire extinguisher, jumper cables or a battery charger, towel, blanket, safety vest, while used for training students.

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## **24 VAC 20-121-160. Sanctions for violations of statutes and regulations.**

A. The department may cancel, suspend, revoke or deny renewal for any license issued pursuant to these regulations, refuse to license a school or instructor or may limit the type of driver training instruction provided and impose a civil penalty up to \$1,000, as outlined in Chapter 17 (§ 46.2-1700 et seq.) of Title 46.2 of the Code of Virginia, for any licensee who violates any provisions of such statutes or these regulations.

The department may take action to cancel, suspend, revoke or deny renewal for any license without first offering the licensee the opportunity for a hearing if the Commissioner has made a determination pursuant to § 46.2-1705 E or G of the Code of Virginia that the violation poses a danger to the safety of students or to public safety or indicates that an instructor is no longer qualified to act as an instructor. The department may also limit the privileges of a school or an instructor pursuant to § 46.2-1705 F of the Code of Virginia.

B. For the purposes of this section, if a school licensee is an association, partnership, corporation or other business entity, it shall be sufficient cause for the suspension, cancellation, revocation or refusal to renew a school license in the event that any officer, director, instructor, employee, or any trustee or member of a partnership or corporation has committed any act or omitted any duty that would be cause for suspending, canceling, revoking, or refusing to renew a license issued to him as an individual under the laws and regulations pertaining to driver training schools.

In addition, each school owner shall be responsible for the acts of any instructor while acting as the owner's agent when (i) the owner approved of those acts, or had knowledge of those acts or other similar acts, and (ii) after such knowledge retained the benefit, proceeds, profits or advantages accruing from those acts or otherwise ratified those acts.

C. Upon revocation or refusal to renew a school license, all school and instructor licenses, forms, documents and all records relating to the school operation, including all student records, and any materials furnished to the school by the department shall be forwarded to the department by the school within 30 calendar days of the action.

### **PART II. SPECIFIC REQUIREMENTS RELATED TO CLASS A LICENSURE.**

## **24 VAC 20-121-170. Curriculum requirements for Class A licensed schools.**

Course curriculum requirements will be established and made available by the department to Class A licensed schools, Class A license applicants and the public. A course curriculum meeting the established requirements must be submitted to the department at the time of Class A license application or renewal application, and must be approved by the department prior to the beginning of course instruction.

The department shall provide and update the list of course curriculum requirements from time to time, as deemed appropriate and necessary by the department, in consultation with all affected schools that are licensed by the department at

the time of the update and other interested parties as identified by the department.

The department shall notify the affected schools when and if new relevant topics are added to the course curriculum. Schools shall have 45 calendar days after such notice is issued to update their course curriculum and to certify to the department in writing that the school has added the new topics to the course curriculum.

## **24 VAC 20-121-180. Class A instructor license requirements.**

A. Applicants for a Class A instructor's license shall possess a valid Virginia nonrestricted interstate commercial driver's license, with the appropriate vehicle classes and endorsements for the type of instruction they intend to provide, and that has been held by the applicant for at least three years.

Applicants for a Class A instructor's license who do not have a high school diploma may nevertheless be licensed if they provide written evidence that they (i) have at least one year of previous Class A instructing experience or (ii) have successfully completed a Class A driver training course and a minimum of 160 hours of Class A instructor training provided by the hiring school.

Instructor applicants shall provide with their applications certifications that they meet the physical requirements, and any alcohol and drug screening requirements for commercial drivers as specified in the federal motor carrier safety regulations. A copy of such certification shall be kept in the instructor's file maintained by the driver training school employing the instructor.

If applicants for a Class A instructor's license hold a valid commercial driver's license from a state other than Virginia at the time of licensing, they shall maintain its validity throughout the entire licensure period and shall provide to the department a copy of their driving record from that other state upon application and, if licensed as a Class A instructor by the department, on a quarterly basis thereafter.

Those applicants for and holders of a Class A instructor's license shall also provide written notice to the department of any conviction of traffic infractions, misdemeanors, or felonies, any administrative actions relating to driving or any driver's license revocation, suspension, cancellation, disqualification or other loss of driving privilege within 15 calendar days of the conviction or administrative action, or within 15 calendar days of the imposition of the revocation, suspension, cancellation, disqualification or other loss of driving privilege.

B. Instructors shall complete in-service instructor training provided by the school prior to offering student instruction. The requirements of such in-service instructor training shall be established and made available to licensed Class A schools by the department and shall include, but not be limited to, the following topic areas:

1. Basic instructional skills;
2. Student teaching with a mentor;

3. Background in federal, state and local laws and ordinances;
4. Basic skills for operating commercial motor vehicles;
5. Safe operating practices;
6. Maintenance of commercial motor vehicles; and
7. Safe trip planning.

**24 VAC 20-121-190. Equipment requirements for Class A licensed schools.**

A. All vehicles used for driver education or testing purposes shall be marked by signs affixed to the sides and the rear of the vehicle, in bold letters not less than four inches in height, clearly visible from 100 feet, stating one of the following: "Student Driver," "Learner," "New Driver," "Driver Education" or "Caution-Student."

All vehicles used by a school shall display the name of the school, as shown on the school license, on the outside of the vehicle when engaged in driver education or when the vehicle is being used for testing purposes. The name of the school shall be included on the signs affixed to the sides of the vehicle.

B. The cabs of such vehicles shall be designed to have safety belts for each individual.

C. No motor vehicle may be used for driver education unless it displays a valid safety inspection sticker or federal Motor Carrier Safety Administration inspection sticker.

PART III.  
SPECIFIC REQUIREMENTS RELATED TO CLASS B  
LICENSURE.

**24 VAC 20-121-200. Curriculum requirements for Class B licensed schools.**

A. Course curriculum shall comply with the provisions of the "Curriculum and Administrative Guide for Driver Education in Virginia" (2001) and these regulations. A copy of the current guide may be obtained from the Virginia Department of Education at the following Internet link: [http://www.doe.virginia.gov/VDOE/Instruction/PE/ca\\_guide.html](http://www.doe.virginia.gov/VDOE/Instruction/PE/ca_guide.html)

B. The department shall provide and update the list of course curriculum requirements from time to time, as deemed appropriate and necessary by the department, in consultation with all affected schools that are licensed by the department at the time of the update and other interested parties as identified by the department.

The department shall notify the affected schools when and if new relevant topics are added to the course curriculum. Schools shall have 45 calendar days after such notice is issued to update their course curriculum and to certify to the department in writing that the school has added the new topics to the course curriculum.

C. The length of daily instruction shall comply with the provisions of the current "Curriculum and Administrative Guide for Driver Education in Virginia" (2001) and these regulations.

D. The number of students in a driver training vehicle during in-vehicle instruction shall be no more than three and no less than two students. The only exception to the two-student minimum is to have the student's parents or legal guardians for students under 18 years of age who are not married or emancipated sign a written release, an original to be maintained with the student's record, allowing for one-on-one driver training with an instructor.

E. Except when one-on-one driver training is being provided with the consent of the student's parents or legal guardians, a student under 19 years of age riding alone with the instructor shall ride in the back seat of the driver training vehicle until other students are present in the vehicle.

F. Except when a student is driving the vehicle, the time during which a student is being transported in a driver training vehicle for the purposes of picking up a student or other students prior to the beginning of a period of instruction or dropping that student or other students off after the end of a period of instruction shall not count as observation time. Any student involved in one-on-one training with an instructor as permitted under subsection C of this section shall meet the observation requirements with at least one other student in the vehicle during in-vehicle training.

G. Students under 19 years of age shall only receive in-vehicle instruction with other students under 19 years of age.

**24 VAC 20-121-210. Class B instructor requirements.**

Any instructor relying on a valid Virginia teaching license with a driver's education endorsement shall submit either the original license or a certified copy of the original license and an unexpired endorsement upon original application and renewal of the license. If submitted, the original license shall be returned to the instructor after review by the department.

**24 VAC 20-121-220. Equipment requirements for Class B licensed schools.**

A. All vehicles used for driver education or used for testing purposes shall be marked by a rooftop sign, in bold letters not less than two and one-half inches in height, clearly visible 100 feet from the front and rear, stating one of the following: "Student Driver," "Learner," "New Driver," "Driver Education" or "Caution-Student."

All vehicles used by a school shall display the name of the school, as shown on the school license, on the outside of the vehicle when engaged in driver education or when the vehicle is being used for testing purposes. The name of the school shall be included either on the rooftop sign or affixed to both sides of the vehicle.

B. No motor vehicle may be used for driver education unless it is in safe mechanical condition as defined in these regulations. Each vehicle used for driver education in a school shall have dual controls consisting of dual brakes, dual inside rearview mirror and right-hand and left-hand outside mirrors. Any training vehicle or vehicles used for instruction shall not be more than nine model years old. This model year requirement may be waived or altered on a case-by-case basis for vehicles specially equipped to accommodate disabled individuals. The driver training vehicle shall be equipped with a minimum of four safety belts.

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# Proposed Regulations

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C. The department may exempt any school teaching disabled individuals from the requirement to provide motor vehicles, on a case-by-case basis. The school may use a vehicle provided by the disabled student for their in-vehicle instruction in the event that it is cost prohibitive for the school to maintain certain specialized equipment or if such equipment is not readily installed and removed or if it provides necessary practical experience for the student in their own vehicle. When using a student's vehicle, the school shall require that the disabled student provide written verification from the company insuring the vehicle that it is aware that the vehicle will be used for driver training instruction and the insurance is in full force during such use.

The school shall also require the disabled student to provide a copy of the current liability insurance policy for the vehicle. The school shall maintain a copy of the current liability insurance policy covering such vehicle in the student's file. The school shall also send prior to beginning instruction a written notice to the department stipulating the reasons for using the student's vehicle and the anticipated dates of instruction as well as a copy of the current liability insurance policy on the vehicle.

Any school that uses a disabled student's motor vehicle must ensure that such vehicle is in safe mechanical condition as defined in these regulations, and displays signage as specified under these regulations.

D. Except as otherwise provided in this section, no motor vehicle may be used for driver training purposes unless it is owned or leased in the name of the licensed school or the school owner as indicated on the application for the school license.

E. All motor vehicles used by a licensed school for in-vehicle instruction shall be inspected and approved by the department based on the criteria outlined in these regulations before being used for student instruction. All motor vehicles used by a licensed school for the purpose of taking the driving examination shall have a valid registration in the vehicle and be in safe mechanical condition, as defined in these regulations.

## DOCUMENTS INCORPORATED BY REFERENCE

Curriculum and Administrative Guide for Driver Education in Virginia, 2001, Virginia Department of Education in cooperation with the Virginia Department of Motor Vehicles, [http://www.doe.virginia.gov/VDOE/Instruction/PE/ca\\_guide.html](http://www.doe.virginia.gov/VDOE/Instruction/PE/ca_guide.html).

**NOTICE:** The forms used in administering 24 VAC 20-121, Virginia Driver Training School Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Virginia Commercial Driver Education Certificate, CDT-B (rev. 7/04).

Application for Driver Training School License, DTS-001 (rev. 4/05).

Application for Driver Training Instructor License, DTS-002 (rev. 4/05).

Commercial Driver Training School License, CDT-003 (rev. 5/03).

Vehicle Insurance Certification, DTS-005 (rev. 3/05).

Virginia Driver Training School Licensing Audit, DTS-9 (rev. 1/05).

Virginia Driver Training School Licensing Review, DTS-10 (rev. 5/06).

Driver Training School Student Records Review (class B) DTS-11 (rev. 5/06).

Virginia Driver Training School Close-out Audit Report, DTS-12 (rev. 1/05).

Virginia Driver Training School Vehicle Inspection Checklist, DTS-13 (rev. 1/05).

Driver Training School Student In-Car Instruction Record, DTS-14 (rev. 1/05).

Final Road Skills Test Score Sheet, DTS-15 (rev. 1/05).

Classroom Instruction Attendance Roster, DTS-17 (rev. 1/05).

Virginia Driver Training School Parent/Student Questionnaire, DTS-18 (rev. 1/05).

Surety Bond Affidavit and Acknowledgement of Surety, DTS-22 (rev. 5/06).

40-Hour Parent/Teen Driving Guide Confirmation of Receipt, DTS-40 (rev. 7/06).

Virginia Driver Training School Review Report, DTS-51 (rev. 5/06).

Driver Training School Instructor Training Report, DTS-100 (rev. 5/06).

Home-Schooled In-Car Driver Education Parental Authorization Application, HS-1 (rev. 5/04).

Virginia Home-Schooled In-Car Driver Education Certificate, HS-2 (rev. 7/04).

Home-Schooled In-Car Driver Education Information Sheet, HS-3 (rev. 7/04).

Class A Driver Training Schools Contract Checklist (rev. 2/05).

Class B Driver Training Schools Contract Checklist (rev. 2/05).

Driver Training School Application Checklist (rev. 7/06).

VA.R. Doc. No. R05-19; Filed July 17, 2006, 4:24 p.m.

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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to § 3.1-884.21:1, which includes (i) any regulation under the federal acts as it pertains to this article, amending it as necessary for intrastate applicability and (ii) any regulation containing provisions no less stringent than those contained in federal regulation. The Board of Agriculture and Consumer Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 2 VAC 5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act (amending 2 VAC 5-210-10, 2 VAC 5-210-20, 2 VAC 5-210-30 and 2 VAC 5-210-60; adding 2 VAC 5-210-41; repealing 2 VAC 5-210-40 and 2 VAC 5-210-50).

**Statutory Authority:** § 3.1-884.21:1 of the Code of Virginia.

**Effective Date:** July 19, 2006.

**Agency Contact:** Richard Hackenbracht, DVM, Program Manager, Department of Agriculture and Consumer Services, Office of Meat and Poultry Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4569, FAX (804) 786-1003, or richard.hackenbracht@vdacs.virginia.gov.

#### Summary:

*The amendments provide (i) requirements for additives used in the preparation and processing of meat and poultry products, (ii) requirements for producers of ready-to-eat products to address the pathogen *Listeria monocytogenes*, (iii) requirements for labeling products that have added solutions due to processing procedures, and (iv) requirements for providing due process to inspected establishments in the event that regulatory control action is taken.*

*Forms used by the Office of Meat and Poultry Services have been updated to reflect changes in the office's name and to clarify the information requested in the forms.*

#### 2 VAC 5-210-10. Adoption by reference.

The following rules and regulations governing the meat and poultry inspection of the United States Department of Agriculture specified in this part, as contained in Title 9, Chapter III, Subchapters A, ~~B~~ and ~~C~~, and E, CFR, dated

January 1, ~~1997~~ 2006, with amendments and with administrative changes therein as needed to make them appropriate and applicable to intrastate operations and transactions subject to the Virginia Meat and Poultry Products Inspection Act, are hereby adopted by reference.

#### 2 VAC 5-210-20. Definitions.

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

"Act" means the Virginia Meat and Poultry Products Inspection Act (§ 3.1-884.17 et seq. of the Code of Virginia).

"Administrator" means the Director of the Division of ~~Consumer Protection~~ *Animal and Food Industry Services*, or any other officer or employee of the department to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

"Commerce" means commerce within the Commonwealth of Virginia.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Federal" means "Virginia."

"Federally inspected and passed" means Virginia inspected and passed.

"Interstate" means intrastate.

"Program" means the Office of Meat and Poultry Services, Virginia Department of Agriculture and Consumer Services.

"Secretary" means the Commissioner of Agriculture and Consumer Services.

"Food Safety Inspection Service" means the Virginia meat and poultry inspection program.

"United States" or "U.S." means "Virginia."

"U.S. Brands and Legends" means "Virginia Brands and Legends."

#### 2 VAC 5-210-30. Mandatory meat inspection and poultry products inspection and voluntary inspection and certification.

Subchapter A - ~~Mandatory meat inspection~~ *Agency organization and terminology; mandatory meat and poultry products inspection and voluntary inspection and certification.*

Part 302. Application of inspection and other requirements.

Part 303. Exemptions.

Any establishment, firm, person or corporation operating under Section 303.1(a)(2) of this subchapter is required to apply for and receive a permit of exemption in accordance

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# Final Regulations

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with requirements set forth by the Commissioner of Agriculture and Consumer Services or his delegate.

Part 304. Application for inspection; grant or refusal of inspection.

Part 305. Official numbers; inauguration of inspection; withdrawal of inspection; reports of violation.

Part 306. Assignment and authorities of program employees.

Part 307. Facilities for inspection.

~~Part 308. Sanitation.~~

Part 309. Ante-mortem inspection.

Part 310. Post-mortem inspection.

Part 311. Disposal of diseased or otherwise adulterated carcasses and parts.

Part 312. Official marks, devices and certificates.

Part 313. Humane slaughter of livestock.

Part 314. Handling and disposal of condemned or other inedible products at official establishments.

Part 315. Rendering or other disposal of carcasses and parts passed for cooking.

Part 316. Marking products and their containers.

Part 317. Labeling, marking devices, and containers.

Part 318. Entry into official establishments; reinspection and preparation of products.

Part 319. Definitions and standards of identity or composition.

Part 320. Records, registration, and reports.

Part 325. Transportation.

Part 329. Detention; seizure and condemnation; criminal offenses.

Part 335. Rules of practice governing proceedings under the federal Meat Inspection Act.

~~**2 VAC 5-210-40. Adopted inspection and certification standards.**~~

~~Subchapter B - Voluntary inspection and certification service.~~

Part 350. Special services relating to meat and other products.

Part 352. Exotic animals; voluntary inspection.

Part 354. Voluntary inspection of rabbits and edible products thereof.

Part 355. Certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition.

Part 362. Voluntary poultry inspection regulations.

~~**2 VAC 5-210-50. Adopted poultry inspection standards.**~~

~~Subchapter C - Mandatory poultry products inspection.~~

Part 381. Poultry products inspection regulations.

Subpart B. Administration; application of inspection and other requirements. Deleting Section 381.5-Publications.

Subpart C. Exemptions.

Subpart D. Application for inspection; grant or refusal of inspection.

Subpart E. Inauguration of inspection; official establishment numbers; separation of establishments and other requirements; withdrawal of inspection.

Subpart F. Assignment and authorities of program employees; appeals.

Subpart G. Facilities for inspection; overtime and holiday service; billing establishments.

Subpart H. Sanitation.

Subpart I. Operating procedures.

Subpart J. Ante-mortem inspection.

Subpart K. Post-mortem inspection; disposition of carcasses and parts.

Subpart L. Handling and disposal of condemned or other inedible products at official establishments.

Subpart M. Official marks, devices, and certificates; export certificates; certification procedures.

Except as otherwise required in this subchapter all referrals and instructions relative to export or import are deleted from adoption.

Subpart N. Labeling and containers.

Subpart O. Entry of articles into official establishments; processing inspection and other reinspections; processing requirements.

Subpart P. Definitions and standards of identity or

Subpart Q. Records, registration, and reports. composition.

Subpart S. Transportation; exportation; or sale of poultry or poultry products.

Subpart U. Detention; seizure and condemnation; criminal offenses.

~~Subpart W. Rules of practice governing proceedings under the Poultry Products Inspection Act.~~

Subpart X. Canning and canned products.

Subpart Y. Nutrition labeling.

Part 416. Sanitation.

Part 417. Hazard Analysis and Critical Control Point (HACCP) Systems.

**2 VAC 5-210-41. Regulatory requirements.**

*Subchapter E - Regulatory requirements under the federal Meat Inspection Act and the Poultry Products Inspection Act.*

*Part 424. Preparation and processing operations.*

*Part 430. Requirements for specific classes of product.*



Part 441. Consumer protection standards: raw products.

Part 500. Rules of practice.

**2 VAC 5-210-60. Hourly charge.**

In setting the hourly charge to be made by the Virginia Bureau Office of Meat and Poultry Inspection Services, the Department of Agriculture and Consumer Services may charge for voluntary, overtime, and holiday inspection, and administrative costs associated therewith. The amount charged will be sufficient to pay: (i) the salaries and benefits of inspection personnel providing voluntary, overtime, and holiday inspection services; and (ii) that portion of the salaries and benefits of any other employee or employees attributable to administrative services associated with voluntary, overtime, or holiday inspection.

**NOTICE:** The forms used in administering 2 VAC 5-210, Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Application for Permit of Exemption Under the Virginia Meat and Poultry ~~Productions~~ Products Inspection Act, Form VDACS-03072, eff. ~~2/93~~ 4/06.

Application for State Meat and Poultry Inspection, Form VDACS-03090, eff. ~~5/94~~ 2/06.

~~Regular and Overtime~~ Work Hours Agreement, Form VDACS-03091, eff. ~~2/93~~ 12/96.

Application/*Approval* for Voluntary Reimbursable Inspection Service, Form VDACS-03140, eff. ~~2/93~~ 6/06.

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# Final Regulations

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## APPLICATION FOR PERMIT OF EXEMPTION UNDER THE VIRGINIA MEAT AND POULTRY PRODUCTS INSPECTION ACT

TO: The Commissioner  
Department of Agriculture and Consumer Services  
Richmond, VA 23219

Application is hereby submitted for a Permit of Exemption as provided by Section 303.1(a)(2) of the Rules and Regulations governing the Inspection of Meat in the State of Virginia, and Subpart C of the Rules and Regulations Governing the Inspection of Poultry and Poultry Products in the State of Virginia.

The following information is submitted in support of this application:

- A. Name of Establishment: \_\_\_\_\_
- B. Owner: \_\_\_\_\_
- C. Address: \_\_\_\_\_
- City/Town: \_\_\_\_\_ VA Zip: \_\_\_\_\_ City/County: \_\_\_\_\_
- Code: \_\_\_\_\_
- D. Telephone Number: (Area Code)- \_\_\_\_\_

Type of Exemption Applied For: (Check those that apply)

- Exempt Slaughter of Livestock \_\_\_\_\_
- Exempt Processing of Meats \_\_\_\_\_
- Exempt Slaughter of Poultry \_\_\_\_\_
- Exempt Processing of Poultry \_\_\_\_\_
- Curing of Exempt Pork Products \_\_\_\_\_

RETAIL Yes ( ) No ( )

NEW \_\_\_\_\_ PERMIT NUMBER

The undersigned acknowledges an understanding of the requirements for initial and renewal exemption permits as provided by Section 303.1 of the Rules and Regulations Governing the Inspection of Meat in the State of Virginia, and Subpart C of the Rules and Regulations Governing the Inspection of Poultry and Poultry Products in the State of Virginia, and agrees to comply with same.

AGREEMENT AND CERTIFICATION: If inspection is granted under this application, I (We) expressly agree to conform strictly to the Virginia Meat and Poultry Products Inspection Act. And all regulations promulgated there under. I CERTIFY that all statement made herein are true to the best of my knowledge and belief.

This is an EQUAL OPPORTUNITY PROGRAM. VDACS & USDA prohibit discrimination in all of their programs and activities on the basis of race, color national origin, sex, religion, age, disability political beliefs, sexual orientation, and marital or family status in employment or in any program or activity conducted or funded by the two Departments. To file a complaint of discrimination, write or call: OMPS 102 Governor Street, Richmond, VA 23218 Phone 804/786-4569 (voice) or 800/828-1120 (TDD) or USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Signature \_\_\_\_\_ Date: \_\_\_\_\_  
Owner or Manager

APPROVED: YES ( ) NO ( ) \_\_\_\_\_ Date: \_\_\_\_\_  
OMPS Regional Supervisor

DISTRIBUTION: Original to the Regional Supervisor, OMPS for approval and then forward to the Richmond Office.  
VDACS - 03072 MPS (04/2006)

INSTRUCTIONS: Submit an original to the Richmond Office

<b>VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES OFFICE OF MEAT AND POULTRY SERVICES</b>  <b>Application for State Meat and Poultry Inspection</b>				<b>Date of Application:</b>		<b>Form of Organization:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Other (specify)				
<b>Name and Mailing Address of Applicant:</b>				<b>Type of Application:</b> <input type="checkbox"/> UPDATE <input type="checkbox"/> NEW <input type="checkbox"/> OTHER (specify) <input type="checkbox"/> NAME CHANGE <input type="checkbox"/> CHANGE OF ADDRESS <input type="checkbox"/> CHANGE OF OWNER						
<b>FEDERAL ID#:</b> <b>Location of Plant (if different from above)</b>				<b>Area Code and Telephone Number:</b>						
<b>Other names (if any) under which business will be conducted. (If other names are used, submit a copy of document showing registration of such names with the proper authorities.)</b>				<b>Name and address of Tenants (if any) Requiring Inspection at This Plant:</b>						
<b>Days per year plant will operate</b>		<b>Hours per week plant will operate</b>		<b>Hours per day plant will operate</b>		<b>Month and year when plant will be ready to operate under inspection program</b>				
<b>ESTIMATED NUMBER OF ANIMALS TO BE SLAUGHTERED WEEKLY WHEN INSPECTION IS INAUGURATED</b>										
<b>S L A U G H T E R I N G</b>	Cattle		Calves		Sheep		Goats			
	Swine		Ratites		Guinea		Squab			
<b>ESTIMATED WEEKLY VOLUME OF FRESH MEAT OR READY-TO-EAT POULTRY TO BE DISPOSED OF IN COMMERCE</b>										
<b>T E M P L E T E</b>	Beef		Veal		Lamb or Mutton		Goat			
	Pork		Ratite		Guinea		Squab			
<b>PREPARED AND PROCESSED WHEN INSPECTION IS INAUGURATED</b>										
<b>P R O C E S S I N G</b>	<b>TYPE OF PRODUCT</b> <input type="checkbox"/> MEAT <input type="checkbox"/> POULTRY <input type="checkbox"/> BOTH		a. <input type="checkbox"/> BREAKING/CUTTING (carcasses, primal cuts, whole poultry, poultry parts etc.) b. <input type="checkbox"/> BONING (manual boning meat/poultry) c. <input type="checkbox"/> MECHANICAL DEBONING (mechanical deboning meat/poultry) d. <input type="checkbox"/> FABRICATING (roast, steaks, chops, ground beef, hamburger, etc.) e. <input type="checkbox"/> CURING (pork cuts, beef cuts, turkey, ham, etc.) f. <input type="checkbox"/> FORMULATING (fresh/cured sausages, loaves, poultry rolls, pattie mix, etc.) g. <input type="checkbox"/> COOKING/SMOKING (pork cuts, beef cuts, sausages, loaves, etc.)				h. <input type="checkbox"/> CANNING (Shelf stable, perishable, cans, pouches, glass) i. <input type="checkbox"/> DRYING (pork cuts, beef cuts, sausage, dehydrated products) j. <input type="checkbox"/> CONVENIENCE ITEMS (entrees, dinners, pies, pizzas, etc.) k. <input type="checkbox"/> SLICING (bacon, luncheon meats, sausages, etc.) l. <input type="checkbox"/> FATS/OILS (lard, tallow, shortening, margarine, etc.) m. <input type="checkbox"/> OTHER (specify)			

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OMPS (02/06)

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List all persons responsibly connected with the applicant. Include all partners, officers, directors, holders or owners of 10 per centum or more of voting Stock, and employees in a managerial or executive capacity in the business. Notify the Inspector-in-Charge of any changes in the listing given.

NAME	TITLE	STREET AND NUMBER CITY, STATE, & ZIP CODE	HOLDER OF MORE THAN 10% OF VOTING STOCK	
			YES	NO

Name of each person listed above who has been convicted in any federal or state court of (1) any felony, or (2) more than one violation of any law. Other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. Include the nature of the crime, the date of conviction, and the court in which convicted.

List each conviction against the applicant in any federal or state court of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. Include the nature of the crime, the date of conviction, and the court in which convicted.

**AGREEMENT AND CERTIFICATION:** If inspection is granted under this application, I (We) expressly agree to conform strictly to the Virginia Meat and Poultry Products Inspection Act. And all regulations promulgated there under. I CERTIFY that all statement made herein are true to the best of my knowledge and belief.

This is an EQUAL OPPORTUNITY PROGRAM. VDACS & USDA prohibit discrimination in all of their programs and activities on the basis of race, color national origin, sex, religion, age, disability political beliefs, sexual orientation, and marital or family status in employment or in any program or activity conducted or funded by the two Departments. To file a complaint of discrimination, write or call: OMPS 102 Governor Street, Richmond, VA 23218 Phone 804-786-4569 (voice) or USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Typed name of person signing application: \_\_\_\_\_ Signature and title of owner, partner, or authorized officer making this application: \_\_\_\_\_

**TO BE COMPLETED BY VDACS**

DATE RECEIVED	DATE REVIEWED	SIGNATURE OF MEAT & POULTRY SERVICES PROGRAM MANAGER

WORK HOURS AGREEMENT

ESTABLISHMENT NAME & NUMBER

This agreement outlines the actual hours of operations to be conducted at said establishment requiring the services of a program employee. Hours of operation in an official establishment shall be in accordance with the applicable provisions issued under Section 21, Federal Meat Inspection Act, as amended by the Wholesome Meat Act (21 USC. Supp., Sec. 601 et seq.) And Public Law 91-342; Talmadge Aiken Act of September 28, 1962 (7 U.S.C. 450); Act of July 24, 1919 (7 U.S.C. 394); Section 14 of the Poultry Products Inspection Act, as amended by the wholesome Poultry Products Act (21 U.S.C. 451 et seq.); the Virginia Meat and Poultry Products Inspection Act; and the regulations promulgated pursuant thereto.

\_\_\_\_\_ (PLANT MANAGEMENT) \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (REGIONAL SUPERVISOR) \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (PROGRAM MANAGER) \_\_\_\_\_ (Date)

FIRST SHIFT		A.M.	LUNCH	P.M.
SUN	S	TO	TO	TO
	P	TO	TO	TO
MON	S	TO	TO	TO
	P	TO	TO	TO
TUE	S	TO	TO	TO
	P	TO	TO	TO
WED	S	TO	TO	TO
	P	TO	TO	TO
THU	S	TO	TO	TO
	P	TO	TO	TO
FRI	S	TO	TO	TO
	P	TO	TO	TO
SAT	S	TO	TO	TO
	P	TO	TO	TO
SECOND SHIFT		A.M.	LUNCH	P.M.
SUN	S	TO	TO	TO
	P	TO	TO	TO
MON	S	TO	TO	TO
	P	TO	TO	TO
TUE	S	TO	TO	TO
	P	TO	TO	TO
WED	S	TO	TO	TO
	P	TO	TO	TO
THU	S	TO	TO	TO
	P	TO	TO	TO
FRI	S	TO	TO	TO
	P	TO	TO	TO
SAT	S	TO	TO	TO
	P	TO	TO	TO

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Collection of this information is voluntary. It is needed before approval is granted for Voluntary Inspection and Certification Service. It is used by the Commonwealth to determine whether the applicant meets the requirements for a grant of inspection. (9 CFR 350.5)

**VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
OFFICE OF MEAT & POULTRY SERVICES  
APPLICATION/APPROVAL FOR VOLUNTARY REIMBURSABLE INSPECTION SERVICE**

**1. DATE OF APPLICATION**

**2. NAME OF APPLICANT**

**3. FORM OF ORGANIZATION**  
 INDIVIDUAL  PARTNERSHIP  CORPORATION  COOPERATIONS  OTHER (specify)

**INSTRUCTIONS:** Submit the original of this application to the Program Manager, Office of Meat and Poultry Services, VA Department of Agriculture and Consumer Services. Complete all sections. If a section is not applicable, enter NA. If additional space is needed, use reverse side and number the item.

**4. APPLICANT-S MAILING ADDRESS** Street Address CITY STATE ZIP

**5. TELEPHONE NUMBER** (include area code)

**6. LOCATION OF PLANT IF DIFFERENT THAN ITEM 4** CITY STATE ZIP

**7. TELEPHONE NUMBER** (include area code)

**SERVICE REQUESTED** REMARKS

8.  ID SERVICE: Meat  ID SERVICE: Poultry  APPROVED  DISAPPROVED

9.  CERTIFICATION Trichinae  CERTIFICATION Cysticercus  APPROVED  DISAPPROVED

10.  OFF-PREMISE FREEZING: Meat  OFF-PREMISE FREEZING: Poultry  APPROVED  DISAPPROVED

11.  FOOD INSPECTION  APPROVED  DISAPPROVED

12.  VOLUNTARY MEAT & POULTRY SLAUGHTER/PROCESSING (Specify)

SLAUGHTER:  Antelope  Deer  Bison  Poultry  Buffalo  Rabbit  Catalo  Reindeer

PROCESSING:  Antelope  Deer  Bison  Poultry  Buffalo  Rabbit  Catalo  Reindeer

13.  ANIMAL FOODS INSPECTION (Certified products for Dogs, Cats, and other Carnivora)  APPROVED  DISAPPROVED

14.  TECHNICAL ANIMAL FATS (9 CFR 351)  APPROVED  DISAPPROVED

**AGREEMENT AND CERTIFICATION:** If inspection is granted under this application, I (We) expressly agree to conform strictly to the Virginia Meat and Poultry Products Inspection Act. And all regulations promulgated there under. I CERTIFY that all statement made herein are true to the best of my knowledge and belief. This is an EQUAL OPPORTUNITY PROGRAM. VDACS & USDA prohibit discrimination in all of their programs and activities on the basis of race, color national origin, sex, religion, age, disability political beliefs, sexual orientation, and marital or family status in employment or in any program or activity conducted or funded by the two Departments. To file a complaint of discrimination, write or call: OMPS 102 Governor Street, Richmond, VA 23218 Phone 804-786-4569 (voice) or USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 (800) 795-3272 (voice) or (202) 720-6382 (TDD)

15. TYPE NAME OF PERSON SIGNING APPLICATION 16. SIGNATURE OF OWNER, PARTNER OR AUTHORIZED OFFICER (making this application) 17. TITLE 18. DATE

**TO BE COMPLETED BY VDACS**

19. DATE RECEIVED 20. DATE FACILITY REVIEWED: 21. EST. NO. 22. SIGNATURE OF REGIONAL SUPER 23. DATE 24. SIGNATURE OF PROGRAM MANAGER 25. DATE

VDACS-03140 OMPS 6/06

VA.R. Doc. No. R06-298; Filed July 19, 2006, 9:58 a.m.

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**REGISTRAR'S NOTICE:** The following amendments are made pursuant to § 3.1-188.23 of the Code of Virginia, which provides authority to the Commissioner of Agriculture and Consumer Services to extend or reduce regulated areas described in the quarantine.

**Title of Regulation:** 2 VAC 5-330. Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine (amending 2 VAC 5-330-30).

**Statutory Authority:** §§ 3.1-188.21 and 3.1-188.23 of the Code of Virginia.

**Effective Date:** September 7, 2006.

**Agency Contact:** Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail frank.fulgham@vdacs.virginia.gov.

**Summary:**

*The amendments extend the regulated areas under the Virginia gypsy moth quarantine due to the detection of larvae or other life stages of the gypsy moth in areas not currently under regulation. The current regulated area is changed by the addition of the cities of Roanoke and Salem and the counties of Craig, Giles, and Roanoke. All other parts of the Virginia gypsy moth quarantine will remain unchanged.*

**2 VAC 5-330-30. Regulated areas.**

A. Any area of another state or the District of Columbia, whether designated high risk or low risk, in which gypsy moth is known to occur and is so geographically described and regulated by the United States Department of Agriculture under the Gypsy Moth and Browntail Moth Quarantine No. 45, (7 USC §§ 1520dd, 150ee, 162) or under a state gypsy moth quarantine or other state legislation.

B. The following areas in Virginia:

1. The entire counties of: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Clarke, *Craig*, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, *Giles*, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Highland, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, *Roanoke*, Rockbridge, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.

2. The entire independent cities of: Alexandria, Bedford, Buena Vista, Charlottesville, Chesapeake, Clifton Forge, Colonial Heights, Covington, Danville, Emporia, Fairfax City,

Falls Church, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, *Roanoke*, *Salem*, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

VA.R. Doc. No. R06-294; Filed July 17, 2006, 9:10 a.m.

**TITLE 4. CONSERVATION AND NATURAL RESOURCES**

**DEPARTMENT OF MINES, MINERALS AND ENERGY**

**Title of Regulation:** 4 VAC 25-130. Coal Surface Mining Reclamation Regulations.

**Statutory Authority:** §§ 45.1-161.3, 45.1-230 and 45.1-242 of the Code of Virginia.

**Effective Date:** September 6, 2006.

**Agency Contact:** Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail stephen.walz@dmme.virginia.gov.

**Summary:**

*The amendments (i) require coal mine permit boundary markers located on steep slopes above private dwellings or occupied buildings to be made or marked with fluorescent or reflective material and (ii) require persons conducting blasting operations on coal mines occurring within 1,000 feet of a private dwelling or occupied building to conduct seismic monitoring of the blasting.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**4 VAC 25-130-816.11. Signs and markers.**

(a) Specifications. Signs and markers required under this Part shall--

- (1) Be posted, maintained, and removed by the person who conducts the surface mining activities;
- (2) Be of a uniform design throughout the operation that can be easily seen and read;
- (3) Be made of durable material;
- (4) *For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings, be made of or marked with fluorescent or reflective paint or material; and*
- (4) (5) Conform to local ordinances and codes.

(b) Maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) Mine and permit identification signs.

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(1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and telephone number of the permittee and the identification number of the current permit authorizing surface coal mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) Perimeter markers. The perimeter of a permit area shall be clearly marked prior to the permit review conducted by the division's field enforcement personnel. The perimeter shall be clearly marked by flagging, stakes or signs. All markers shall be easily visible from adjacent markers. The approximate outer perimeter of the solid portion of any pre-existing bench shall be closely marked prior to permit review.

(e) Buffer zone markers. Buffer zones shall be marked along their boundaries, prior to permit review conducted by the division's field enforcement personnel. The boundaries shall be clearly marked by flagging, stakes or signs as required under 4 VAC 25-130-816.57. All markers of the buffer zone shall be easily visible from adjacent markers.

(f) Blasting signs. If blasting is conducted incident to surface mining activities, the person who conducts these activities shall:

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right of way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways place conspicuous signs which state "Warning! Explosives In Use" which clearly list and describe the meaning of the audible blast warning and all clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(g) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under 4 VAC 25-130-816.22, the stockpiled material shall be clearly marked.

(h) Incremental bonding markers. When the permittee elects to increment the amount of performance bond during the term of the permit, he shall, if required by the division, identify the initial and successive incremental areas for bonding by clearly marking such areas (with markers different from the perimeter markers) prior to disturbing the incremental area(s).

## **4 VAC 25-130-816.64. Use of explosives; blasting schedule.**

(a) General requirements.

(1) The permittee shall conduct blasting operations at times approved by the division and announced in the blasting schedule. The division may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) All blasting shall be conducted during daylight hours. The division may specify more restrictive time periods for blasting.

(3) Unscheduled blasts may be conducted only where public or permittee health and safety so require and for emergency blasting actions. When a permittee conducts an unscheduled blast, the permittee, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason for the unscheduled blast in accordance with 4 VAC 25-130-816.68(p).

(4) *Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.*

(b) Blasting schedule publication and distribution.

(1) The permittee shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) The permittee shall distribute copies of the schedule to local governments and public utilities and to each local residence within 1/2 mile of the proposed blasting site described in the schedule.

(3) The permittee shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(c) Blasting schedule contents. The blasting schedule shall contain, at a minimum-

(1) Name, address, and telephone number of the permittee;

(2) Identification of the specific areas in which blasting will take place;

(3) Dates and time periods when explosives are to be detonated;

(4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible warning and all-clear signals to be used before and after blasting.

VA.R. Doc. No. R05-282; Filed July 12, 2006, 10:28 a.m.





## TITLE 8. EDUCATION

## STATE BOARD OF EDUCATION

**Title of Regulation:** 8 VAC 20-131. **Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8 VAC 20-131-10, 8 VAC 20-131-20, 8 VAC 20-131-30, 8 VAC 20-131-50 through 8 VAC 20-131-110, 8 VAC 20-131-140, 8 VAC 20-131-150, 8 VAC 20-131-170 through 8 VAC 20-131-210, 8 VAC 20-131-240, 8 VAC 20-131-260 through 8 VAC 20-131-310, 8 VAC 20-131-325, [ 8 VAC 20-131-330, ] and 8 VAC 20-131-340; adding 8 VAC 20-131-5, [ 8 VAC 20-131-315, 8 VAC 20-131-350, and 8 VAC 20-131-360]; repealing 8 VAC 20-131-40, 8 VAC 20-131-160, [ and ] 8 VAC 20-131-320 [ , 8 VAC 20-131-330, and Appendix I ]).**

**Statutory Authority:** §§ 22.1-19 and 22.1-253.13:3 of the Code of Virginia.

**Effective Date:** September 7, 2006.

**Agency Contact:** Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or e-mail [anne.wescott@doe.virginia.gov](mailto:anne.wescott@doe.virginia.gov).

**Summary:**

*The amendments include additional options for students to meet the requirements for graduation; change the methodology for calculating accreditation ratings; create greater flexibility for transfer students; add more rigorous benchmarks for accreditation; and better define sanctions for schools, superintendents, and school boards if a school loses its accreditation. In consideration of the Governor's Healthy Virginians initiative, the Governor has asked that the Board of Education consider two additional revisions to the accrediting regulations that will help promote the health and physical fitness of elementary and middle school students. The revisions require all elementary and middle schools to require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.*

*Changes made to the proposed regulations (i) add defined terms and clarify existing terms; (ii) clarify that students who are limited English proficient (LEP) may be granted an exemption from Standards of Learning (SOL) testing in the areas of writing, science, and history and social science; (iii) add a provision encouraging elementary schools to provide instruction in foreign languages; (iv) allow advanced courses to include Cambridge courses, in addition to Advanced Placement, International Baccalaureate, and college level courses for degree credit; (v) beginning with the academic year 2008-2009, limit middle school teachers to a teaching load of no more than 25 class periods a week; (vi) restore language removed in the proposed regulation regarding teachers of block programs that encompass more than one class period with no more than 120 student periods per day may teach 30 class periods per week; (vii) add a provision for one planning period per day or*

*equivalent for middle and secondary teachers; (viii) cross-reference the responsibility of the division superintendent in reporting compliance with preaccreditation eligibility requirements; and (ix) repeal Appendix I, which is expired.*

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

[ PART I.  
DEFINITIONS AND PURPOSE. ]

**8 VAC 20-131-5. Definitions.**

*The following words and terms apply only to these regulations and do not supersede those definitions used for federal reporting purposes or for the calculation of costs related to the Standards of Quality (§ 22.1-253.13:1 et seq. of the Code of Virginia). When used in these regulations, these words shall have the following meanings, unless the context clearly indicates otherwise:*

*"Accreditation" means a process used by the Virginia Department of Education (hereinafter "department") to evaluate the educational performance of public schools in accordance with these regulations.*

*"Additional test" means a test, including substitute tests approved by the Board of Education that students may use in lieu of a Standards of Learning test to obtain verified credit.*

[ *"Class period" means a segment of time in the school day that is approximately 1/6 of the instructional day. ]*

*"Combined school" means a public school that contains any combination of or all of the grade levels from kindergarten through grade 12. This definition does not include those schools defined as elementary, middle, or secondary schools.*

[ ~~*"Department" means the Virginia Department of Education. ]*~~

*"Elementary school" means a public school with any grades kindergarten through five.*

*"Eligible students" means the total number of students of school age enrolled in the school at a grade or course for which a Standards of Learning test is required unless excluded under the provisions of 8 VAC 20-131-30 F and 8 VAC 20-131-280 D relative to limited English proficient (LEP) students.*

*"Enrollment" means the act of complying with state and local requirements relative to the registration or admission of a child for attendance in a school within a local school division. This term also means registration for courses within the student's home school or within related schools or programs.*

*"First time" means the student has not been enrolled in the school at any time during the current school year (for purposes of 8 VAC 20-131-60 with reference to students who transfer in during the school year).*

*"Four core areas" or "four core academic areas" means English, mathematics, science, and history and social science for purposes of testing for the Standards of Learning.*

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[ "Graduate" means a student who has earned a Board of Education recognized diploma, which includes the Advanced Studies, Standard, Modified Standard, Special, and General Achievement diplomas. ]

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or a licensed clinical psychologist.

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8 VAC 20-131-110.

"Middle school" means a public school with any grades 6 through 8.

[ "Planning period" means one class period per day or the equivalent unencumbered of any teaching or supervisory duties.

"Recess" means a segment of free time exclusive of time provided for meals during the standard school day in which students are given a break from instruction.

"Reconstitution" means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied that may include, but not be limited to, restructuring a school's governance, instructional program, staff or student population. ]

"School" means a publicly funded institution where students are enrolled for all or a majority of the instructional day and:

1. Those students are reported in fall membership at the institution; and
2. At a minimum, the institution meets the preaccreditation eligibility requirements of these regulations as adopted by the Board of Education.

"Secondary school" means a public school with any grades 9 through 12.

"Standard school day" means a [ calendar ] day that averages at least five and one-half instructional hours for students in grades 1 through 12, [ excluding breaks for meals and recess, ] and a minimum of three instructional hours for students in kindergarten [ ~~excluding breaks for meals and recess~~ ].

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 teaching hours per year.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8 VAC 20-131-110.

"Standards of Learning (SOL) tests" means those criterion referenced assessments approved by the Board of Education for use in the Virginia assessment program that measure

attainment of knowledge and skills required by the Standards of Learning.

"Student" means a person of school age as defined by § 22.1-1 of the Code of Virginia, a child with disabilities as defined in § 22.1-213 of the Code of Virginia, and a person with limited English proficiency in accordance with § 22.1-5 of the Code of Virginia.

[ "Student periods" means the number of students a teacher instructs per class period multiplied by the number of class periods taught. ]

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and achieves a passing score on a corresponding end-of-course SOL test or an additional test approved by the Board of Education as part of the Virginia assessment program.

"Virginia assessment program" means a system used to evaluate student achievement that includes Standards of Learning tests and additional tests that may be approved from time to time by the Board of Education.

## **8 VAC 20-131-10. Purpose.**

The foremost purpose of public education in Virginia is to provide children with a quality education giving them opportunities to meet their fullest potential in life. The standards for the accreditation of public schools in Virginia are designed to ensure that an effective educational program is established and maintained in Virginia's public schools. The mission of the public education system is to educate students in the essential academic knowledge and skills in order that they may be equipped for citizenship, work, and a private life that is informed and free. The accreditation standards:

1. Provide an essential foundation of educational programs of high quality in all schools for all students.
2. Encourage continuous appraisal and improvement of the school program for the purpose of raising student achievement.
3. Foster public confidence.
4. Assure recognition of Virginia's public schools by other institutions of learning.
5. Establish a means of determining the effectiveness of schools.

Section 22.1-253.13:3 B of the Code of Virginia requires the Virginia Board of Education (hereinafter "board") promulgate regulations establishing standards for accreditation.

The statutory authority for these regulations is delineated in § 22.1-19 of the Code of Virginia, which includes the requirement that the board shall provide for the accreditation of public elementary, middle and secondary schools in accordance with regulations prescribed by it.

*These regulations govern public schools operated by local school boards providing instruction to students as defined in 8 VAC 20-131-5. Other schools licensed under other state statutes are exempt from these requirements.*

## 8 VAC 20-131-20. Philosophy, goals, and objectives.

A. Each school shall have a current philosophy, goals, and objectives that shall serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and in consideration of the needs of the community and shall serve as a basis for the creation and review of the biennial school plan.

2. The school's philosophy, goals and objectives shall be consistent with the Standards of Quality.

3. The goals and objectives shall (i) be written in plain language so as to be understandable to noneducators, including parents; (ii) to the extent possible, be stated in measurable terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas of the Standards of Learning (SOL), to improve student and staff attendance, to reduce student drop-out rates, *to increase graduation rates*, and to increase the quality of instruction through professional staff development and licensure.

4. The school staff and community representatives shall review annually the extent to which the school has met its prior goals and objectives, analyze the school's student performance data including data by grade level or academic department as necessary, and report these outcomes to the division superintendent and the community in accordance with local school board policy. This report shall be in addition to the school report card required by 8 VAC 20-131-270 B.

B. Copies of the school's philosophy, goals and objectives shall be available upon request.

## 8 VAC 20-131-30. Student achievement expectations.

A. Each student should learn the relevant grade level/course subject matter before promotion to the next grade. The division superintendent shall certify to the Department of Education that the division's promotion/retention policy does not exclude students from membership in a grade, or participation in a course, in which SOL tests are to be administered. *Each school shall have a process, as appropriate, to identify and recommend strategies to address the learning, behavior, communication, or development of individual children who are having difficulty in the educational setting.*

B. In kindergarten through eighth grade, where [ ~~SOL the~~ *the administration of Virginia assessment program* ] tests are [ ~~administered required by the Board of Education~~ ], each student shall be expected to take the SOL tests; *students who are accelerated should take the tests for the grade level of the content received in instruction.* Schools shall use the [ ~~SOL Virginia assessment program~~ ] test results in kindergarten through eighth grade as part of a set of multiple criteria for determining the promotion or retention of students. *Students promoted to high school from eighth grade should have attained basic mastery of the Standards of Learning in English, history and social science, mathematics, and science*

*and should be prepared for high school work.* Students shall not be required to retake the [ ~~SOL Virginia assessment program~~ ] tests unless they are retained in grade and have not previously passed the related [ ~~SOL~~ ] tests, ~~or they participate in a remediation recovery program established by the board in English (Reading, Literature, and Research) or mathematics or both.~~

C. In kindergarten through grade ~~8~~ *12*, students may participate in a remediation recovery program as established by the board in English (Reading, Literature and Research) or mathematics or both. ~~In grades 9 through 12, the remediation recovery program shall include all retakes of end-of-course SOL mathematics tests only. However, students in the ninth grade who are participants in a remediation recovery program may be retested on the eighth grade English (Reading, Literature and Research) and mathematics SOL tests.~~

D. The board recommends that students in kindergarten through grade 8 not be required to attend summer school or weekend remediation classes solely based on failing a SOL test in science or history/social science.

E. Each student in middle and secondary schools shall take all applicable end-of-course SOL tests following course instruction. Students who achieve a passing score on an end-of-course SOL test shall be awarded a verified unit of credit in that course in accordance with the provisions of 8 VAC 20-131-110 B. Students may earn verified units of credit in any courses for which end-of-course SOL tests are available. Middle and secondary schools may consider the student's end-of-course SOL test score in determining the student's final course grade. However, no student who has failed an end-of-course SOL test but passed the related course shall be prevented from taking any other course in a content area and from taking the applicable end-of-course SOL test. The board may approve ~~other~~ additional tests to verify student achievement in accordance with guidelines adopted for verified units of credit described in 8 VAC 20-131-110 B.

F. Participation in ~~SOL testing the Virginia assessment program~~ by students with disabilities ~~will~~ *shall* be prescribed by provisions of their Individualized Education Program (IEP) or *504 Plan*. ~~Beginning with the school year 2000-01, students with disabilities for whom participation in an alternate assessment is prescribed in their IEP shall demonstrate proficiency on that assessment. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments where necessary.~~

G. ~~All students identified as limited English proficient (LEP) shall participate in the Virginia assessment program. A school-based committee shall convene and make determinations regarding the participation [level] of LEP students in SOL testing by students identified as limited English proficient (LEP) shall be guided by a school-based committee convened to make such determinations the Virginia assessment program.~~ In kindergarten through eighth grade, limited English proficient students may be granted a one-time exemption from SOL testing in ~~each of the four [core academic] areas of [writing,] science [,] and history and social science.~~

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~~H. Students identified as foreign exchange students taking courses for credit shall be required to take the relevant Virginia assessment program tests. Foreign exchange students who are auditing courses and who will not receive a standard unit of credit for such courses shall not be required to take the Standards of Learning tests for those courses.~~

## **8 VAC 20-131-40. Literacy Passport Tests. (Repealed.)**

~~Students who were in the eighth grade or above in the 1998-99 school year shall be required to pass the Literacy Passport Tests in order to receive a Standard or Advanced Studies Diploma from a Virginia public school.~~

~~In order to receive a graded status, such students must pass the Literacy Passport Tests, except for students with disabilities who progress according to the goals of their Individualized Education Program (IEP).~~

~~Students who are not eligible for graded status shall be enrolled in appropriate programs leading to passing of the Literacy Passport Tests and one or more of the following:~~

- ~~1. High school diploma;~~
- ~~2. General Educational Development (GED) credential;~~
- ~~3. Certificate of Program Completion; and~~
- ~~4. Job entry skills.~~

## **8 VAC 20-131-50. Requirements for graduation.**

A. The requirements for a student to earn a diploma [ *and graduate* ] from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students ~~may~~ *shall* be awarded a diploma ~~or certificate~~ upon graduation from a Virginia high school.

When students below the ninth grade successfully complete courses offered for credit in grades 9 through 12, credit shall be counted toward meeting the standard units required for graduation provided the courses ~~meet SOL content requirements~~ or are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8 VAC 20-131-110 B.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements ~~which that~~ have been approved by the ~~board~~ *Board of Education*. All additional requirements prescribed by local school boards [ ~~, and in effect as of June 30, 1997~~ ] ~~, are approved to continue those requirements pending further action by the board that have been approved by the Board of Education [ , ] remain in effect until such time as the local school board submits a request to amend or discontinue them.~~ The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

B. Requirements for a Standard Diploma.

- ~~1. Beginning with the ninth grade class of 1998-99, students shall earn the standard units of credit outlined in subdivision 4 of this subsection.~~

~~2. During a transition period applicable only to the ninth grade classes of 2000-01, 2001-02, and 2002-03, students shall earn the standard units of credit described in subdivision 4 of this subsection and the following number of verified units of credit (8 VAC 20-131-110):~~

- ~~a. English—two;~~
- ~~b. Four additional verified units of credit of the student's own choosing.~~

~~3. 1. Beginning with the [ ninth grade *ninth-grade* ] classes of 2003-04 and beyond, students shall earn the required standard and verified units of credit described in subdivision 4 2 of this subsection.~~

~~4. 2. Credits required for graduation with a Standard Diploma.~~

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics <sup>1</sup>	3	1
Laboratory Science <sup>2,6</sup>	3	1
History and Social Sciences <sup>3,6</sup>	3	1
Health and Physical Education	2	
Fine Arts or <del>Practical Arts</del> <i>Career and Technical Education</i>	1	
Electives <sup>4</sup>	6	
Student Selected Test <sup>5</sup>		1
Total	22	6

1. Courses completed to satisfy this requirement shall be at or above the level of algebra and shall include at least two course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of algebra and geometry. The board may approve additional courses to satisfy this requirement.

2. Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics. The board may approve additional courses to satisfy this requirement.

3. Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one ~~world history/geography~~ *history/geography* course *in either world history or geography or both*. Courses which satisfy the world history/geography requirement are: (i) World History, (ii) World Geography, (iii) World History and Geography Part I, (iv) World History and Geography Part II, or (v) a semester course of World History Part I and a semester course of World Geography. The board may approve additional courses to satisfy this requirement.

4. ~~Beginning with the graduating class of 2003,~~ Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

5. A student may utilize additional tests for earning verified credit in computer science, technology, *career and technical education* or other areas as prescribed by the board in 8 VAC 20-131-110 B.

6. *Students who complete a career and technical [ education ] program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers*

certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the Board of Education as an additional test to verify student achievement.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection I of this section.

### C. Requirements for an Advanced Studies Diploma.

~~1. Beginning with the ninth grade class of 1998-99, students shall earn the standard units of credit outlined in subdivision 2 of this subsection. Beginning with the ninth grade class of 2000-01, students shall earn the standard and verified units of credit outlined in subdivision 2 of this subsection.~~

2- Credits required for graduation with an Advanced Studies Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics <sup>1</sup>	4	2
Laboratory Science <sup>2</sup>	4	2
History and Social Sciences <sup>3</sup>	4	2
Foreign Language <sup>4</sup>	3	
Health and Physical Education	2	
Fine Arts or <del>Practical Arts</del> Career and Technical Education	1	
Electives	2	
Student Selected Test <sup>5</sup>		1
Total	24	9

<sup>1</sup> Courses completed to satisfy this requirement shall be at or above the level of algebra and shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board may approve additional courses to satisfy this requirement.

<sup>2</sup> Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board may approve additional courses to satisfy this requirement.

<sup>3</sup> Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two ~~world history/geography~~ courses in either world history or geography or both. ~~Acceptable courses to satisfy the world history/geography requirements include: (i) World History and World Geography; (ii) World History and Geography Part I, and World History and Geography Part II; or (iii) a semester course of World Geography, a semester course of World History Part I, and a year-long course of~~

~~World History Part II.~~ The board may approve additional courses to satisfy this requirement.

<sup>4</sup> Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

<sup>5</sup> A student may utilize additional tests for earning verified credit in computer science, technology, *career or technical education* or other areas as prescribed by the board in 8 VAC 20-131-110 ~~B~~.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection F I of this section.

### D. Requirements for the Modified Standard Diploma.

1. *Every student shall be expected to pursue a Standard Diploma or Advanced Studies Diploma.* The Modified Standard Diploma program is intended for certain students at the secondary level who have a disability and are unlikely to meet the credit requirements for a Standard Diploma. Eligibility and participation in the Modified Standard Diploma program shall be determined by the student's ~~individual~~ Individualized Education Program (IEP) team ~~and including~~ the student, where appropriate, at any point after the student's eighth grade year.

[ 2. The school must secure the informed written consent of the parent/guardian and the student to choose this diploma program after review of the student's academic history and the full disclosure of the student's options.

3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard or Advanced Studies Diploma at any time throughout that student's high school career, and the student must not be excluded from courses and tests required to earn a Standard or Advanced Studies Diploma.

~~4. 2.] Beginning with the ninth grade class of 2000-01,~~ Students pursuing the Modified Standard Diploma shall pass literacy and numeracy competency assessments prescribed by the board.

[ 5. ~~3.] Credits required for graduation with a Modified Standard Diploma.~~

Discipline Area	Standard Units of Credit Required
English	4
Mathematics <sup>1</sup>	3
Science <sup>2</sup>	2
History and Social Sciences <sup>3</sup>	2
Health and Physical Education	2
Fine Arts or <del>Practical Arts</del> Career and Technical Education	1
Electives <sup>4</sup>	6
Total	20

<sup>1</sup> Courses completed to satisfy this requirement shall include content from among applications of algebra, geometry, personal finance, and statistics in courses that have been approved by the board.

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2. Courses completed shall include content from at least two of the following: applications of earth science, biology, chemistry, or physics in courses approved by the board.

3. Courses completed to satisfy this requirement shall include one unit of credit in U.S. and Virginia History and one unit of credit in U.S. and Virginia Government in courses approved by the board.

4. ~~Beginning with the graduating class of 2003,~~ Courses to satisfy this requirement shall include at least two sequential electives in the same manner required for the Standard Diploma.

[ 6. 4. ] The student must meet any additional criteria established by the Board of Education.

E. In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas shall be awarded Special Diplomas.

F. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for *Standard, Advanced Studies, Modified Standard, [ Special, ] or General Achievement* diplomas shall be awarded Certificates of Program Completion. *The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality. Students receiving a general achievement diploma shall comply with 8 VAC 20-680, Regulations Governing the General Achievement Diploma.*

G. In accordance with the provisions of the compulsory attendance law and 8 VAC 20-360-10 ~~et seq.~~, Regulations Governing General Education ~~Educational Development~~ Certificates, students who do not qualify for diplomas may earn a high school equivalency credential.

H. At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

I. Awards for exemplary student performance. Students who demonstrate academic excellence and/or outstanding achievement may be eligible for one [or more] of the following awards:

1. Students who complete the requirements for an Advanced Studies Diploma with an average grade of "B" or better, and successfully complete ~~at least one college-level [ course work coursework ] that will earn the student at least nine transferable college credits in Advanced Placement course (AP), International Baccalaureate (IB) or one college-level course for credit, Cambridge, or dual enrollment courses~~ ~~will~~ shall receive the Governor's Seal on the diploma.

2. Students who complete the requirements for a Standard Diploma or *Advanced Studies Diploma* with an average grade of "A" ~~will~~ shall receive a Board of Education Seal on the diploma.

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard or Advanced Studies Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an *occupational competency assessment* in a career and technical education concentration or specialization that confers certification or *occupational competency credential* from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. [ *The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.* ]

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students who earn either a Standard or Advanced Studies Diploma and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma (four units of credit including Algebra II; two verified units of credit) with a "B" average or better; and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area. [ *The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.* ]

5. *The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a Standard or Advanced Studies Diploma and (i) complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) of this subdivision include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.*

5- 6. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

J. Students completing graduation requirements in a summer school ~~accredited under this chapter program~~ shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

K. Students who complete Advanced Placement *courses*, college-level *courses*, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements of subsections B and C of this section.

L. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits as provided in accordance with the provisions of 8 VAC 20-131-110 B, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

## 8 VAC 20-131-60. Transfer of credits students.

A. *The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in grades K-8 [from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools] shall be [placed-in-grade evaluated to determine appropriate grade placement] in accordance with policies adopted by the local school board.*

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. *Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools and state-operated programs. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.*

B. D. A secondary school shall accept credits toward graduation received from [other] ~~accredited secondary~~ [Virginia nonpublic] schools including ~~[accredited by any of the accrediting agencies recognized by the U.S. Department of Education and schools]~~ accredited through by one of the [approved accrediting] constituent members of the Virginia Council for Private Education (VCPE). The Board of Education will maintain contact with the VCPE ~~to and may periodically review its accrediting procedures and policies on a periodic basis~~ as part of its policies under this section.

[Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit, and the school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8 VAC 20-131-110 A.]

Students transferring into a Virginia public school shall be required to meet the requirements prescribed in 8 VAC 20-131-50 to receive a Standard, Advanced Studies, or Modified Standard Diploma, except as provided by subsection F G of this section. To receive a Special Diploma or Certificate of Program Completion, a student must meet the requirements prescribed by the Standards of Quality. [~~Students who transfer from schools accredited by other nonrecognized agencies shall have their records evaluated by the receiving school in accordance with subsection F of this section.~~]

C. ~~Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned.~~

D. ~~Records of transferred students~~ E. *The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8 VAC 20-150-40 et seq., Management of the Student's Scholastic Records Record in the Public Schools of Virginia.*

E. F. *The academic record of a student transferring into Virginia public schools from other than a Virginia public school, shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection F G of this section. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools and state-operated programs. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.*

Students transferring above the tenth grade from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

F. G. Students entering a Virginia public high school for the first time after the tenth grade shall ~~be encouraged to~~ earn as many credits as possible toward the graduation requirements prescribed in 8 VAC 20-131-50. However, *schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8 VAC 20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8 VAC 20-131-110 B for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:*

### 1. For a Standard Diploma:

- a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the

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tenth grade shall earn credit as prescribed in 8 VAC 20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of four verified units of credit: one each in English, mathematics, history, and science ~~except that during the transition period 2000-01 through 2002-03, students shall earn one in English and three of the student's own choosing~~ [ . Students who complete a career and technical education program sequence may substitute a certificate, occupational competency credential or license for either a science or history and social science verified credit pursuant to 8 VAC 20-131-50 ] ; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of two verified units of credit: one in English and one of the student's own choosing.

## 2. For an Advanced Studies Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8 VAC 20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of four verified units of credit: one in English and three of the student's own choosing.

~~G.~~ H. Students entering a Virginia high school for the first time after the first semester of their eleventh grade year must meet the requirements of subdivision ~~F~~ G 1 c or ~~F~~ G 2 c of this section. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a Standard, Advanced Studies, or Modified Standard Diploma. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the Board of Education.

~~H.~~ I. Any local school division receiving approval to increase its course credit requirements for a diploma may not deny either the Standard, Advanced Studies, or Modified Standard Diploma to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester,

by taking summer school, or by taking courses after the time when he otherwise would have graduated.

~~J.~~ J. The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of 8 VAC 20-160-10 ~~et seq.~~, Regulations Governing Secondary School Transcripts.

~~J.~~ K. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements established in 8 VAC 20-131-50 and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

## **8 VAC 20-131-70. Program of instruction and learning objectives.**

A. Each school shall provide a program of instruction that promotes individual student academic achievement in the essential academic disciplines and shall provide additional instructional opportunities that meet the abilities, interests, and educational needs of students. Each school shall establish learning objectives to be achieved by students at successive grade levels that meet or exceed the knowledge and skills contained in the Standards of Learning for English, mathematics, science, and history/social science adopted by the board and shall continually assess the progress of each student in relation to the objectives.

B. Instruction shall be designed to accommodate all students, including those *identified with disabilities in accordance with the Individuals with Disabilities Education Act or § 504 of the Rehabilitation Act, as amended*, those identified as gifted/talented, and those who have limited English proficiency. Each school shall provide students identified as gifted/talented with instructional programs taught by teachers with special training or experience in working with gifted/talented students. Students with disabilities shall have the opportunity to receive a full continuum of education services, in accordance with ~~8 VAC 20-180-10 et seq.~~ 8 VAC 20-80, Regulations Governing Special Education Programs for Children with Disabilities in Virginia and other pertinent federal and state regulations.

## **8 VAC 20-131-80. Instructional program in elementary schools.**

A. The elementary school shall provide each student a program of instruction ~~which that~~ corresponds to the Standards of Learning for English, mathematics, science, and history/social science. In addition, each school shall provide instruction in art, music, and physical education and health, and shall ~~provide~~ require students ~~with a daily recess during the regular school year as determined appropriate by the school to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.~~



B. In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program. Schools shall maintain, in a manner prescribed by the Board [ *of Education* ], an early skills and knowledge achievement record in reading and [ ~~math~~ *mathematics* ] for each student in grades kindergarten through grade 3 to monitor student progress and to promote successful achievement on the third grade SOL tests. This record shall be included with the student's records if the student transfers to a new school.

C. To provide students with sufficient opportunity to learn, a minimum of 75% of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and history/social science. Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials ~~necessary~~ used for instruction shall receive additional instructional time in reading, *which may include summer school*.

[ *D. Elementary schools are encouraged to provide instruction in foreign languages.* ]

### 8 VAC 20-131-90. Instructional program in middle schools.

A. The middle school shall provide each student a program of instruction which corresponds to the Standards of Learning for English, mathematics, science, and history/social science. In addition, each school shall provide instruction in art, music, foreign language, physical education and health, and career and technical exploration *and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.*

B. The middle school shall provide a minimum of eight courses to students in the eighth grade. English, mathematics, science, and history/social science shall be required. Four elective courses shall be available: level one of a foreign language, one in health and physical education, one in fine arts, and one in career and technical exploration.

C. Level one of a foreign language *and an Algebra I course* shall be available to all eighth grade students. For any high school credit-bearing course taken in middle school, parents may request that grades be omitted from the student's transcript and the student not earn high school credit for the course in accordance with policies adopted by the local school board. Notice of this provision must be provided to parents with a deadline and format for making such a request. Nothing in ~~this chapter~~ *these regulations* shall be construed to prevent a middle school from offering any other credit-bearing courses for graduation.

D. To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines of English, [ ~~math~~ *mathematics* ], science, and history/social science. Sixth grade students may receive an alternative schedule of instruction provided each student receives at least 560 total clock hours of instruction in the four academic disciplines.

*E. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction*

*receive additional instruction in reading, which may include summer school.*

### 8 VAC 20-131-100. Instructional program in secondary schools.

A. The secondary school shall provide each student a program of instruction in the academic areas of English, mathematics, science, and history/social science that enables each student to meet the graduation requirements described in 8 VAC 20-131-50 and shall offer opportunities for students to pursue a program of studies in ~~academics~~ *foreign languages*, fine arts, and career and technical areas including:

1. Career and technical education choices that prepare the student as a career and technical education program completer in one of three or more occupational areas and that prepare the student for technical or preprofessional postsecondary programs;
2. [ ~~Course work~~ *Coursework* ] and experiences that prepare the student for college-level studies including access to at least ~~two~~ *three* Advanced Placement [ *(AP)* ] courses, ~~or two~~ college-level courses for *degree* credit, *International Baccalaureate [ (IB) ] courses*, [ *Cambridge courses,* ] *or any combination thereof*;
3. Preparation for college admissions tests; and
4. Opportunities to study and explore the fine arts *and foreign languages*.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in 8 VAC 20-131-50 and must include:

English	4
Mathematics	4
Science (Laboratory)	4
History and Social Sciences	4
Foreign Language	3
Electives	4
Career and Technical Education	11
Fine Arts	2
Health and Physical Education	2
Total Units	38

C. Classroom driver education may count for 36 class periods of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.

*D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.*

### 8 VAC 20-131-110. Standard and verified units of credit.

A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. When credit is awarded in less than whole units, the increment awarded must

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be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit ~~in a noncore academic course~~ on a basis other than the *140 clock hours of instruction required for a standard unit of credit* defined in this subsection, the local school division shall develop a written policy approved by the superintendent and school board which ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and
2. That upon completion, the student will have met the aims and objectives of the course.

B. A verified unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction, successful completion of the requirements of the course, and the achievement by the student of a passing score on the end-of-course SOL test for that course or additional tests as described in this subsection. *A student may also earn a verified unit of credit by the following methods:*

1. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the Board of Education.
2. Upon the recommendation of the division superintendent and demonstration of mastery of course content and objectives, qualified students may receive a standard unit of credit and be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.
3. [*Beginning with the ninth grade class of 2003-2004 and beyond*] *students who do not pass Standards of Learning tests in science or history and social science may [be receive locally] awarded verified credits [by from] the local school board in accordance with criteria established in guidelines adopted by the Board of Education.*

C. The Board of Education may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;
2. The test must be knowledge based;
3. The test must be administered on a multistate or international basis, *or administered as part of another state's accountability assessment program;* and
4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the SOL content in the course for which verified credit is given.

The Board of Education will set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the Board of Education will provide opportunities for students who meet criteria adopted by the board to have an expedited retake of ~~an end-of-course~~ a SOL test to earn verified credit *or to meet literacy and numeracy requirements for the Modified Standard Diploma.*

~~C. A school employing a scheduling configuration of less than 140 clock hours per core academic course may retain that scheduling configuration through the end of the 2000-01 school year unless a waiver is granted by the board under the provisions of 8 VAC 20-131-325 B or 8 VAC 20-131-330. If the school does not comply following the end of the 2000-01 school year, the board may take appropriate action which may include, but not be limited to, adjustment or withdrawal of the school's accreditation.~~

## **8 VAC 20-131-140. College preparation programs and opportunities for postsecondary credit.**

Each middle and secondary school shall provide for the early identification and enrollment of students in a college preparation program with a range of educational and academic experiences in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to attend college.

Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education *and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation.* Such opportunities shall include access to at least three Advanced Placement courses or three college-level courses for degree credit pursuant to 8 VAC 20-131-100. Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

1. Written approval of the high school principal prior to participation in dual enrollment must be obtained;
2. The college must accept the student for admission to the course or courses; and
3. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

Schools that comply with this standard shall not be penalized in receiving state appropriations.

## **8 VAC 20-131-150. Standard school year and school day.**

A. The standard school year shall be 180 [*instructional*] days. The standard school day for students in grades 1 through 12 shall average at least 5-1/2 [*instructional*] hours, excluding breaks for meals *and recess*, and a minimum of three hours for kindergarten. ~~School divisions may develop alternative schedules for meeting these requirements as long as a minimum of 990 hours of instructional time is provided for grades 1 through 12 and 540 hours for kindergarten. Such alternative plans must be approved by the local school board~~

~~and by the board under guidelines established by the board. No alternative plan which reduces the instructional time in the core academics shall be approved.~~

B. All students in grades 1 through 12 shall maintain a full day schedule of classes (5-1/2 hours), unless a waiver is granted in accordance with policies defined by the local school board.

**8 VAC 20-131-160. Additional reading instruction. (Repealed.)**

~~Each school shall ensure that students who are unable to read with comprehension the materials necessary for instruction receive additional instruction in reading, which may include summer school.~~

**8 VAC 20-131-170. Family Life Education.**

Each school may implement the Standards of Learning for the Family Life Education program promulgated by the Board of Education or a Family Life Education program consistent with the guidelines developed by the board, which shall have the goals of reducing the incidence of pregnancy and sexually-transmitted diseases and substance abuse among teenagers.

**8 VAC 20-131-180. Off-site instruction.**

A. Homebound instruction shall be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For students eligible for special education or related services, the Individualized Education Program committee must revise the IEP, as appropriate. Credit for the work shall be awarded when it is done under the supervision of a licensed teacher, a person eligible to hold a Virginia license, or other appropriately licensed professional employed by the local school board, and ~~meets the~~ *there is evidence that the instructional time requirements of or alternative means of awarding credit adopted by the local school board in accordance with the provisions of 8 VAC 20-131-110 have been met.*

B. Students may enroll in and receive a standard and verified unit of credit for supervised correspondence courses with prior approval of the principal. Standard units of credit shall be awarded for the successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher, or a person eligible to hold a Virginia license, approved by the local school board. Verified units of credit may be earned when the student has passed the SOL test associated with the correspondence course completed. The local school board shall develop policies governing this method of instruction in accordance with the provisions of 8VAC 20-131-110 and the administration of required SOL tests prescribed by 8 VAC 20-131-30.

C. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through emerging technologies and other similar means. Standard units of credit shall be awarded for successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher, or a person eligible to hold a Virginia teaching license and approved by *the* local school

board. Verified units of credit may be earned when the student has successfully completed the requirements and passed the SOL test associated with the course. The local school board shall develop policies governing this method of delivery of instruction that shall include the provisions of 8 VAC 20-131-110 and the administration of required SOL tests prescribed by 8 VAC 20-131-30.

**8 VAC 20-131-190. Library media, materials and equipment.**

A. Each school shall maintain an organized library media center as the resource center of the school and provide a unified program of media services and activities for students and teachers before, during, and after school. The library media center shall contain hard copy, electronic technological resources, materials, and equipment that are sufficient to meet research, inquiry, and reading requirements of the instructional program and general student interest.

B. Each school shall provide a variety of materials and equipment to support the instructional program.

**8 VAC 20-131-200. Extracurricular and other school activities; recess.**

A. School sponsored extracurricular activities shall be under the direct supervision of the staff and shall contribute to the educational objectives of the school. Extracurricular activities must be organized to avoid interrupting the instructional program. Extracurricular activities shall not be permitted to interfere with the student's required instructional activities. Extracurricular activities and eligibility requirements shall be established and approved by the superintendent and the school board.

B. Competitive sports of a varsity nature (scheduled league games) shall be prohibited as a part of the elementary school program.

*C. Each elementary school shall provide students with a daily recess during the regular school year as determined appropriate by the school.*

**8 VAC 20-131-210. Role of the principal.**

A. The principal is recognized as the instructional leader of the school and is responsible for effective school management that promotes positive student achievement, a safe and secure environment in which to teach and learn, and efficient use of resources. As a matter of policy, the board, through these standards, recognizes the critically important role of principals to the success of public schools and the students who attend those schools and recommends that local school boards provide principals with the maximum authority available under law in all matters affecting the school including, but not limited to, instruction and personnel, in a manner that allows the principal to be held accountable in a fair and consistent manner for matters under his direct control.

B. As the instructional leader, the principal is responsible for ensuring that students are provided an opportunity to learn and shall:

1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the professional

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teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class;

2. Ensure that the school division's student code of conduct is enforced and seek to maintain a safe and secure school environment;

3. Analyze the school's test scores annually, by grade and by discipline, to:

a. Direct and require appropriate prevention, intervention, and/or remediation to those students performing below grade level or not passing the SOL tests;

b. Involve the staff of the school in identifying the types of staff development needed to improve student achievement and ensure that the staff participate in those activities; and

c. Analyze classroom practices and methods for improvement of instruction;

4. Ensure that students' records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's performance, are included in the record;

5. Monitor and evaluate the quality of instruction, provide staff development, provide support that is designed to improve instruction, and seek to ensure the successful attainment of the knowledge and skills required for students by the SOL tests; and

6. Maintain records of students who drop out of school, including their reasons for dropping out and actions taken to prevent these students from dropping out; and

7. Notify the parents of rising [~~eleventh~~ eleventh-grade] and [~~twelfth~~ twelfth-grade] students of:

a. The number of standard and verified units of credit required for graduation; and

b. The remaining number of such units of credit the individual student requires for graduation.

C. As the school manager, the principal shall:

1. Work with staff to create an atmosphere of mutual respect and courtesy and to facilitate constructive communication by establishing and maintaining a current handbook of personnel policies and procedures;

2. Work with the community to involve parents and citizens in the educational program and facilitate communication with parents by maintaining and disseminating a current student handbook of policies and procedures that includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;

3. Maintain a current record of licensure, endorsement, and in-service training completed by staff; and

4. Maintain records of receipts and disbursements of all funds handled. These records shall be audited annually by

a professional accountant approved by the local school board.

## 8 VAC 20-131-240. Administrative and support staff; staffing requirements.

A. Each school shall have *at a minimum* the staff as specified in the Standards of Quality with proper licenses and endorsements for the positions they hold including:

1. Principal; elementary: one half time to 299, one full time at 300; middle: one full time; secondary: one full time.

2. Assistant principal; elementary: one half time at 600, one full time at 900; middle: one full time each 600; secondary: one full time each 600.

3. Librarian; elementary: part time to 299, one full time at 300; middle: one half time to 299, one full time at 300, two full time at 1,000; secondary: one half time to 299, one full time at 300, two full time at 1,000.

4. Guidance counselors or reading specialists; elementary: one hour per day per 100, one full time at 500, one hour per day additional time per 100 or major fraction.

5. Guidance counselor; middle: one period per 80, one full time at 400, one additional period per 80 or major fraction; secondary: one period per 70, one full time at 350, one additional period per 70 or major fraction.

6. Clerical; elementary: part time to 299, one full time at 300; middle: one full time and one additional full time for each 600 beyond 200 and one full time for the library at 750; secondary: one full time and one additional full time for each 600 beyond 200 and one full time for the library at 750.

B. The principal of each middle and secondary school shall be employed on a 12-month basis.

C. Each secondary school with 350 or more students and each middle school with 400 or more students shall employ at least one member of the guidance staff for 11 months. Guidance counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting the graduation requirements specified in 8 VAC 20-131-50 is being followed. [~~In addition, the counseling program shall provide for a minimum of 60% of the time of each member of the guidance staff devoted to such counseling of students.~~]

[~~D. The counseling program for elementary, middle, and secondary schools shall provide a minimum of 60% of the time for each member of the guidance staff devoted to counseling of students.~~]

[~~D. E. The~~] middle school [~~teachers in schools with a seven-period day may teach classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day with no more than~~] 150 student periods per day or 30 class periods per week [~~, provided all teachers with more than 25 class periods per week have one period per day or the equivalent unencumbered of any teaching or supervisory duties~~]. [*Beginning with the academic year 2008-2009, a middle school classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day*]

with no more than 150 student periods per day or 25 class periods per week. ]

[ ~~E. F.~~ ] The secondary classroom teacher's standard load shall be [ *based on teaching no more than 5/6 of the instructional day with* ] no more than [ *150 student periods per day or* ] 25 class periods per week. [ ~~One class period each day or the equivalent, unencumbered by supervisory or teaching duties, shall be provided to every full-time classroom teacher for instructional planning.~~ ] Teachers of block programs [ *that encompass more than one class period* ] with no more than 120 student periods per day may teach 30 class periods per week. Teachers who teach very small classes may teach 30 class periods per week, provided the teaching load does not exceed 75 student periods per day. If a classroom teacher teaches 30 class periods per week with more than 75 student periods per day, an appropriate contractual arrangement and compensation shall be provided.

[ ~~F. G.~~ ] Middle or secondary school teachers shall teach no more than 750 student periods per week; however, physical education and music teachers may teach 1,000 student periods per week.

[ *H. Notwithstanding the provisions of subsections E, F, and G, each full-time middle and secondary classroom teacher shall be provided one planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.* ]

~~G. Each school shall report the extent to which an unencumbered lunch is provided for all classroom teachers.~~

~~H. [ *G. I.* ]~~ Staff-student ratios in special and career and technical education classrooms shall comply with regulations of the Board [ *of Education* ].

~~I. Pupil [ *H. J.* ]~~ *Student services personnel services, including visiting teachers, school social workers, school psychologists, and guidance counselors, as defined in the Standards of Quality shall be available as necessary to promote academic achievement and to provide support services to the school.*

## **8 VAC 20-131-260. School facilities and safety.**

A. Each school shall be maintained in a manner ensuring compliance with the Virginia [ ~~Uniform~~ ] Statewide Building Code (13-VAC-5-61-10 et seq. 13 VAC 5-63) ~~and regulations of the board pertaining to facilities.~~ In addition, the school administration shall:

1. Maintain a physical plant that is accessible, barrier free, safe, and clean;
2. Provide for the proper outdoor display of flags of the United States and of the Commonwealth of Virginia;
3. Provide suitable space for classrooms, administrative staff, pupil personnel services, library and media services, and for the needs and safety of physical education; ~~and~~
4. Provide adequate, safe, and properly-equipped laboratories to meet the needs of instruction in the sciences, technology, fine arts, and career and technical programs; ~~and~~

5. Provide facilities for the adequate and safe administration and storage of student medications.

B. Each school shall maintain records of regular safety, health, and fire inspections that have been conducted and certified by local health and fire departments. The frequency of such inspections shall be determined by the local school board in consultation with the local health and fire departments. In addition, the school administration shall:

1. Equip all exit doors with panic hardware as required by the Virginia [ ~~Uniform~~ ] Statewide Building Code (13-VAC-5-61-10 et seq. 13 VAC 5-63); and

2. Conduct fire drills at least once a week during the first month of school and at least once each month for the remainder of the school term. Evacuation routes for students shall be posted in each room. Additionally, at least one simulated lock-down and crisis emergency evacuation activity should be conducted early in the school year.

C. Each school shall have contingency plans for emergencies that include staff certified in cardiopulmonary resuscitation (CPR), the Heimlich maneuver, and emergency first aid. In addition, the school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, *allergic reactions*, and violent or threatening behavior. The plan shall be outlined in the student handbook and discussed with staff and students during the first week of each school year;

2. Space for the proper care of students who become ill; ~~and~~

3. A written procedure, in accordance with guidelines established by the local school board, for responding to violent, disruptive or illegal activities by students on school property or during a school sponsored activity; ~~and~~

4. *Written procedures to follow for the safe evacuation of persons with special physical, medical, or language needs who may need assistance to exit a facility.*

## **8 VAC 20-131-270. School and community communications.**

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.

2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:

- a. ~~SOL test scores and scores on the literacy and numeracy tests required for the Modified Standard Diploma for the school, school division, and state.~~

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~~Virginia assessment program results including the percentage of students tested, as well as the percentage of students not tested, to include a breakout of students with disabilities and limited English proficient students.~~

~~e. Percentage of students who are otherwise eligible, but do not take, the SOL tests due to enrollment in an alternative, or any other program not leading to a Standard, Advanced Studies, Modified Standard, or International Baccalaureate Diploma.~~

~~d. b. Performance of students with disabilities or students with limited English proficiency student subgroups on SOL tests and alternate assessments the Virginia assessment program as appropriate.~~

~~e. c. The accreditation rating awarded to the school.~~

~~f. d. Attendance rates for students.~~

~~g. e. Information related to school safety to include, but not limited to, incidents of physical violence (including fighting and other serious offenses), possession of firearms, and possession of other weapons.~~

~~h. f. Information related to qualifications and experience of the teaching staff including the percentage of the school's teachers endorsed in the area of their primary teaching assignment.~~

~~i. g. In addition, secondary schools' School Performance Report Cards shall include the following:~~

~~(1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of those students who take AP tests;~~

~~(2) International Baccalaureate (IB) [ and Cambridge course ] information to include percentage of students who are enrolled in IB [ or Cambridge ] programs and percentage of students who receive IB [ or Cambridge ] Diplomas;~~

~~(3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;~~

~~(4) Percentage of (i) [ diplomas graduates by diploma type as prescribed by the Board of Education ], (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not [ graduate complete high school ];~~

~~(5) Percentage of students in alternative programs that do not lead to a Standard, Advanced Studies, or Modified Standard Diploma; Information on the number of students obtaining industry certifications, and passing state licensure examinations and occupational competency assessments while still in high school; and~~

~~(6) Percentage of students in academic year Governor's Schools; and~~

~~(7) (6) Percentage of drop-outs.~~

3. Cooperate with business and industry in formulating career and technical educational programs and conducting

joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment and/or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to its students' parents or guardians *information on the availability of and source for receiving:*

1. The learning objectives developed in accordance with the provisions of 8 VAC 20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;

2. ~~A copy of~~ The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard, Advanced Studies, and Modified Standard Diplomas, and the board's policies on promotion and retention as outlined in 8 VAC 20-131-30.

~~No later than the end of the first semester of each school year,~~ The division superintendent shall *certify report* to the department compliance with this subsection *through the preaccreditation eligibility procedures in 8 VAC 20-131-290.*

## **8 VAC 20-131-280. Expectations for school accountability.**

A. Schools will be accredited annually based on compliance with preaccreditation eligibility requirements and achievement of the school accountability requirements of 8 VAC 20-131-300 C.

~~B. These standards apply to schools for all grade levels, kindergarten through 12, as listed below:~~

~~1. Schools with grades kindergarten through 5 shall be classified as elementary schools;~~

~~2. Schools with grades 6 through 8 shall be classified as middle schools;~~

~~3. Schools with grades 9 through 12 shall be classified as secondary schools.~~

~~4. Schools with grade configurations other than these shall be classified in accordance with policies and practices of the Department of Education.~~

C. B. Each school shall be accredited based, primarily, on achievement of the criteria established in 8 VAC 20-131-30 as specified below:

1. All students enrolled in a grade or course in which a SOL test is administered shall take each applicable SOL test, unless exempted from participating in all or part of the testing program by one of the following:

a. IEP team;

b. LEP committee;

- ~~c. Use of additional tests for verified units of credit as outlined in 8 VAC 20-131-110 B; or~~
- ~~d. In accordance with 8 VAC 20-131-30 B.~~
- ~~2. In a manner prescribed by the board, the evaluation of the performance of schools shall take into consideration:~~
- ~~a. The percentage of eligible students who achieve a passing score on the prescribed SOL tests or additional tests used for verified units of credit as outlined in 8 VAC 20-131-110 B;~~
- ~~b. The percentage of students who pass the literacy and numeracy tests required for the Modified Standard Diploma;~~
- ~~c. The percentage of those students with disabilities whose IEPs specify their participation in alternate assessment who attain a proficient level score (beginning with the 2001-02 school year); and~~
- ~~d. The school's attainment of the provisional accreditation benchmarks as described in 8 VAC 20-131-320.~~
- ~~e. The number of students who successfully complete a remediation recovery program and subsequently pass SOL tests in English (Reading, Literature, and Research) and/or mathematics during any scheduled administration by the end of the following school year.~~
- ~~3. 1. The awarding of an accreditation rating shall be based on the percentage of students passing SOL the Virginia assessment program tests or approved additional tests described in 8 VAC 20-131-110 B or in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three-year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.~~
- ~~2. The number of students who successfully complete a remediation recovery program.~~
- ~~4. Eligible students shall be defined as the total number of students enrolled in the school at a grade or course for which a SOL test is required unless excluded under subsection E of this section and those students with disabilities who participate in the alternate assessment program.~~
- ~~5. Schools shall be evaluated by the percentage of the school's eligible students who achieve a passing score on the SOL tests or other additional tests approved by the board as outlined in 8 VAC 20-131-110 B in the four core academic areas administered in the school.~~
- ~~6. 3. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or [other] additional tests approved by the Board of Education as outlined in 8 VAC 20-131-110 B are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the local superintendent. The schools~~

should have a "feeder" relationship and the grades should be contiguous.

~~D. C. Subject to the provisions of 8 VAC 20-131-330, the governing school board of special purpose schools such as regional those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Advanced Studies, or Modified Standard Diploma must meet the requirements prescribed in 8 VAC 20-131-50.~~

~~E. D. When calculating the passing rates on [SOL Virginia assessment program] tests for the purpose of school [accountability accreditation], the following tolerances for limited English proficient (LEP) and transfer students will apply:~~

~~1. LEP students shall have a one time exemption in each of the four core areas for SOL tests designed to assess SOL content in grades kindergarten through 8.~~

~~2. LEP students shall not be exempted from participating in the SOL end-of-course testing.~~

~~3. 1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by 8 VAC 20-131-280 B and 8 VAC 20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.~~

~~4. 2. In accordance with the provisions of 8 VAC 20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests unless they have been exempted as defined in subdivision C 1 of this section in the content areas in which they receive instruction.~~

~~5. 3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accountability (accreditation) rating. Students who transfer into a Virginia school from home instruction, [or from] another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or [other] additional tests approved by the board as outlined in 8 VAC 20-131-110 B. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accountability (accreditation) ratings.~~

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~~6.~~ 4. Students who transfer into a Virginia middle or high school from *home instruction*, or from another state or country, and enroll in a course for which there is an end-of-course SOL test, shall be expected to take the test or [ ~~either~~ ] additional tests for that course approved by the board as outlined in 8 VAC 20-131-110 ~~B~~. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school ~~accountability~~ (accreditation) ratings in the year the transfer occurs.

~~7.~~ 5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in calculating the school ~~accountability~~ (accreditation) rating in the year in which the transfers occur.

~~8.~~ The scores of LEP and transfer students will be used in the calculation of a school's ~~accountability~~ (accreditation) rating if it will benefit the school.

~~9.~~ 6. The board may alter the inclusions and exclusions from the ~~accountability~~ accreditation calculations by providing adequate notice to local school boards.

E. The Board of Education may [ ~~enact~~ adopt ] special provisions related to the administration and use of any [ ~~SOL Virginia assessment program~~ ] test [ ~~or tests~~ ] in a content area as applied to these regulations.

F. As a prerequisite to the awarding of an accreditation rating as defined in 8 VAC 20-131-300, each new or existing school shall document, in a manner prescribed by the board, the following: (i) the division's promotion/retention policies developed in accordance with the requirements of 8 VAC 20-131-30, (ii) compliance with the requirements to offer courses that will allow students to complete the graduation requirements in 8 VAC 20-131-50, (iii) the ability to offer the instructional program prescribed in 8 VAC 20-131-70 through 8 VAC 20-131-100, (iv) the leadership and staffing requirements of 8 VAC 20-131-210 through 8 VAC 20-131-240, and (v) the facilities and safety provisions of 8 VAC 20-131-260. [ *The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8 VAC 20-131-290.* ]

## **8 VAC 20-131-290. Procedures for certifying accreditation eligibility.**

A. Schools will be accredited under these standards annually based, *in part*, on compliance with the preaccreditation [ ~~criteria~~ eligibility requirements ] described in 8 VAC 20-131-280 F.

B. To be eligible for accreditation, the principal of each school and the division superintendent shall ~~certify~~ report to the Department of Education:

1. The extent to which each school continues to meet standards reported as met in the previous year described in 8 VAC 20-131-280 F.

2. That the SOL have been fully incorporated into the school division's curriculum in all accreditation-eligible schools and the SOL material is being taught to all students eligible to take the SOL tests. This shall be certified ~~in writing to the board no later than July 1 of every year~~, by each school division superintendent *as part of the preaccreditation eligibility determination process*.

3. Actions taken to correct any noncompliance issues cited in the previous year.

[ *4. Compliance with 8 VAC 20-131-270 B.* ]

The principal of each school and the division superintendent shall submit preaccreditation eligibility reports in a manner prescribed by the board to the Department of Education. Failure to submit the reports on time will constitute grounds for denying accreditation to the school.

C. In keeping with provisions of the Standards of Quality, and in conjunction with the six-year plan of the division, each school shall prepare and implement a biennial school plan which shall be available to students, parents, staff, and the public. Each biennial school plan shall be evaluated as part of the development of the next biennial plan. Schools may use other plans to satisfy the requirement for the biennial plan with prior written approval from the Department of Education.

D. With the approval of the local school board, local schools seeking to implement experimental or innovative programs, or both, that are not consistent with these standards shall submit a waiver request, on forms provided, to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental/innovative programs;
2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

Except as specified below, the board may grant, for a period up to five years, a waiver of these regulations that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request. Waivers of requirements in 8 VAC 20-131-30, 8 VAC 20-131-50, 8 VAC 20-131-70, and 8 VAC 20-131-280 through 8 VAC 20-131-340 shall not be granted, and no waiver may be approved for a program which would violate the provisions of the Standards of Quality.

## **8 VAC 20-131-300. Application of the standards.**

A. Schools that meet the preaccreditation [ *eligibility* ] requirements prescribed in 8 VAC 20-131-280 F shall be assigned one of the following ratings as described in this section:

~~1. Earned During Academic Years Ending in 2000 through 2003:~~



- a. Fully Accredited;
- b. Provisionally Accredited/Meets State Standards;
- c. Provisionally Accredited/Needs Improvement;
- d. Accredited with Warning in (specified academic area or areas);
- e. Conditionally Accredited.

~~2. Earned During Academic Years Ending in 2004 and 2005:~~

- a. Fully Accredited;
- b. Accredited with Warning in (specified academic area or areas);
- c. Conditionally Accredited.

~~3. Earned During Academic Years Ending in 2006 and Beyond:~~

- a. 1. Fully Accredited;
- b. 2. Accredited with Warning in (specified academic area or areas);
- c. 3. Accreditation Denied;
- d. 4. Conditionally Accredited [ ; ]
- e. ~~Accreditation Withheld/Improving School Near Accreditation (not to be used after academic year ending in 2009)~~

~~[ 5. Accreditation Withheld/Improving School Near Accreditation (rating shall not be awarded after academic year ending in 2007, based on tests administered in 2005-2006) ].~~

B. Compliance with the student academic achievement expectations shall be documented to the board directly through the reporting of the results of student performance on SOL tests and other alternative means of assessing student academic achievement as outlined in 8 VAC 20-131-110 B. Compliance with other provisions of these regulations will be documented in accordance with procedures prescribed by the Board [ of Education ].

C. Accreditation ratings defined. [ *Accreditation ratings awarded in an academic year are based upon Virginia assessment program scores from the academic year immediately prior to the year to which the accreditation rating applies. Accreditation ratings are defined as follows:* ]

1. Fully accredited.

*[ a. With tests administered in the academic year 2005-2006 for the accreditation ratings awarded for academic year 2006-2007, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas, except the pass rates required shall be 75% in third-grade and fifth-grade English and 50% in third-grade science and history/social science. ]*

*[ a. For school years 2004-05 through 2008-09, b. With tests administered in the academic years 2006-2007,*

*2007-2008, and 2008-2009 for the accreditation ratings awarded for academic years 2007-2008, 2008-2009, and 2009-2010 respectively], a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas except, effective with ratings earned in the academic year 2003-04 and beyond, the pass rates required shall be 75% in third [ -grade ] and through fifth [ - ] grade English and 50% in [ third grade third-grade ] science and history/social science. [ In schools housing grades kindergarten through 5, the English and mathematics pass rates for accreditation purposes shall be calculated for these grades as single rates by combining the scores of all third grade ] and [ through fifth grade SOL tests administered in English and by combining the scores of all third grade ] and [ through fifth grade SOL tests administered in mathematics.*

~~b. c. ] During the transition period covering ratings earned during 1999-2000 through 2002-03, in schools housing grades kindergarten through 5, the science and history/social science pass rates for accreditation purposes shall be calculated by using the fifth grade scores alone, or by combining the scores of all SOL tests administered in grades 3 through 5 in science and by combining the scores of all SOL tests administered in grades 3 through 5 in history/social science, whichever is higher. If the third grade scores are combined with the fifth grade scores, the required passing rate shall be 70% for full accreditation. In schools housing grades kindergarten through 3, the accreditation rating shall be calculated using the English and mathematics scores only. For schools housing grade configurations where multiple pass rates apply, the results of the tests may be combined in each of the four core academic areas for the purpose of calculating the school's accreditation rating provided the school chooses to meet the higher pass rate.~~

~~[ e. d. ] With tests administered [ beginning ] in the academic year 2009-10 for the accreditation ratings [ ~~is~~ awarded for ] school year 2010-11 and beyond, a school will be rated Fully Accredited when its eligible students meet the pass rate of 75% in English and the pass rate of 70% in mathematics, science, and history and social science.~~

~~[ e. e. ] For accreditation purposes, the pass rate will be calculated as single rates for each of the four core academic areas by combining all scores of all tests administered in each subject area.~~

~~2. Provisionally Accredited/Meets State Standards. For ratings earned during the academic years 1999-2000 through 2002-03, a school will be rated Provisionally Accredited/Meets State Standards when it has met the provisional accreditation benchmarks as defined in accordance with 8 VAC 20-131-320 but has not met the requirement to be rated Fully Accredited.~~

~~3. Provisionally Accredited/Needs Improvement. For ratings earned during the academic years 1999-2000 through 2002-03, a school will be rated Provisionally Accredited/Needs Improvement when it fails to meet the~~

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~~provisional accreditation benchmarks as defined in 8 VAC 20-131-320 in one or more academic areas.~~

~~4. 2. Accredited with Warning [ ( ) in [ ( ) specific academic area or areas). a. For ratings earned during academic years ending in 1999-2000 through 2002-03, a school will be Accredited with Warning (in specific academic area or areas) if its pass rate performance on SOL tests is 20 or more percentage points below any of the provisional accreditation benchmarks set forth in the appendix to these standards. b. For ratings earned during academic years 2003-04 and 2004-05, a school will be Accredited with Warning in (specific academic area or areas) if it does not meet the pass rate requirements to be Fully Accredited. c. For ratings earned during academic years 2005-06 and beyond, A school will be Accredited with Warning in (specific academic area or areas) if it has achieved failed to achieve Fully Accredited status but has failed to meet the requirements to maintain that status in any one year. Following the academic year 2005-06, Such a school may remain in the Accredited with Warning status for no more than three consecutive years.~~

~~5. 3. Accreditation Denied. Based on a school's academic performance during academic years ending in 2006 and beyond, a school shall be rated Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited, except for schools rated Accredited with Warning as set forth in subdivision 4 c of this subsection for the preceding three consecutive years or for three consecutive years anytime thereafter.~~

~~In any school division in which [ ~~4/3 one-third~~ ] or more of the schools have been rated Accreditation Denied, the superintendent shall be evaluated by the local school board with a copy of such evaluation submitted to the Board of Education no later than December 1 of each year in which such condition exists. In addition, the Board of Education may take action against the local school board as permitted by the Standards of Quality due to the failure of the local board to maintain accredited schools.~~

~~[ 6. 4. Accreditation Withheld/Improving School Near Accreditation. A school that has never met the requirements to be rated Fully Accredited by ] end of [ the academic year ending in 2006 and subject to being awarded a rating of Accreditation Denied may apply to the board for this accreditation designation for 2006-2007. To be eligible, the school must meet each of the following criteria:~~

~~a. ] By the year ending in 2006, [ With assessments administered in 2005-2006, at least 70% of its students must have passed the applicable English SOL tests except at third and fifth grade where the requirement is 75%.~~

~~b. ] By the year ending in 2006, [ With assessments administered in 2005-2006, a combined pass rate of 60% of its students must have passed the ] SOL [ Virginia assessment program tests in the other three core academic areas.~~

~~c. In each academic area in which the pass rate is below the rate required to be rated Fully Accredited, the school's pass rate must have increased by at least 25 percentage~~

~~points as compared to the pass rates on tests taken during the academic year ending in 1999. ]~~

~~To retain this rating, a school must continue to show annual improvement in each academic area in which the pass rate is below the rate required for full accreditation. [ This rating ] will cease to exist [ shall not be awarded after the 2006-2007 academic year. ] ending in 2009.~~

~~7. [ 4. 5. ] Conditionally Accredited. New schools that are comprised of students from one or more existing schools in the division will be awarded this status for one year pending an evaluation of the school's eligible students' performance on SOL tests or additional tests described in 8 VAC 20-131-110 B approved by the Board of Education to be rated Fully Accredited. This rating may also be awarded to a school that is being reconstituted in accordance with the provisions of 8 VAC 20-131-340 upon [ agreement approval ] by the Board of Education. A school awarded this rating under those circumstances will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the agreed upon term [ or if it fails to have its annual application for such rating renewed ].~~

## **8 VAC 20-131-310. Action requirements for schools that are Accredited with Warning [ or Accreditation Withheld/Improving School Near Accreditation ].**

A. With such funds as are appropriated by the General Assembly, the Department of Education shall develop a school academic review process and monitoring plan designed to assist schools rated as Accredited with Warning. All procedures and operations for the academic review process shall be approved and adopted by the board.

[ Schools rated Accredited with Warning or Accreditation Withheld/Improving School Near Accreditation must undergo an academic review in accordance with guidelines adopted by the board and prepare a school improvement plan as required by subsection F of this section. ]

B. Any school that is rated Accredited with Warning in English or mathematics ~~is expected to~~ shall adopt ~~an~~ a research-based instructional ~~method~~ intervention that has a proven track record of success at raising student achievement in those areas as appropriate.

C. The superintendent and principal shall certify in writing to the Board of Education that such ~~a method~~ an intervention has been adopted and implemented.

D. The board shall publish a list of recommended instructional ~~methods~~ interventions, which may be amended from time to time.

E. Adoption of instructional ~~methods~~ interventions referenced in subsections B and D of this section shall be funded by eligible local, state, and federal funds.

F. A three-year School Improvement Plan must be developed and implemented, based on the results of an academic review of each school that is rated Accredited with Warning [ or Accreditation Withheld/Improving School Near Accreditation ] upon receipt of notification of the awarding of this rating and receipt of the results of the academic review. The plan:

1. Shall be developed with the assistance of parents and teachers and made available to the public;
2. Must include the components outlined in subsection G of this section; and
3. Must be approved by the division superintendent and the local school board and be designed to assist the school in meeting the student achievement standard to be Fully Accredited as outlined in 8 VAC 20-131-300.

G. The improvement plan shall include the following:

1. A description of how the school will meet the ~~provisional accreditation benchmarks, or the~~ requirements to be Fully Accredited, for each of the years covered by the plan;
2. Specific measures for achieving and documenting student academic improvement;
3. A description of the amount of time in the school day devoted to instruction in the core academic areas;
4. Instructional practices designed to remediate students who have not been successful on SOL tests;
5. Intervention strategies designed to prevent further declines in student performance;
6. Staff development needed;
7. Strategies to involve and assist parents in raising their child's academic performance;
8. The need for flexibility or waivers to state or local regulations to meet the objectives of the plan; and
9. A description of the manner in which local, state, and federal funds are used to support the implementation of the components of this plan.

As part of its approval of the school improvement plan, the board may grant a local school board a waiver from the requirements of any regulations promulgated by the board when such a waiver is available.

H. The school improvement plan and related annual reports submitted to the board shall provide documentation of the continuous efforts of the school to achieve the requirements to become rated Fully Accredited. The board shall adopt and approve all policies and formats for the submission of annual reports under this section. The reports shall be due no later than October 1 of the school year.

**[ 8 VAC 20-131-315. Action requirements for schools that are denied accreditation.**

A. Any school rated Accreditation Denied in accordance with 8 VAC 20-131-300 shall be subject to actions prescribed by the Board of Education and shall provide parents of enrolled students and other interested parties with the following:

1. Written notice of the school's accreditation rating within 30 calendar days of the notification of the rating from the Department of Education;
2. A copy of the school division's proposed corrective action plan, including a timeline for implementation, to improve the school's accreditation rating; and

3. An opportunity to comment on the division's proposed corrective action plan. Such public comment shall be received and considered by the school division prior to finalizing the school's corrective action plan and a Board of Education memorandum of understanding with the local school board.

B. Any school rated Accreditation Denied in accordance with 8 VAC 20-131-300 shall be subject to actions prescribed by the Board of Education and affirmed through a memorandum of understanding between the Board of Education and the local school board. The local school board shall submit a corrective action plan to the Board of Education for its consideration in prescribing actions in the memorandum of understanding within 45 days of the notification of the rating. The memorandum of understanding shall be entered into no later than November 1 of the academic year in which the rating is awarded.

The local board shall submit status reports detailing implementation of actions prescribed by the memorandum of understanding to the Board of Education. The status reports shall be signed by the school principal, division superintendent, and the chair of the local school board. The school principal, division superintendent, and the chair of the local school board may be required to appear before the Board of Education to present status reports.

The memorandum of understanding may also include but not be limited to:

1. Undergoing an educational service delivery and management review. The Board of Education shall prescribe the content of such review and approve the reviewing authority retained by the school division.

2. Employing a turnaround specialist credentialed by the state to address those conditions at the school that may impede educational progress and effectiveness and academic success.

C. As an alternative to the memorandum of understanding outlined in subsection B of this section, a local school board may choose to reconstitute a school rated Accreditation Denied and apply to the Board of Education for a rating of Conditionally Accredited. The application shall outline specific responses that address all areas of deficiency that resulted in the Accreditation Denied rating and may include any of the provisions of subsection B of this section.

If a local school board chooses to reconstitute a school, it may annually apply for an accreditation rating of Conditionally Accredited as provided for in 8 VAC 20-131-300 C 5. The Conditionally Accredited rating may be granted for a period not to exceed three years if the school is making progress toward a rating of Fully Accredited in accordance with the terms of the Board of Education's approval of the reconstitution application. The school will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the three-year term or if it fails to have its annual application for such rating renewed.

D. The local school board may choose to close a school rated Accreditation Denied or to combine such school with a higher performing school in the division.

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*E. A local school board that has any school with the status of Accreditation Denied shall annually report each school's progress toward meeting the requirements to be rated Fully Accredited to the Board of Education. The local board shall submit such report in a manner prescribed by the Board of Education no later than October 1 of each year. Such reports on each school's progress shall be included in the Board of Education's annual report on the condition and needs of public education to the Governor and the General Assembly submitted on November 15 of each year. ]*

**8 VAC 20-131-320. Provisional accreditation benchmarks. (Repealed.)**

~~The board will set the minimum acceptable pass rates required for a school to achieve the rating of Provisionally Accredited/Meets State Standards in the academic years 1999-2003. These benchmarks are outlined in the appendix to these standards.~~

**8 VAC 20-131-325. Recognitions and rewards for school accountability performance.**

A. Schools may be recognized by the Board of Education in accordance with ~~procedures~~ *guidelines* it shall establish. Such recognition may include:

1. Public announcements recognizing individual schools;
2. Tangible rewards;
3. Waivers of certain board regulations;
4. Exemptions from certain reporting requirements; or
5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, participation in community activities for input purposes when setting policy relating to schools and budget development, as well as other appropriate recognition.

B. A school that maintains a passing rate on [ ~~SOL~~ *Virginia assessment program* ] tests or [ ~~other~~ ] additional tests approved by the board as outlined in 8 VAC 20-131-110 B of ~~80% or above 95% [ or above ] in [ each of ] the four core academic areas for two consecutive years~~ may, upon application to the Department of Education, receive a waiver from ~~some or all provisions of the following regulations and reporting requirements for a period of up to three years:~~

~~8 VAC 20-131-80. Instructional program in elementary schools. (clock-hour requirement only)~~

~~8 VAC 20-131-90. Instructional program in middle schools. (clock-hour requirement only)~~

~~8 VAC 20-131-100. Instructional program in secondary schools.~~

~~8 VAC 20-131-110. Standard and verified units of credit. (clock-hour requirement only)~~

~~8 VAC 20-131-120. Summer school. (clock-hour requirement only)~~

~~8 VAC 20-131-130. Elective courses.~~

~~8 VAC 20-131-140. College preparation programs and opportunities for postsecondary credit.~~

~~8 VAC 20-131-150. Standard school year and school day.~~

~~8 VAC 20-131-190. Library media, materials and equipment.~~

~~8 VAC 20-131-200. Extracurricular and other school activities.~~

~~8 VAC 20-131-210. Role of the principal.~~

~~8 VAC 20-131-220. Role of professional teaching staff.~~

~~8 VAC 20-131-230. Role of support staff.~~

~~8 VAC 20-131-240. Administrative and support staff; staffing requirements.~~

*annual accreditation. A school receiving such a waiver shall be Fully Accredited for a three-year period. However, such school shall continue to annually submit documentation in compliance with the preaccreditation [ eligibility ] requirements described in 8 VAC 20-131-280 F.*

C. Schools may be eligible to receive the Governor's Award for Outstanding Improvement Achievement. This award will be given to schools in ~~each classification defined in 8 VAC 20-131-280 B~~ rated below Fully Accredited that exceed the improvement levels defined in 8 VAC 20-131-320 by 10 percentage points or more in one year during the school years 2000-01 through 2002-03. In addition, any school that raises its rating from Accredited with Warning to Fully Accredited in one year will receive this award when it was 10 percentage points or more below the performance level to be rated Fully Accredited significantly increase the achievement of students within student subgroups in accordance with guidelines prescribed by the Board of Education.

**8 VAC 20-131-330. [ Waivers. (Repealed.)**

~~Waivers of some of the requirements of ] this chapter [ these regulations may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the need for the waiver. In no event will waivers be granted to the requirements of Part III (8 VAC 20-131-30 et seq.) of ] this chapter [ these regulations. ]~~

**8 VAC 20-131-340. [ Academic reviews, ] Special provisions and sanctions.**

~~[ A. ] Beginning with the 2000-01 school year, [ Schools rated Accredited with Warning must undergo an academic review in accordance with guidelines adopted by the board and prepare a school improvement plan as required by 8 VAC 20-131-340.~~

~~B. ] The board may enact special provisions related to the administration and use of any SOL test or tests in a content area as applied to this chapter for any period during which the SOL content in that area is being revised and phased in. [ Any school rated Accreditation Denied in accordance with 8 VAC 20-131-300 shall be subject to sanctions prescribed by the Board of Education and affirmed through a memorandum of understanding between the Board of Education and the local school board. The memorandum of understanding shall be~~

~~entered into no later than 30 days after the opening of school. The memorandum of understanding may include but not be limited to:~~

- ~~1. Submitting status reports detailing implementation of corrective actions to the Board of Education. The status reports shall be signed by the school principal, division superintendent, and the chair of the local school board. The Board of Education may require the school principal, division superintendent, and the chair of the local school board to appear before the board to present such status reports.~~
- ~~2. Undergoing an educational service delivery and management review. The Board of Education shall prescribe the content of such review and approve the reviewing authority retained by the school division.~~
- ~~3. Employing a turnaround specialist credentialed by the state to address those conditions at the school that may impede educational progress and effectiveness and academic success.~~

~~C. Any school rated Accreditation Denied shall provide parents of enrolled students and other interested parties with the following:~~

- ~~1. Written notice of the school's accreditation rating within 30 calendar days of the notification of the rating from the Department of Education;~~
- ~~2. A copy of the school division's proposed corrective action plan, including a timeline for implementation, to improve the school's accreditation rating; and~~
- ~~3. An opportunity to comment on the division's proposed corrective action plan.~~

~~Such public comment shall be received and considered by the school division prior to finalizing the school division's corrective action plan and memorandum of understanding with the Board of Education.~~

~~D. As an alternative to the memorandum of understanding outlined in subsection B of this section, a local school board may choose to enter into an agreement with the Board of Education to reconstitute a school rated Accreditation Denied. The reconstitution agreement may include any of the provisions of subsection B of this section along with one or more of the following actions:~~

- ~~1. Replacing all or a majority of the administrative staff and a substantial percentage of the instructional staff;~~
- ~~2. Hiring a private or nonprofit management firm from a Board of Education reviewed list; or~~
- ~~3. Converting the school to a charter school in accordance with § 22.1-212.6 of the Code of Virginia, with consideration given to collaboration with an institution of higher education or other suitable entity.~~

~~If a local school board chooses to reconstitute a school, it may apply for an accreditation rating of Conditionally Accredited as provided for in 8 VAC 20-131-300 D 6. The Conditionally Accredited rating may be extended for a period not to exceed three years if the school is making progress toward a rating of~~

~~Fully Accredited in accordance with the terms of the agreement with the Board of Education. The school will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the term of the agreement.~~

~~E. The local school board may choose to close a school rated Accreditation Denied or to combine such school with a higher performing school in the division.~~

~~F. A local school board that has any school with the status of Accreditation Denied shall annually report each school's progress toward meeting the requirements to be rated Fully Accredited to the Board of Education. The local board shall submit such report in a manner prescribed by the Board of Education no later than October 1 of each year. Such reports on each school's progress shall be included in the Board of Education's annual report on the condition and needs of public education to the Governor, and the General Assembly submitted on November 15 of each year. ]~~

~~G. [G. A.] Any school in violation of this chapter these regulations shall be subject to appropriate action by the Board of Education including, but not limited to, the adjustment or withdrawal withholding or denial of a school's accreditation.~~

~~[H. B.] A school's accreditation rating may be withheld by action of the Board of Education for any school found to be in violation of test security procedures pursuant to § 22.1-19.1 of the Code of Virginia. [ Withholding of a school's accreditation rating shall not be considered an interruption of the three-consecutive-year period for purposes of receiving an Accreditation Denied status pursuant to 8 VAC 20-131-300. ]~~

~~[I. C.] The Board of Education may exercise its authority to seek school division compliance with school laws pursuant to relevant provisions of the Code of Virginia when any school within a division is rated Accreditation Denied.~~

**[ 8 VAC 20-131-350. Waivers.**

~~Waivers of some of the requirements of these regulations may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the need for the waiver. In no event shall waivers be granted to the requirements of Part III (8 VAC 20-131-30 et seq.) of these regulations.~~

**8 VAC 20-131-360. Effective date.**

~~Unless otherwise specified, these regulations shall be effective for the 2006-2007 academic year.~~

**APPENDIX I. PROVISIONAL ACCREDITATION BENCHMARKS THROUGH 2003 PURSUANT TO 8 VAC 20-131-320. (Repealed.)**

~~Each School Must Meet the Following Pass Rate Benchmarks in Tests Given in the Academic Years Indicated to Earn the Rating of Provisional Accreditation/Meets State Standards:~~

	English	Math	Science	History/ Sec. Studies
Grade 3				
1999-00	60%	55%		

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2000-01	63%	60%		
2001-02	66%	65%		
2002-03	70%	70%		
<del>Grade 5 (includes tests given in Grade 4)</del>				
1999-00	60%	55%	60%	40%
2000-01	63%	60%	63%	45%
2001-02	66%	65%	66%	50%
2002-03	70%	70%	70%	55%
<del>Middle (includes any tests given in middle school grades)</del>				
1999-00	60%	55%	60%	40%
2000-01	63%	60%	63%	45%
2001-02	66%	65%	66%	50%
2002-03	70%	70%	70%	55%
<del>High School</del>				
1999-00	60%	55%	55%	40%
2000-01	63%	60%	60%	45%
2001-02	66%	65%	65%	50%
2002-03	70%	70%	70%	55%

~~1. Schools that do not meet the benchmarks in one or more academic areas will be rated Provisionally Accredited/Needs Improvement unless the school is rated "Accredited with Warning."~~

~~2. Schools that are 20 or more percentage points below the benchmarks in any academic area will be rated Accredited with Warning in (specific academic area or areas).~~

~~3. The Provisionally Accredited ratings may not be earned after school year 2002-03.~~

~~4. Schools must achieve pass rates of 70% in all applicable core academic areas to be rated Fully Accredited except that, beginning with school year 2003-04, schools must achieve pass rates of 75% in third and fifth grade English and 50% in third grade science and history/social science. In schools housing grades kindergarten through 3, the accreditation rating shall be based on the English and mathematics scores only.~~

~~5. In determining accreditation ratings, a single pass rate will be calculated by combining third and fifth grade English and third and fifth grade mathematics scores.~~

~~6. In determining the accreditation ratings during the transition period, covering ratings earned during 1999-2000 through 2002-03, in schools housing grades kindergarten through 5, the accreditation ratings shall be calculated by using the fifth grade scores alone or by combining the scores of all SOL tests given in grades 3 through 5 in science and by combining the scores of all SOL tests given in grades 3 through 5 history/social science, whichever is higher. In schools housing grades kindergarten through 3, the accreditation rating shall be based on the English and mathematics scores only.]~~

VA.R. Doc. No. R05-142; Filed July 18, 2006, 10:31 a.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9 VAC 25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9 VAC 25-31-10, 9 VAC 25-31-30, 9 VAC 25-31-80, 9 VAC 25-31-100, 9 VAC 25-31-220, 9 VAC 25-31-290, 9 VAC 25-31-770, 9 VAC 25-31-780, 9 VAC 25-31-790, 9 VAC 25-31-800, 9 VAC 25-31-840 and 9 VAC 25-31-870; adding 9 VAC 25-31-165).**

**Statutory Authority:** § 62.1-44.15 (10) of the Code of Virginia; § 402 of the Clean Water Act, 40 CFR Parts 122, 123, 124, 403 and 503.

**Effective Date:** September 6, 2006.

**Agency Contact:** Michael B. Gregory, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.virginia.gov.

#### Summary:

*The regulation is updated in order to bring it into conformance with changes in federal regulations as required by the Clean Water Act, federal regulations delegating NPDES authority, and the NPDES Memorandum of Agreement between the Commonwealth of Virginia and the U.S. Environmental Protection Agency. Most of the changes to the regulation pertain to new federal rules for cooling water intake structures, and to new federal rules to streamline pretreatment requirements.*

#### 9 VAC 25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC § 1251 et seq.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a

discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9 VAC 25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9 VAC 25-31-830.

"Approved program" or "approved state" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 ~~(2000)~~ (2005).

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices *to implement the prohibitions listed in 9 VAC 25-31-770 and to prevent or reduce the pollution of surface waters.* BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Class I sludge management facility" means any POTW identified under Part VII (9 VAC 25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9 VAC 25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- a. The type and number of animals that it stables or confines falls within any of the following ranges:
  - (1) 200 to 699 mature dairy cattle, whether milked or dry;
  - (2) 300 to 999 veal calves;
  - (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
  - (4) 750 to 2,499 swine each weighing 55 pounds or more;
  - (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
  - (6) 150 to 499 horses;
  - (7) 3,000 to 9,999 sheep or lambs;
  - (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
  - (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

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(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the board designates under 9 VAC 25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

a. Closed ponds which discharge only during periods of excess run-off; or

b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9 VAC 25-31-830 or the approval authority if the submission has not been approved.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge," when used in Part VII (9 VAC 25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface run-off which is collected or channeled



by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the department or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing source" means any source which is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) (2005) pursuant to § 311 of the CWA.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired

territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial user" or "user" means a source of indirect discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and therefore (ii) is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land application area" means land under the control of an AFO owner or operator, that is owned, rented, or leased to which manure, litter or process wastewater from the production area may be applied.

"Log sorting" and "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the regional administrator in conjunction with the board.

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"Manmade" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9 VAC 25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9 VAC 25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source," except when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under § 306 of the CWA which are applicable to such source; or
- (b) After proposal of standards of performance in accordance with § 306 of the CWA which are applicable to such source,

but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or

any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

*"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the Act, which is owned by a state or municipality (as defined by § 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey*

*wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.*

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A (~~2000~~) (2005).

"Privately owned treatment works (PVOTW)" means any device or system which is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to

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open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the law, the CWA and regulations.

"Secondary industry category" means any industry category which is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe

property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Significant industrial user," or "SIU" means:

1. Except as provided in ~~subdivision~~ *subdivisions 2 and 3* of this definition ~~means:~~

~~4-~~ a. All industrial users subject to categorical pretreatment standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30; and

~~2-~~ b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, ~~as defined in 9 VAC 25-31-840 A~~, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

*2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9 VAC 25-31-780 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:*

*a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;*

*b. The industrial user annually submits the certification statement required in 9 VAC 25-31-840 together with any additional information necessary to support the certification statement; and*

*c. The industrial user never discharges any untreated concentrated wastewater.*

3. Upon a finding that an industrial user meeting the criteria in subdivision 2 *b* of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9 VAC 25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for sewage sludge use or disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the law.

"State Water Control Law" or "Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9 VAC 25-31-120 A 1 c. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 10);

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) ~~(2000)~~ (2005) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate

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products, finished products, by-products, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC § 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and

10. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce.

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 ~~(2000)~~ (2005).

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating,

reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 ~~(2000)~~ (2005), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on §§ 301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VPDES permit.

"Wastewater," when used in Part VII of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control

wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

## **9 VAC 25-31-30. Federal effluent guidelines.**

A. The following federal regulations are hereby incorporated by reference:

Aluminum Forming 40 CFR Part 467 ~~(2000)~~ (2005)

Asbestos Manufacturing 40 CFR Part 427 ~~(2000)~~ (2005)

Battery Manufacturing 40 CFR Part 461 ~~(2000)~~ (2005)

Canned and Preserved Fruits and Vegetables 40 CFR Part 407 ~~(2000)~~ (2005)

Canned and Preserved Seafood 40 CFR Part 408 ~~(2000)~~ (2005)

Carbon Black Manufacturing 40 CFR Part 458 ~~(2000)~~ (2005)

Cement Manufacturing 40 CFR Part 411 ~~(2000)~~ (2005)

Centralized Waste Treatment 40 CFR Part 437 ~~(2000)~~ (2005)

Coal Mining 40 CFR Part 434 ~~(2000)~~ (2005)

Coil Coating 40 CFR Part 465 ~~(2000)~~ (2005)

Copper Forming 40 CFR Part 468 ~~(2000)~~ (2005)

Dairy Products 40 CFR Part 405 ~~(2000)~~ (2005)

Electrical and Electronic Components 40 CFR Part 469 ~~(2000)~~ (2005)

Electroplating 40 CFR Part 413 ~~(2000)~~ (2005)

Explosives Manufacturing 40 CFR Part 457 ~~(2000)~~ (2005)

Feedlots 40 CFR Part 412 ~~(2002)~~ (2005)

Ferroalloy Manufacturing 40 CFR Part 424 ~~(2000)~~ (2005)

Fertilizer Manufacturing 40 CFR Part 418 ~~(2000)~~ (2005)

Glass Manufacturing 40 CFR Part 426 ~~(2000)~~ (2005)

Grain Mills 40 CFR Part 406 ~~(2000)~~ (2005)

Gum and Wood Chemicals Manufacturing 40 CFR Part 454 ~~(2000)~~ (2005)

Hospitals 40 CFR Part 460 ~~(2000)~~ (2005)

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Ink Formulating 40 CFR Part 447 ~~(2000)~~ (2005)  
Inorganic Chemicals Manufacturing 40 CFR Part 415 ~~(2000)~~ (2005)  
Iron and Steel Manufacturing 40 CFR Part 420 ~~(2000)~~ (2005)  
Landfills 40 CFR Part 445 ~~(2000)~~ (2005)  
Leather Tanning and Finishing 40 CFR Part 425 ~~(2000)~~ (2005)  
Meat Products 40 CFR Part 432 ~~(2000)~~ (2005)  
Metal Finishing 40 CFR Part 433 ~~(2000)~~ (2005)  
Metal Molding and Casting 40 CFR Part 464 ~~(2000)~~ (2005)  
*Metal Products and Machinery 40 CFR Part 438 (2005)*  
Mineral Mining and Processing 40 CFR Part 436 ~~(2000)~~ (2005)  
Nonferrous Metals 40 CFR Part 421 ~~(2000)~~ (2005)  
Nonferrous Metal Forming 40 CFR Part 471 ~~(2000)~~ (2005)  
Oil and Gas Extraction 40 CFR Part 435 ~~(2000)~~ (2005)  
Ore Mining and Dressing 40 CFR Part 440 ~~(2000)~~ (2005)  
Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 ~~(2000)~~ (2005)  
Paint Formulating 40 CFR Part 446 ~~(2000)~~ (2005)  
Paving and Roofing Materials 40 CFR Part 443 ~~(2000)~~ (2005)  
Pesticide Chemicals 40 CFR Part 455 ~~(2000)~~ (2005)  
Petroleum Refining 40 CFR Part 419 ~~(2000)~~ (2005)  
Pharmaceutical Manufacturing 40 CFR Part 439 ~~(2000)~~ (2005)  
Phosphate Manufacturing 40 CFR Part 422 ~~(2000)~~ (2005)  
Photographic Processing 40 CFR Part 459 ~~(2000)~~ (2005)  
Plastics Molding and Forming 40 CFR Part 463 ~~(2000)~~ (2005)  
Porcelain Enameling 40 CFR Part 466 ~~(2000)~~ (2005)  
Pulp, Paper and Paperboard 40 CFR Part 430 ~~(2000)~~ (2005)  
Rubber Processing 40 CFR Part 428 ~~(2000)~~ (2005)  
Secondary Treatment 40 CFR Part 133 ~~(2000)~~ (2005)  
Soaps and Detergents 40 CFR Part 417 ~~(2000)~~ (2005)  
Steam Electric Power Generation 40 CFR Part 423 ~~(2000)~~ (2005)  
Sugar Processing 40 CFR Part 409 ~~(2000)~~ (2005)  
Textile Mills 40 CFR Part 410 ~~(2000)~~ (2005)  
Timber Products 40 CFR Part 429 ~~(2000)~~ (2005)  
Toxic Pollutant Effluent Standards 40 CFR Part 129 ~~(2000)~~ (2005)  
Transportation Equipment Cleaning 40 CFR Part 442 ~~(2000)~~ (2005)  
Waste Combustors 40 CFR Part 444 ~~(2000)~~ (2005)

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to § 2.2-4007 C of the Code of Virginia.

## 9 VAC 25-31-80. Confidentiality of information.

A. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (~~§ 2.1-340 et seq.~~ 2.2-3700 and § 62.1-44.21 of the Code of Virginia).

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Permit applications, permits, and effluent data.

C. Information required by VPDES application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

## 9 VAC 25-31-100. Application for a permit.

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section. All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new



discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9 VAC 25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9 VAC 25-31-120 B.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission

for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

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3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA; and

i. Other relevant environmental permits, including state permits.

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9 VAC 25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining

activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (~~2000~~) (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling

for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 B 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 ~~(2000)~~ (2005), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

- Biochemical oxygen demand (BOD<sub>5</sub>)
- Chemical oxygen demand
- Total organic carbon
- Total suspended solids

- Ammonia (as N)
- Temperature (both winter and summer)
- pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A ~~(2000)~~ (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D ~~(2000)~~ (2005) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D ~~(2000)~~ (2005) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D ~~(2000)~~ (2005) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D ~~(2000)~~ (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D ~~(2000)~~ (2005) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100

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ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility

and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (~~2000~~) (2005). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD<sub>5</sub>).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9 VAC 25-31-230 G;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef

cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

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b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and NPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable,

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no

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reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (~~2000~~) (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (~~2000~~) (2005) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

## 5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to

the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii)



chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 ~~(2000)~~ (2005), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9 VAC 25-31-10, that discharges to the POTW:

- (1) Name and mailing address;
- (2) Description of all industrial processes that affect or contribute to the SIU's discharge;
- (3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;
- (4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;
- (5) Whether the SIU is subject to local limits;
- (6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and
- (7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of

the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 ~~(2000)~~ (2005), the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 ~~(2000)~~ (2005), if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) ~~(2000)~~ (2005).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

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(2) A diagram of the combined sewer collection system that includes the following information:

- (a) The location of major sewer trunk lines, both combined and separate sanitary;
- (b) The locations of points where separate sanitary sewers feed into the combined sewer system;
- (c) In-line and off-line storage structures;
- (d) The locations of flow-regulating devices; and
- (e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

- (a) Outfall number;
- (b) State, county, and city or town in which outfall is located;
- (c) Latitude and longitude, to the nearest second;
- (d) Distance from shore and depth below surface;
- (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and
- (f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

- (a) The number of events in the past year;
- (b) The average duration per event, if available;
- (c) The average volume per CSO event, if available; and
- (d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

- (a) Name of receiving water;
- (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and
- (c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9 VAC 25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

- (3) Total organic carbon (TOC).
- (4) Total suspended solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (~~2000~~) (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required

to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

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(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 ~~(2000)~~ (2005) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G ~~(2000)~~ (2005).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of

consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 ~~(2000)~~ (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9 VAC 25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state,

and local permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
- b. UIC program under the Safe Drinking Water Act (SDWA);
- c. NPDES program under the Clean Water Act (CWA);
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- e. Nonattainment program under the Clean Air Act;
- f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
- g. Dredge or fill permits under § 404 of the CWA;
- h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

- a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
- b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9 VAC 25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

- a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
- b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
- c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9 VAC 25-31-490 unless an alternative has been specified in an existing sewage sludge permit.

d. The monitoring data provided must include at least the following information for each parameter:

- (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
- (2) The analytical method used; and
- (3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9 VAC 25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9 VAC 25-31-710 A or the Class B pathogen reduction requirements in 9 VAC 25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

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(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9 VAC 25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9 VAC 25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9 VAC 25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

- (1) The name or number and the location of the active sewage sludge unit;
- (2) The unit's latitude and longitude to the nearest second, and method of determination;
- (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;
- (4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;
- (5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;
- (6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of  $1 \times 10^{-7}$  cm/sec;
- (7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;
- (8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;
- (9) The remaining capacity (dry metric tons) for the active sewage sludge unit;
- (10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;
- (11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:
  - (a) The name, contact person, and mailing address of the facility; and
  - (b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;
- (12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;
- (13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:
  - (a) A description of any groundwater monitoring occurring at the active sewage sludge unit;
  - (b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;
  - (c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

- (14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.
10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:
- a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.
  - b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:
    - (1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and
    - (2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.
11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:
- a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;
  - b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;
  - c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and
  - d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9 VAC 20-80-40 ~~et seq.~~
12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.
13. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9 VAC 25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.
14. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

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Q. Applications for facilities with cooling water intake structures.

1. Application requirements.

a. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9 VAC 25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9 VAC 25-31-165. Requests for alternative requirements under 9 VAC 25-31-165 must be submitted with the permit application.

b. Phase II existing facilities. Phase II existing facilities as defined in 9 VAC 25-31-165 must submit to the board for review the information required under subdivisions 2, 3, and 5 of this subsection and all applicable provisions of 9 VAC 25-31-165 as part of their application except for the proposal for information collection, which must be provided in accordance with 9 VAC 25-31-165 C 3 b (1).

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9 VAC 25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be

supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

5. Cooling water system data. Phase II existing facilities as defined in 9 VAC 25-31-165 must provide the following information for each cooling water intake structure they use:

a. A narrative description of the operation of the cooling water system, its relationship to cooling water intake structures, the proportion of the design intake flow that is used in the system, the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable; and

b. Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by subdivision 5 a of this subsection.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES



application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 ~~(2000)~~ (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 ~~(2000)~~ (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 ~~(2000)~~ (2005)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 ~~(2000)~~ (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

## **9 VAC 25-31-165. Requirements applicable to cooling water intake structures.**

A. *Definitions.* The following definitions apply specifically to this section:

*“Adaptive management method” is a type of project management method where a facility chooses an approach to meeting the project goal, monitors the effectiveness of that approach, and then based on monitoring and any other relevant information, makes any adjustments necessary to ensure continued progress toward the project's goal. This cycle of activity is repeated as necessary to reach the project's goal.*

*“All life stages” means eggs, larvae, juveniles, and adults.*

*“Annual mean flow” means the average of daily flows over a calendar year.*

*“Calculation baseline” means an estimate of impingement mortality and entrainment that would occur at a site assuming that: the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8-inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source water body; and the baseline practices, procedures, and structural configuration are those that a facility would maintain in the absence of any structural or operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes of reducing impingement mortality and entrainment. The current level of impingement mortality and entrainment may be used as the calculation baseline. The calculation baseline may be estimated using: historical impingement mortality and entrainment data from a facility with comparable design, operational, and environmental conditions; current biological data collected in the water body in the vicinity of the cooling water intake structure; or current impingement mortality and entrainment data collected at the facility. The calculation baseline may be modified to be based on a location of the opening of the cooling water intake structure at a depth other than at or near the surface if it can be demonstrated to the department that the other depth would correspond to a higher baseline level of impingement mortality and/or entrainment.*

*“Capacity utilization rate” means the ratio between the average annual net generation of power by the facility (in MWh) and the total net capability of the facility to generate power (in MW) multiplied by the number of hours during a year. In cases where a facility has more than one intake structure, and each intake structure provides cooling water exclusively to one or more generating units, the capacity utilization rate may be calculated separately for each intake structure, based on the capacity utilization of the units it services. Applicable requirements under this section would then be determined separately for each intake structure. The average annual net generation should be measured over a five-year period (if available) of representative operating conditions, unless the facility makes a binding commitment to maintain capacity utilization below 15% for the life of the permit, in which case the rate may be based on this commitment. For purposes of this section, the capacity utilization rate applies to only that portion of the facility that*

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generates electricity for transmission or sale using a thermal cycle employing the steam water system as the thermodynamic medium.

“Closed-cycle recirculating system” means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

“Cooling water” means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes.

“Cooling water intake structure” means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

“Design and construction technology” means any physical configuration of the cooling water intake structure, or a technology that is placed in the water body in front of the cooling water intake structure, to reduce impingement mortality and/or entrainment. Design and construction technologies include, but are not limited to, location of the intake structure, intake screen systems, passive intake systems, fish diversion and/or avoidance systems, and fish handling and return systems. Restoration measures are not design and construction technologies for purposes of this definition.

“Design intake flow” means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

“Design intake velocity” means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

“Diel” means daily and refers to variation in organism abundance and density over a 24-hour period due to the influence of water movement, physical or chemical changes, and changes in light intensity.

“Entrainment” means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

“Estuary” means a semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

“Existing facility” means any facility that commenced construction as described on or before January 17, 2002; and any modification of, or any addition of a unit at such a facility that does not meet the definition of a new facility.

“Freshwater river or stream” means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this section, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.

“Hydraulic zone of influence” means that portion of the source water body hydraulically affected by the cooling water intake structure withdrawal of water.

“Impingement” means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

“Lake or reservoir” means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.

“Maximize” means to increase to the greatest amount, extent, or degree reasonably possible.

“Minimize” means to reduce to the smallest amount, extent, or degree reasonably possible.

“Moribund” means dying; close to death.

“Natural thermal stratification” means the naturally-occurring division of a water body into horizontal layers of differing densities as a result of variations in temperature at different depths.

“New facility” means any building, structure, facility, or installation that meets the definition of a “new source” or “new discharger” and is a greenfield or stand-alone facility that commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of

the same general industrial operation (for example, a new peaking unit at an electrical generating station).

“Ocean” means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

“Once-through cooling water system” means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact and/or noncontact cooling uses, and then discharge it to a water body without recirculation. Once-through cooling systems sometimes employ canals/channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

“Operational measure” means a modification to any operation at a facility that serves to minimize impact to fish and shellfish from the cooling water intake structure. Examples of operational measures include, but are not limited to reductions in cooling water intake flow through the use of variable speed pumps and seasonal flow reductions or shutdowns; and more frequent rotation of traveling screens.

“Phase II existing facility” means any existing facility that meets the criteria specified in subsection C of this section.

“Source water” means the water body from which the cooling water is withdrawn.

“Supplier” means an entity, other than the regulated facility, that owns and operates its own cooling water intake structure and directly withdraws water from state waters. The supplier sells the cooling water to other facilities for their use, but may also use a portion of the water itself. An entity that provides potable water to residential populations (e.g., public water system) is not a supplier for purposes of this subpart.

“Thermocline” means the middle layer of a thermally stratified lake or reservoir. In this layer, there is a rapid decrease in temperatures.

“Tidal excursion” means the horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

“Tidal river” means the most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

## B. Cooling water intake structures for new facilities.

### 1. Applicability.

a. This section applies to a new facility if it:

- (1) Is a point source that uses or proposes to use a cooling water intake structure;
- (2) Has at least one cooling water intake structure that uses at least 25% of the water it withdraws for cooling purposes as specified in subdivision 1 c of this subsection; and
- (3) Has a design intake flow greater than two million gallons per day (MGD).

b. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to state waters. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

c. The threshold requirement that at least 25% of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25% cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25% of the total water withdrawn.

d. This section does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

### 2. Compliance.

a. The owner or operator of a new facility must comply with either Track I in subdivision 2 b or c of this subsection or Track II in subdivision 2 d of this subsection. In addition to meeting the requirements in subdivision 2 b, c or d of this subsection, the owner or operator of a new facility may be required to comply with subdivision 2 e of this subsection.

b. Track I requirements for new facilities that withdraw equal to or greater than 10 MGD. Facilities must comply with all of the following requirements:

- (1) Reduce intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;
- (2) Design and construct each cooling water intake structure to a maximum through-screen design intake velocity of 0.5 ft/s;
- (3) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures meets the following requirements:
  - (a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;
  - (b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);
  - (c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening

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of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the board, and the board determines that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would contribute unacceptable stress to these species of concern;

(6) Submit the application information required in 9 VAC 25-31-100 Q and subdivision 4 b of this subsection;

(7) Implement the monitoring requirements specified in subdivision 5 of this subsection;

(8) Implement the record-keeping requirements specified in subdivision 6 of this subsection.

c. Track I requirements for new facilities that withdraw equal to or greater than two MGD and less than 10 MGD and that choose not to comply with subdivision 2 b of this subsection. Facilities must comply with all of the following requirements:

(1) Design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivisions 2 c (1) and (2) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(4) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(5) Submit the application information required in 9 VAC 25-31-100 Q and 9 VAC 25-31-165 B 4;

(6) Implement the monitoring requirements specified in 9 VAC 25-31-165 B 5;

(7) Implement the recordkeeping requirements specified in 9 VAC 25-31-165 B 6.

d. Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

(1) Demonstrate to the board that the technologies employed will reduce the level of adverse environmental impact from cooling water intake structures to a comparable level to that which would be achieved using the requirements of subdivision 3 b (1) and (2) of this subsection. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species,

within the watershed will be comparable to those that would result implementing the requirements of subdivisions 3 b (1) and (2) of this subsection. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the board identifies as species of concern. In identifying such species the board may consider information provided by fishery management agencies with responsibility for fisheries potentially affected by the cooling water intake structure along with data and information from other sources.

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meet the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

(3) Submit the application information required in 9 VAC 25-31-100 Q and 9 VAC 25-31-165 B 4 c.

(4) Implement the monitoring requirements specified in 9 VAC 25-31-165 B 5.

(5) Implement the record-keeping requirements specified in 9 VAC 25-31-165 B 6.

e. The owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the board deems are reasonably necessary to comply with any provision of state law, including compliance with state water quality standards (including designated uses, criteria, and antidegradation requirements).

### 3. Alternative requirements.

a. Any interested person may request that alternative requirements less stringent than those specified in 9 VAC 25-31-165 B 2 a through e be imposed in the permit. The board may establish alternative requirements less stringent than the requirements of 9 VAC 25-31-165 B 2 a through e only if:

(1) There is an applicable requirement under 9 VAC 25-31-165 B 2 a through e;

(2) The board determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and state law.

b. The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

### 4. Application information requirements.

a. The owner or operator of a new facility must submit to the department:

(1) A statement of intention to comply with either:

(a) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in 9 VAC 25-31-165 B 2 b;

(b) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in 9 VAC 25-31-165 B 2 c or;

(c) The requirements for Track II in 9 VAC 25-31-165 B 2 d.

(2) The owner or operator must also submit the application information required by 9 VAC 25-31-100 Q and the information required in either subdivision 4 b of this subsection for Track I or subdivision 4 c of this section for Track II when application is made for a new or reissued VPDES permit.

b. Track I application requirements. To demonstrate compliance with Track I requirements in 9 VAC 25-31-165 B 2 b or c, collect and submit to the department the information in subdivision 4 b (1) through (4) of this subsection.

(1) Flow reduction information. To comply with the flow reduction requirements in 9 VAC 25-31-165 B 2 b (1), submit the following information to demonstrate reduction of flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(a) A narrative description of the system that has been designed to reduce intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that make-up and blowdown flows have been minimized; and

(b) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, provide documentation

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that the amount of cooling water that is not reused or recycled has been minimized.

(2) *Velocity information.* Submit the following information to demonstrate compliance with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure:

(a) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(b) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(3) *Source water body flow information.* Submit the following information to demonstrate that the cooling water intake structure meets the flow requirements in 9 VAC 25-31-165 B 2 b (3) and c (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(4) *Design and Construction Technology Plan.* To comply with 9 VAC 25-31-165 B 2 b (4) and (5), or 9 VAC 25-31-165 B 2 c (3) and (4), submit the following information in a Design and Construction Technology Plan:

(a) Information to demonstrate whether or not the criteria in 9 VAC 25-31-165 B 2 b (4) and b (5), or 9 VAC 25-31-165 B 2 c (3) and c (4) are met;

(b) Delineation of the hydraulic zone of influence for the cooling water intake structure;

(c) New facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures selected based on information collected for the Source Water Biological Baseline Characterization required by 9 VAC 25-31-100 Q. (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier

systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

(i) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that will be used to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(ii) A narrative description of the design and operation of the design and construction technologies that will be used to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(iii) Design calculations, drawings, and estimates to support the descriptions provided in 9 VAC 25-31-165 B 4 b (4) (c) (i) and (ii).

c. *Application requirements for Track II.* In order to with the requirements of Track II in 9 VAC 25-31-165 B 2 d collect and submit the following information:

(1) *Source water body flow information.* Submit to the department the following information to demonstrate that the cooling water intake structure meets the source water body requirements in 9 VAC 25-31-165 B 2 d (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(2) *Track II Comprehensive Demonstration Study.* Perform and submit the results of a Comprehensive Demonstration Study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at the cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those achieved by implementation of the requirements in

9 VAC 25-31-165 B 2 b (1) and (2) of Track I. To demonstrate the "comparable level" requirement, include information showing that:

(a) Both impingement mortality and entrainment of all life stages of fish and shellfish are reduced by 90% or greater of the reduction that would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2); or

(b) If the demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2); and

(c) Develop and submit a plan to the department containing a proposal for how information will be collected to support the study. The plan must include:

(i) A description of the proposed and/or implemented technology(ies) to be evaluated in the study;

(ii) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If existing source water body data is used, it must be no more than five years old, demonstrated sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and include documentation that the data were collected using appropriate quality assurance/quality control procedures;

(iii) Any public participation or consultation with federal or state agencies undertaken in developing the plan; and

(iv) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods proposed must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods; and

(d) Submit documentation of the results of the study to the director. Documentation of the results of the study must include:

(i) Source Water Biological Study. The Source Water Biological Study must include a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure; an

identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

(ii) Evaluation of potential cooling water intake structure effects. This evaluation will include calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies selected to implement requirements under Track II and an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish, demonstrating that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved implementing the requirements in 9 VAC 25-31-165 B 2 b (1) and (2) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(iii) Evaluation of proposed restoration measures. If restoration measures are proposed to maintain the fish and shellfish provide information and data to show coordination with the appropriate fishery management agency(ies) and a plan that provides a list of the measures to implement to demonstrate and continue to ensure that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level to that which would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2).

(iv) Verification monitoring plan. Include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in 9 VAC 25-31-165 B 4 c (2) (d) (ii). The plan must describe the frequency of monitoring and the parameters to be monitored. The department will use the verification monitoring to confirm that the level of impingement mortality and entrainment reduction required in is met and that the operation of the technology has been optimized. Include a plan to conduct monitoring to verify that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level as that which would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2).

5. Monitoring. The owner or operator of a new facility will be required to perform monitoring to demonstrate compliance with the requirements specified in 9 VAC 25-31-165 B 2.

a. Biological monitoring. Monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data or the

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*Comprehensive Demonstration Study, depending on whether compliance with Track I or Track II was chosen. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Follow the monitoring frequencies identified below for at least two years after the initial permit issuance.*

(1) *Impingement sampling. Collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.*

(2) *Entrainment sampling. Collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Collect samples only when the cooling water intake structure is in operation.*

b. *Velocity monitoring. If the facility uses surface intake screen systems, monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in 9 VAC 25-31-165 B 2 b (2) or c (1). If the facility uses devices other than surface intake screens, monitor velocity at the point of entry through the device. Monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in the VPDES permit.*

c. *Visual or remote inspections. Conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Conduct visual inspections at least weekly to ensure that any design and construction technologies are maintained and operated to ensure that they will continue to function as designed. Alternatively, inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.*

6. *Records and reporting. The owner or operator of a new facility is required to keep records and report information and data to the department as follows:*

a. *Keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under 9 VAC 25-31-165 B 4, and any compliance monitoring data submitted under 9 VAC 25-31-165 B 5, for a period of at least three years from the date of permit issuance. The department may require that these records be kept for a longer period.*

b. *Provide the following to the department in a yearly status report:*

(1) *Biological monitoring records for each cooling water intake structure as required by 9 VAC 25-31-165 B 5 a;*

(2) *Velocity and head loss monitoring records for each cooling water intake structure as required by 9 VAC 25-31-165 B 5 b; and*

(3) *Records of visual or remote inspections as required in 9 VAC 25-31-165 B 5 c.*

C. *Cooling water intake structures for Phase II existing facilities.*

1. *Applicability.*

a. *An existing facility, as defined in 9 VAC 25-31-165 A, is a Phase II existing facility subject to this section if it meets each of the following criteria:*

(1) *It is a point source.*

(2) *It uses or proposes to use cooling water intake structures with a total design intake flow of 50 million gallons per day (MGD) or more to withdraw cooling water from state waters;*

(3) *As its primary activity, the facility both generates and transmits electric power, or generates electric power but sells it to another entity for transmission; and*

(4) *It uses at least 25% of water withdrawn exclusively for cooling purposes, measured on an average annual basis.*

b. *In the case of a Phase II existing facility that is co-located with a manufacturing facility, only that portion of the combined cooling water intake flow that is used by the Phase II facility to generate electricity for sale to another entity will be considered for purposes of determining whether the 50 MGD and 25% criteria in 9 VAC 25-31-165 C 1 a (2) and (4) have been exceeded.*

c. *Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from state waters but is not itself a Phase II existing facility, except as provided in 9 VAC 25-31-165 C 1 d.*

d. *Notwithstanding subdivision 1 c of this subsection, obtaining cooling water from a public water system or using treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this section.*

2. *Establishing best technology available requirements for Phase II Existing facilities.*

a. *Compliance alternatives. Phase II existing facilities must select and implement one of the following five alternatives for establishing best technology available for minimizing adverse environmental impact at the facility:*

(1) *Flow and velocity reduction.*

(a) *Demonstrate to the department a reduction, or planned reduction in flow commensurate with a closed-cycle recirculating system. In this case, the applicable performance standards are deemed to be met and the facility will not be required to demonstrate further that it meets the impingement mortality and entrainment performance standards specified in subdivision 2 b of this subsection. In addition, the facility is not subject to the requirements in 9 VAC 25-31-165 C 3, C 4, or C 5. However, the facility may still be subject to more stringent*



requirements established under subdivision 2 e of this subsection; or

(b) Demonstrate to the department that a reduction, or planned reduction in the maximum through-screen design intake velocity to 0.5 ft/s or less. In this case, the facility is deemed to have met the impingement mortality performance standards and will not be required to demonstrate further that it meets the performance standards for impingement mortality specified in subdivision 2 b of this subsection, and the facility is not subject to the requirements in 9 VAC 25-31-165 C 3, C 4, or C 5 as they apply to impingement mortality. However, the facility may still be subject to applicable requirements for entrainment reduction and may still be subject to more stringent requirements established under subdivision 2 e of this subsection.

(2) Demonstrate to the department that the existing design and construction technologies, operational measures, and/or restoration measures meet the performance standards specified in subdivision 2 b of this subsection and/or the restoration requirements in subdivision 2 c of this subsection.

(3) Demonstrate to the department that the facility has selected, and will install and properly operate and maintain, design and construction technologies, operational measures, and/or restoration measures that will, in combination with any existing design and construction technologies, operational measures, and/or restoration measures, meet the performance standards specified in subdivision 2 b of this subsection and/or the restoration requirements in subdivision 2 c of this subsection;

(4) Demonstrate to the department that the facility has installed, or will install, and properly operate and maintain an approved design and construction technology in accordance with 9 VAC 25-31-165 C 6; or

(5) Demonstrate to the department that the facility has selected, installed, and is properly operating and maintaining, or will install and properly operate and maintain design and construction technologies, operational measures, and/or restoration measures that the department has determined to be the best technology available to minimize adverse environmental impact for the facility in accordance with 9 VAC 25-31-165 C 2 a (5) (a) or (b).

(a) If the department determines that data specific to the facility demonstrate that the costs of compliance under alternatives in 9 VAC 25-31-165 C 2 a (2) through (4) would be significantly greater than the costs considered by the EPA Administrator for similar facilities in establishing the applicable performance standards in subdivision 2 b of this subsection, the department must make a site-specific determination of the best technology available for minimizing adverse environmental impact. This determination must be based on reliable, scientifically valid cost and performance data submitted by the facility and any other information that the department deems appropriate. The department must establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that is, in the judgment of the department, as close as practicable to the applicable performance

standards in 9 VAC 25-31-165 C 2 b of this section, without resulting in costs that are significantly greater than the costs considered by the EPA administrator for similar facilities in establishing the applicable performance standards. The site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because of the significantly greater costs. To calculate the costs considered by the EPA administrator for a similar facility in establishing the applicable performance standards:

(i) Determine which technology the EPA administrator modeled as the most appropriate compliance technology for the facility;

(ii) Using the EPA administrator's costing equations, calculate the annualized capital and net operation and maintenance (O&M) costs for a facility with the same design intake flow using this technology;

(iii) Determine the annualized net revenue loss associated with net construction downtime that the EPA administrator modeled for the facility to install this technology;

(iv) Determine the annualized pilot study costs that the EPA Administrator modeled for the facility to test and optimize this technology;

(v) Sum the cost items in 9 VAC 25-31-165 C 2 a (5) (a) (ii), (iii), and (iv); and

(vi) Determine if the performance standards that form the basis of these estimates (i.e., impingement mortality reduction only or impingement mortality and entrainment reduction) are applicable to the facility, and if necessary, adjust the estimates to correspond to the applicable performance standards.

(b) If the department determines that data specific to the facility demonstrate that the costs of compliance under alternatives in 9 VAC 25-31-165 C 2 a (2) through (4) of this section would be significantly greater than the benefits of complying with the applicable performance standards at the facility, the department must make a site-specific determination of best technology available for minimizing adverse environmental impact. This determination must be based on reliable, scientifically valid cost and performance data submitted by the facility and any other information the department deems appropriate. The department must establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that, in the judgment of the department, is as close as practicable to the applicable performance standards in 9 VAC 25-31-165 C 2 b without resulting in costs that are significantly greater than the benefits at the facility. The director's site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because the costs would be significantly greater than the benefits at the facility.

b. Performance standards.

(1) Impingement mortality performance standards. If compliance alternatives in 9 VAC 25-31-165 C 2 a (2), a (3),

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or a (4) of this section are chosen, the standard for impingement mortality is to reduce impingement mortality for all life stages of fish and shellfish by 80 to 95% from the calculation baseline.

(2) *Entrainment performance standards.* If compliance alternatives in 9 VAC 25-31-165 C 2 a (1) (b), a (2), a (3), or a (4) are chosen, the standard for entrainment is to reduce entrainment of all life stages of fish and shellfish by 60 to 90% from the calculation baseline if:

(a) The facility has a capacity utilization rate of 15% or greater, and

(b) The facility uses:

(i) Cooling water withdrawn from a tidal river, estuary or ocean; or

(ii) The facility uses cooling water withdrawn from a freshwater river or stream and the design intake flow of the cooling water intake structures is greater than 5.0% of the mean annual flow.

(3) *Additional performance standards for facilities withdrawing from a lake or a reservoir.* If the facility withdraws cooling water from a lake or a reservoir and the facility proposes to increase the design intake flow of cooling water intake structures it uses, the increased design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water, except in cases where the disruption does not adversely affect the management of fisheries. In determining whether any such disruption does not adversely affect the management of fisheries, the facility must consult with state fish and wildlife management agencies.

(4) *Use of performance standards for site-specific determinations of best technology available.* The performance standards in 9 VAC 25-31-165 C 2 b (1) through (3) must also be used for determining eligibility for site-specific determinations of best technology available for minimizing adverse environmental impact and establishing site specific requirements that achieve an efficacy as close as practicable to the applicable performance standards without resulting in costs that are significantly greater than those considered by the EPA administrator for a similar facility in establishing the performance standards or costs that are significantly greater than the benefits at the facility.

c. *Requirements for restoration measures.* With the approval of the department, the facility may implement and adaptively manage restoration measures that produce and result in increases of fish and shellfish in the facility's watershed in place of or as a supplement to installing design and control technologies and/or adopting operational measures that reduce impingement mortality and entrainment. Demonstration must be made to the department that:

(1) The facility has evaluated the use of design and construction technologies and operational measures and determined that the use of restoration measures is appropriate because meeting the applicable performance standards or site-specific requirements through the use of design and construction technologies and/or operational measures alone is less feasible, less cost effective, or less environmentally

desirable than meeting the standards or requirements in whole or in part through the use of restoration measures; and

(2) The restoration measures to be implemented, alone or in combination with design and construction technologies and/or operational measures, will produce ecological benefits (fish and shellfish), including maintenance or protection of community structure and function in the facility's water body or watershed, at a level that is substantially similar to the level achieved by meeting the applicable performance standards under 9 VAC 25-31-165 C 2 b, or that satisfies alternative site-specific requirements established pursuant to 9 VAC 25-31-165 C 2 a (5).

d. *Compliance using a technology installation and operation plan or restoration plan.*

(1) If the facility chooses one of the compliance alternatives in 9 VAC 25-31-165 C 2 a (2), (3), (4), or (5), it may request that compliance with the requirements of 9 VAC 25-31-165 C 2 b during the first permit containing requirements consistent with this section be determined based on whether the facility has complied with the construction, operational, maintenance, monitoring, and adaptive management requirements of a Technology Installation and Operation Plan developed in accordance with 9 VAC 25-31-165 C 3 b (4) (b) (for any design and construction technologies and/or operational measures) and/or a Restoration Plan developed in accordance with 9 VAC 25-31-165 C 3 b (5) (for any restoration measures). The Technology Installation and Operation Plan must be designed to meet applicable performance standards in 9 VAC 25-31-165 C 2 b or alternative site-specific requirements developed pursuant to 9 VAC 25-31-165 C 2 a (5). The Restoration Plan must be designed to achieve compliance with the applicable requirements 9 VAC 25-31-165 C 2 c.

(2) During subsequent permit terms, if the facility selected and installed design and construction technologies and/or operational measures and has been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements of the Technology Installation and Operation Plan during the preceding permit term, it may request that compliance with the requirements of 9 VAC 25-31-165 C 2 during the following permit term be determined based on whether the facility remains in compliance with the Technology Installation and Operation Plan, revised in accordance with the adaptive management plan in 9 VAC 25-31-165 C 3 b (4) (b) (iii) if applicable performance standards are not met. Each request and approval of a Technology Installation and Operation Plan shall be limited to one permit term.

(3) During subsequent permit terms, if the facility selected and installed restoration measures and has been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements in the Restoration Plan during the preceding permit term, it may request that compliance with the requirements of this section during the following permit term be determined based on whether the facility remains in compliance with the Restoration Plan, revised in accordance with the adaptive management plan in 9 VAC 25-31-165 C 3 b (5) (e) if applicable performance

standards are not met. Each request and approval of a Restoration Plan shall be limited to one permit term.

e. More stringent standards. The department may establish more stringent requirements as best technology available for minimizing adverse environmental impact if the department determines that compliance with the applicable requirements of this section would not meet the requirements of applicable state law.

f. Nuclear facilities. If it is demonstrated to the department based on consultation with the Nuclear Regulatory Commission that compliance with this subpart would result in a conflict with a safety requirement established by the commission, the department must make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the Nuclear Regulatory Commission's safety requirement.

### 3. Application information requirements.

a. Items to be submitted to the department are:

(1) The proposal for information collection required in 9 VAC 25-31-165 C 2 b (1) prior to the start of information collection activities;

(2) The information required in 9 VAC 25-31-100 Q and any applicable portions of the Comprehensive Demonstration Study, except for the proposal for information collection required by 9 VAC 25-31-165 C 2 b (1); and

(a) The VPDES permit application in accordance with the time frames specified in 9 VAC 25-31-100.

(b) If the existing permit expires before July 9, 2008, the facility may request that the department establish a schedule for submission of the information required by this section as expeditiously as practicable, but not later than January 7, 2008. Between the time the existing permit expires and the time a VPDES permit containing requirements consistent with this section is issued to the facility, the best technology available to minimize adverse environmental impact will continue to be determined based on the department's best professional judgment.

(3) In subsequent permit terms, the department may approve a request to reduce the information required to be submitted in the permit application on the cooling water intake structure(s) and the source water body, if conditions at the facility and in the water body remain substantially unchanged since the previous application. The request for reduced cooling water intake structure and water body application information must be submitted to the department at least one year prior to the expiration of the permit. The request must identify each required information item in 9 VAC 25-31-100 Q and this section that has not substantially changed since the previous permit application and the basis for the determination.

b. Comprehensive Demonstration Study. The purpose of the Comprehensive Demonstration Study is to characterize impingement mortality and entrainment, to describe the operation of the cooling water intake structures, and to confirm that the technologies, operational measures, and/or restoration measures selected and installed, or to be installed,

at the facility meet the applicable requirements of 9 VAC 25-31-165 C 2. All facilities except those that have met the applicable requirements in accordance with 9 VAC 25-31-165 C 2 a (1) (a), 9 VAC 25-31-165 C 2 a (1) (b), and 9 VAC 25-31-165 C 2 a (4) must submit all applicable portions of the Comprehensive Demonstration Study to the department in accordance with 9 VAC 25-31-165 C 2 a. Facilities that meet the requirements in 9 VAC 25-31-165 C 2 a (1) (a) by reducing their flow commensurate with a closed-cycle, recirculating system are not required to submit a Comprehensive Demonstration Study. Facilities that meet the requirements in 9 VAC 25-31-165 C 2 a (1) (b) by reducing their design intake velocity to 0.5 ft/sec or less are required to submit a study only for the entrainment requirements, if applicable. Facilities that meet the requirements in 9 VAC 25-31-165 C 2 a (4) and have installed and properly operate and maintain an approved design and construction technology are required to submit only the Technology Installation and Operation Plan in 9 VAC 25-31-165 C 2 b (4) and the Verification Monitoring Plan in 9 VAC 25-31-165 C 2 b (7). Facilities that are required to meet only impingement mortality performance standards in 9 VAC 25-31-165 C 2 b (1) are required to submit only a study for the impingement mortality reduction requirements. The Comprehensive Demonstration Study must include:

(1) Proposal For Information Collection. Submit to the department for review and comment a description of the information to be used to support the study. The proposal for information must be submitted prior to the start of information collection activities, such activities may be initiated prior to receiving comment from the department. The proposal must include:

(a) A description of the proposed and/or implemented technologies, operational measures, and/or restoration measures to be evaluated in the study;

(b) A list and description of any historical studies characterizing impingement mortality and entrainment and/or the physical and biological conditions in the vicinity of the cooling water intake structures and their relevance to this proposed study. If existing data is to be used, demonstrate the extent to which the data are representative of current conditions and that the data were collected using appropriate quality assurance/quality control procedures;

(c) A summary of any past or ongoing consultations with appropriate fish and wildlife agencies that are relevant to this study and a copy of written comments received as a result of such consultations; and

(d) A sampling plan for any new field studies proposed in order to ensure sufficient data to develop a scientifically valid estimate of impingement mortality and entrainment at the site is provided. The sampling plan must document all methods and quality assurance/quality control procedures for sampling and data analysis. The sampling and data analysis methods must be appropriate for a quantitative survey and include consideration of the methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure(s)), and provide a taxonomic

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identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish).

(2) Source water body flow information. Submit to the department the following source water body flow information:

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow of the water body and any supporting documentation and engineering calculations to support the analysis of whether the design intake flow is greater than 5.0% of the mean annual flow of the river or stream for purposes of determining applicable performance standards under 9 VAC 25-31-165 C 2 b. Representative historical data (from a period of time up to 10 years, if available) must be used; and

(b) If the cooling water intake structure is located in a lake or a reservoir and an increase in design intake flow is proposed, provide a description of the thermal stratification in the water body, and any supporting documentation and engineering calculations to show that the total design intake flow after the increase will not disrupt the natural thermal stratification and turnover pattern in a way that adversely impacts fisheries, including the results of any consultations with fish and wildlife management agencies.

(3) Impingement Mortality and/or Entrainment Characterization Study. Submit to the department an Impingement Mortality and/or Entrainment Characterization Study for the purpose of providing information to support the development of a calculation baseline for evaluating impingement mortality and entrainment and to characterize current impingement mortality and entrainment. The Impingement Mortality and/or Entrainment Characterization Study must include the following in sufficient detail to support development of the other elements of the Comprehensive Demonstration Study:

(a) Taxonomic identifications of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) that are in the vicinity of the cooling water intake structure(s) and are susceptible to impingement and entrainment;

(b) A characterization of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) identified pursuant to 9 VAC 25-31-165 C 2 b (3) (a), including a description of the abundance and temporal and spatial characteristics in the vicinity of the cooling water intake structure(s), based on sufficient data to characterize annual, seasonal, and diel variations in impingement mortality and entrainment (e.g., related to climate and weather differences, spawning, feeding and water column migration). These may include historical data that are representative of the current operation of the facility and of biological conditions at the site;

(c) Documentation of the current impingement mortality and entrainment of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) identified pursuant to 9 VAC 25-31-165 C 2 b (3) (a) and an estimate of impingement mortality and entrainment to be used as the calculation baseline. The documentation may include historical data that are representative of the current operation of the facility and of

biological conditions at the site. Impingement mortality and entrainment samples to support the calculations required in 9 VAC 25-31-165 C 2 b (4) (a) (iii) and b (5) (c) must be collected during periods of representative operational flows for the cooling water intake structure and the flows associated with the samples must be documented;

(4) Technology and compliance assessment information.

(a) Design and Construction Technology Plan. If design and construction technologies and/or operational measures are proposed, in whole or in part, to meet the requirements of 9 VAC 25-31-165 C 2 a (2) or (3), submit a Design and Construction Technology Plan to the department for review and approval. In the plan, provide the capacity utilization rate for the facility or for individual intake structures where applicable, and provide supporting data (including the average annual net generation of the facility in MWh measured over a five-year period if available) of representative operating conditions and the total net capacity of the facility in MW and underlying calculations. The plan must explain the technologies and/or operational measures in place and/or selected to meet the requirements in 9 VAC 25-31-165 C 2 (examples of potentially appropriate technologies may include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, vertical and/or lateral relocation of the cooling water intake structure, and enlargement of the cooling water intake structure opening to reduce velocity. Examples of potentially appropriate operational measures may include, but are not limited to, seasonal shutdowns, reductions in flow, and continuous or more frequent rotation of traveling screens.) The plan must contain the following information:

(i) A narrative description of the design and operation of all design and construction technologies and/or operational measures (existing and proposed), including fish handling and return systems, that are in place or will be used to meet the requirements to reduce impingement mortality of those species expected to be most susceptible to impingement, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

(ii) A narrative description of the design and operation of all design and construction technologies and/or operational measures (existing and proposed) that are in place or will be used to meet the requirements to reduce entrainment of those species expected to be the most susceptible to entrainment, if applicable, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

(iii) Calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would be achieved by the technologies and/or operational measures selected based on the Impingement Mortality and/or Entrainment Characterization Study in 9 VAC 25-31-165 C 2 b (3). In determining compliance with any requirements to reduce impingement mortality or entrainment, assess the total reduction in impingement mortality and entrainment against the calculation baseline determined in accordance with 9 VAC 25-31-165 C 2 b (3). Reductions in impingement mortality and entrainment from this calculation baseline as a result of any design and construction technologies and/or operational

measures already implemented at the facility should be added to the reductions expected to be achieved by any additional design and/or construction technologies and operational measures that will be implemented, and any increases in fish and shellfish within the water body attributable to the restoration measures. Facilities that recirculate a portion of their flow, but do not reduce flow sufficiently to satisfy the compliance option in 9 VAC 25-31-165 C 2 a (1) (a) may take into account the reduction in impingement mortality and entrainment associated with the reduction in flow when determining the net reduction associated with existing design and construction technologies and/or operational measures. This estimate must include a site-specific evaluation of the suitability of the technologies and/or operational measures based on the species that are found at the site, and may be determined based on representative studies (i.e., studies that have been conducted at a similar facility's cooling water intake structures located in the same water body type with similar biological characteristics) and/or site-specific technology prototype or pilot studies; and

(iv) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the descriptions required by 9 VAC 25-31-165 C 2 b (4) a (i) and (ii).

(b) Technology Installation and Operation Plan. If the compliance alternative in 9 VAC 25-31-165 C 2 a (2), (3), (4), or (5) is chosen and design and construction technologies and/or operational measures are to be used in whole or in part to comply with the applicable requirements of 9 VAC 25-31-165 C 2, submit the following information with the application for review and approval by the department:

(i) A schedule for the installation and maintenance of any new design and construction technologies. Any downtime of generating units to accommodate installation and/or maintenance of these technologies should be scheduled to coincide with otherwise necessary downtime (e.g., for repair, overhaul, or routine maintenance of the generating units) to the extent practicable. Where additional downtime is required, coordinate scheduling of this downtime with the North American Electric Reliability Council and/or other generators in the area to ensure that impacts to reliability and supply are minimized;

(ii) A list of operational and other parameters to be monitored, and the location and frequency of monitoring;

(iii) A list of activities to be undertaken to ensure to the degree practicable the efficacy of installed design and construction technologies and operational measures, and the schedule for implementing them;

(iv) A schedule and methodology for assessing the efficacy of any installed design and construction technologies and operational measures in meeting applicable performance standards or site-specific requirements, including an adaptive management plan for revising design and construction technologies, operational measures, operation and maintenance requirements, and/or monitoring requirements if the assessment indicates that applicable performance standards or site-specific requirements are not being met; and

(v) If the compliance alternative in 9 VAC 25-31-165 C 2 a (4) is chosen, documentation that the appropriate site conditions exist at the facility.

(5) Restoration plan. If restoration measures are proposed, in whole or in part, to meet the applicable requirements in 9 VAC 25-31-165 C 2, submit the following information with the application for review and approval by the department. Address species of concern identified in consultation with federal and state fish and wildlife management agencies with responsibility for fisheries and wildlife potentially affected by the cooling water intake structure(s).

(a) A demonstration to the department that evaluation has been made of the use of design and construction technologies and/or operational measures for the facility and an explanation of how it was determined that restoration would be more feasible, cost effective, or environmentally desirable;

(b) A narrative description of the design and operation of all restoration measures (existing and proposed) that are in place or will be used to produce fish and shellfish;

(c) Quantification of the ecological benefits of the proposed restoration measures. Use information from the Impingement Mortality and/or Entrainment Characterization Study required in 9 VAC 25-31-165 C 2 b (3), and any other available and appropriate information, to estimate the reduction in fish and shellfish impingement mortality and/or entrainment that would be necessary for the facility to comply with 9 VAC 25-31-165 C 2 c (2). Then calculate the production of fish and shellfish that will be achieved with the restoration measures installed. Include a discussion of the nature and magnitude of uncertainty associated with the performance of these restoration measures. Also include a discussion of the time frame within which these ecological benefits are expected to accrue;

(d) Design calculations, drawings, and estimates to document that the proposed restoration measures in combination with design and construction technologies and/or operational measures, or alone, will meet the requirements of 9 VAC 25-31-165 C 2 c (2). If the restoration measures address the same fish and shellfish species identified in the Impingement Mortality and/or Entrainment Characterization Study (in-kind restoration), demonstrate that the restoration measures will produce a level of these fish and shellfish substantially similar to that which would result from meeting applicable performance standards in 9 VAC 25-31-165 C 2 b, or that they will satisfy site-specific requirements established pursuant to 9 VAC 25-31-165 C 2 a (5). If the restoration measures address fish and shellfish species different from those identified in the Impingement Mortality and/or Entrainment Characterization Study (out-of-kind restoration), demonstrate that the restoration measures produce ecological benefits substantially similar to or greater than those that would be realized through in-kind restoration. Such a demonstration should be based on a watershed approach to restoration planning and consider applicable multiagency watershed restoration plans, site-specific peer-reviewed ecological studies, and/or consultation with appropriate federal and state fish and wildlife management agencies.

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(e) A plan utilizing an adaptive management method for implementing, maintaining, and demonstrating the efficacy of the restoration measures selected and for determining the extent to which the restoration measures, or the restoration measures in combination with design and construction technologies and operational measures, have met the applicable requirements of 9 VAC 25-31-165 C 2 c (2). The plan must include:

(i) A monitoring plan that includes a list of the restoration parameters that will be monitored, the frequency of monitoring, and success criteria for each parameter;

(ii) A list of activities to be undertaken to ensure the efficacy of the restoration measures, a description of the linkages between these activities and the items in 9 VAC 25-31-165 C 2 b (5) (e) (i) of this section, and an implementation schedule; and

(iii) A process for revising the Restoration Plan as new information, including monitoring data, becomes available, if the applicable requirements under 9 VAC 25-31-165 C 2 c (2) are not being met.

(f) A summary of any past or ongoing consultation with appropriate federal or state fish and wildlife management agencies on the use of restoration measures including a copy of any written comments received as a result of such consultations;

(g) If requested by the department, a peer review of the items submitted for the Restoration Plan. Choose the peer reviewers in consultation with the department that may consult with EPA and federal and state fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Peer reviewers must have appropriate qualifications (e.g., in the fields of geology, engineering, and/or biology, etc.) depending upon the materials to be reviewed; and

(h) A description of the information to be included in a biannual status report to the department.

(6) Information to support site-specific determination of best technology available for minimizing adverse environmental impact. If a site-specific determination of best technology available for minimizing adverse environmental impact pursuant to 9 VAC 25-31-165 C 2 a (5) (a) is requested because of costs significantly greater than those considered by the EPA administrator for a similar facility in establishing the applicable performance standards of 9 VAC 25-31-165 C 2 b, the facility is required to provide to the department the information specified in 9 VAC 25-31-165 C 2 b (6) (a) and b (6) (c). If a site-specific determination of best technology available for minimizing adverse environmental impact pursuant to 9 VAC 25-31-165 C 2 a (5) (b) is requested because of costs significantly greater than the benefits of meeting the applicable performance standards of 9 VAC 25-31-165 C 2 b at the facility, provide the information specified in 9 VAC 25-31-165 C 2 b (6) (a), b (6) (b), and b (6) (c):

(a) Comprehensive Cost Evaluation Study. Perform and submit the results of a Comprehensive Cost Evaluation Study, that includes:

(i) Engineering cost estimates in sufficient detail to document the costs of implementing design and construction technologies, operational measures, and/or restoration measures at the facility that would be needed to meet the applicable performance standards of 9 VAC 25-31-165 C 2 b;

(ii) A demonstration that the costs documented in 9 VAC 25-31-165 C 2 b (6) (a) (i) significantly exceed either those considered by the EPA administrator for a similar facility in establishing the applicable performance standards or the benefits of meeting the applicable performance standards at the facility; and

(iii) Engineering cost estimates in sufficient detail to document the costs of implementing the design and construction technologies, operational measures, and/or restoration measures in the Site-Specific Technology Plan developed in accordance with 9 VAC 25-31-165 C 2 b (6) (c).

(b) Benefits Valuation Study. If the facility is seeking a site-specific determination of best technology available for minimizing adverse environmental impact because of costs significantly greater than the benefits of meeting the applicable performance standards of 9 VAC 25-31-165 C 2 b, use a comprehensive methodology to fully value the impacts of impingement mortality and entrainment at the site and the benefits achievable by meeting the applicable performance standards. In addition to the valuation estimates, the benefit study must include the following:

(i) A description of the methodology(ies) used to value commercial, recreational, and ecological benefits (including any nonuse benefits, if applicable);

(ii) Documentation of the basis for any assumptions and quantitative estimates. If use of an entrainment survival rate other than zero is planned, submit a determination of entrainment survival at the facility based on a study approved by the department;

(iii) An analysis of the effects of significant sources of uncertainty on the results of the study; and

(iv) If requested by the department, a peer review of the items submitted in the Benefits Valuation Study. Choose the peer reviewers in consultation with the department that may consult with EPA and federal and state fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure. Peer reviewers must have appropriate qualifications depending upon the materials to be reviewed.

(v) A narrative description of any nonmonetized benefits that would be realized at the site if the applicable performance standards were met and a qualitative assessment of their magnitude and significance.

(c) Site-Specific Technology Plan. Based on the results of the Comprehensive Cost Evaluation Study required by 9 VAC 25-31-165 C 2 b (6) (a), and the Benefits Valuation Study required by 9 VAC 25-31-165 C 2 b (6) (b), if applicable, submit a Site-Specific Technology Plan to the department for review and approval. The plan must contain the following information:

(i) A narrative description of the design and operation of all existing and proposed design and construction technologies, operational measures, and/or restoration measures selected in accordance with 9 VAC 25-31-165 C 2 a (5);

(ii) An engineering estimate of the efficacy of the proposed and/or implemented design and construction technologies or operational measures, and/or restoration measures. This estimate must include a site-specific evaluation of the suitability of the technologies or operational measures for reducing impingement mortality and/or entrainment (as applicable) of all life stages of fish and shellfish based on representative studies (e.g., studies that have been conducted at cooling water intake structures located in the same water body type with similar biological characteristics) and, if applicable, site-specific technology prototype or pilot studies. If restoration measures will be used, provide a Restoration Plan that includes the elements described in 9 VAC 25-31-165 C 2 b (5).

(iii) A demonstration that the proposed and/or implemented design and construction technologies, operational measures, and/or restoration measures achieve an efficacy that is as close as practicable to the applicable performance standards of 9 VAC 25-31-165 C 2 b without resulting in costs significantly greater than either the costs considered by the EPA Administrator for a similar facility in establishing the applicable performance standards, or as appropriate, the benefits of complying with the applicable performance standards at the facility;

(iv) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the elements of the plan.

(7) **Verification Monitoring Plan.** If using compliance alternatives in 9 VAC 25-31-165 C 2 a (2), (3), (4), or (5) with design and construction technologies and/or operational measures, submit a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or already implemented technologies and/or operational measures. The verification study must begin once the design and construction technologies and/or operational measures are installed and continue for a period of time that is sufficient to demonstrate to the department whether the facility is meeting the applicable performance standards in 9 VAC 25-31-165 C 2 b or site-specific requirements developed pursuant to 9 VAC 25-31-165 C 2 a (5). The plan must provide the following:

(a) A description of the frequency and duration of monitoring, the parameters to be monitored, and the basis for determining the parameters and the frequency and duration for monitoring. The parameters selected and duration and frequency of monitoring must be consistent with any methodology for assessing success in meeting applicable performance standards in the Technology Installation and Operation Plan as required by 9 VAC 25-31-165 C 2 b (4) (b).

(b) A proposal on how naturally moribund fish and shellfish that enter the cooling water intake structure would be identified and taken into account in assessing success in meeting the performance standards in 9 VAC 25-31-165 C 2 b.

(c) A description of the information to be included in a biannual status report to the department.

4. **Monitoring.** The owner or operator of a Phase II existing facility must perform monitoring, as applicable, in accordance with the Technology Installation and Operation Plan required by 9 VAC 25-31-165 C 3 b (4) (b), the Restoration Plan required by 9 VAC 25-31-165 C 3 b (5), the Verification Monitoring Plan required by 9 VAC 25-31-165 C 3 b (7), and any additional monitoring specified by the department to demonstrate compliance with the applicable requirements of 9 VAC 25-31-165 C 2.

5. **Records and reporting.** The owner or operator of a Phase II existing facility is required to keep records and report information and data to the department as follows:

a. Keep records of all the data used to complete the permit application and show compliance with the requirements of 9 VAC 25-31-165 C 2, any supplemental information developed under 9 VAC 25-31-165 C 3, and any compliance monitoring data submitted under 9 VAC 25-31-165 C 4, for a period of at least three years from date of permit issuance. The department may require that these records be kept for a longer period.

b. Submit a status report to the department for review every two years that includes appropriate monitoring data and other information as specified by the department.

6. **Approved design and construction technologies.**

a. The following technologies constitute approved design and construction technologies for purposes of 9 VAC 25-31-165 C 2 a (4):

(1) Submerged cylindrical wedge-wire screen technology, if the following conditions are met:

(a) The cooling water intake structure is located in a freshwater river or stream;

(b) The cooling water intake structure is situated such that sufficient ambient counter currents exist to promote cleaning of the screen face;

(c) The maximum through-screen design intake velocity is 0.5 ft/s or less;

(d) The slot size is appropriate for the size of eggs, larvae, and juveniles of all fish and shellfish to be protected at the site; and

(e) The entire main condenser cooling water flow is directed through the technology. Small flows totaling less than 2 MGD for auxiliary plant cooling uses are excluded from this provision.

(2) A technology that has been approved in accordance with the process described in 9 VAC 25-31-165 C 2 b.

**9 VAC 25-31-220. Establishing limitations, standards, and other permit conditions.**

In addition to the conditions established under 9 VAC 25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.



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A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9 VAC 25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N ~~(2000)~~ (2005) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under § 405(d) of the CWA and Part VI (9 VAC 25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC § 6901 et seq.), Part C of Safe Drinking Water Act (42 USC § 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1401 et seq.), or the Clean Air Act (42 USC § 4701 et seq.), or in another permit issued by the Department of Environmental Quality, the Virginia Department of Health or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from

any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

*3. Requirements applicable to cooling water intake structures at new facilities under § 316 (b) of the CWA, in accordance with 9 VAC 25-31-165.*

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under § 405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

~~*3. Requirements applicable to cooling water intake structures at new facilities under § 316(b) of the CWA, in accordance with 9 VAC 25-31-165.*~~

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.



d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;  
or

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9 VAC 25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (~~2000~~) (2005);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and § 401 of the CWA.;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M (~~2000~~) (2005), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D (~~2000~~) (2005).

E. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A (~~2000~~) (2005).

F. A notification level which exceeds the notification level of 9 VAC 25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the

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technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9 VAC 25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9 VAC 25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9 VAC 25-31-190 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9 VAC 25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and § 405(d)(4) of the CWA; and

d. According to test procedures approved under 40 CFR Part 136 (~~2000~~) (2005) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part

VI of this chapter (where applicable), but in no case less than once a year;

6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9 VAC 25-31-110; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9 VAC 25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA and Part VII (9 VAC 25-31-730 et seq.) of this chapter;

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent applicable under § 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and

4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;
2. Authorized under § 402(p) of the CWA for the control of storm water discharges;
3. Numeric effluent limitations are infeasible; or
4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §§ 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and §§ 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has

nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§ 201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limitations under § 301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9 VAC 25-31-330.

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## **9 VAC 25-31-290. Public notice of permit actions and public comment period.**

### A. Scope.

1. The board shall give public notice that the following actions have occurred:

- a. A draft permit has been prepared under 9 VAC 25-31-260 D;
- b. A public hearing has been scheduled under 9 VAC 25-31-310; or
- c. A VPDES new source determination has been made under 9 VAC 25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9 VAC 25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one permit or permit actions.

### B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his or her rights to receive notice for any classes and categories of permits):

- a. The applicant (except for VPDES general permits when there is no applicant);
- b. Any other agency which the board knows has issued or is required to issue a VPDES, sludge management permit;
- c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
- d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
- e. Any user identified in the permit application of a privately owned treatment works;
- f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.);

g. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

### D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice or practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area; and

*g. Requirements applicable to cooling water intake structures under § 316 of the CWA, in accordance with 9 VAC 25-31-165; and*

~~g.~~ *h.* Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9 VAC 25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9 VAC 25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under § 301 or § 306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum:

1. The name of the applicant;

2. The nature of the application and proposed discharge;

3. The availability and timing of any comment period; and

4. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.

The board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property

owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

G. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

## **9 VAC 25-31-770. National pretreatment standards: prohibited discharges.**

A. 1. General prohibitions. A user may not introduce into any POTW any pollutant or pollutants which cause pass through, interference or violation of water quality standards. These general prohibitions and the specific prohibitions in subsection B of this section apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards or any national, state, or local pretreatment requirements.

2. Affirmative defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subdivision A 1 of this section and the specific prohibitions in subdivisions B 3, 4, 5, 6, and 7 of this section where the user can demonstrate that:

a. It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

b. (1) A local limit designed to prevent pass through or interference or both, as the case may be, was developed in accordance with subsection C of this section for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

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(2) If a local limit designed to prevent pass through or interference or both, as the case may be, has not been developed in accordance with subsection C of this section for the pollutant or pollutants that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's VPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

B. Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21 ~~(2000)~~ (2005);

2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate or pollutant concentration which will cause interference with the POTW;

5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F) unless the director, upon request of the POTW, approves alternate temperature limits;

6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or

8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

C. When specific limits must be developed by POTW.

1. Each POTW developing a POTW pretreatment program pursuant to 9 VAC 25-31-800 shall develop and enforce specific limits to implement the prohibitions listed in subdivisions A 1 and subsection B of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

2. All other POTW's shall, in cases where pollutants contributed by users result in interference, pass through or water quality standards violations and such violation is likely to recur, develop and enforce specific effluent limits for industrial users, and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued

compliance with the POTW's VPDES permit or sludge use or disposal practices.

3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

4. All POTW's with approved pretreatment programs shall provide a written technical evaluation of the need to revise their local limits within one year of reissuance of VPDES permits for applicable treatment works, or within one year of VPDES permit modifications resulting in significant changes in VPDES permit limitations, POTW pretreatment operations, or POTW sludge disposal methods.

5. *POTW's may develop Best Management Practices (BMPs) to implement subdivisions 1 and 2 of this subsection. Such BMPs shall be considered local limits and pretreatment standards for the purposes of this Part and § 307(d) of the Act.*

D. Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection C of this section, such limits shall be deemed pretreatment standards for the purposes of § 307(d) of the CWA.

E. EPA and state enforcement actions under the law and § 309(f) of the CWA. If, within 30 days after notice of an interference or pass through violation has been sent by the director or EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the director or EPA may take appropriate enforcement action under the authority provided by the law and in § 309(f) of the CWA.

## **9 VAC 25-31-780. National pretreatment standards: categorical standards.**

National pretreatment standards included in the regulations incorporated by reference in 9 VAC 25-31-30, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

A. Category determination request.

1. Application deadline within 60 days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial user or POTW may request that the Water Management Division Director or director, as appropriate, provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operation. A new source must request this certification prior to commencing discharge. Where a certification is submitted by a POTW, the POTW shall notify any affected industrial user of such submission. The industrial user may provide written comments on the POTW submission to the Water Management Division Director or director, as appropriate, within 30 days of notification.

2. Contents of application each request shall contain a statement:

- a. Describing which subcategories might be applicable; and
- b. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. Deficient requests. The Water Management Division Director or director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the director, the request for a determination shall be denied.

4. Final decision.

a. When the Water Management Division Director or director receives a submittal he will, after determining that it contains all of the information required by subdivision 2 of this subsection, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or director will then make a written determination of the applicable subcategory and state the reasons for the determination.

b. Where the request is submitted to the director, the director shall forward the determination described in this subdivision to the Water Management Division Director who may make a final determination. If the Water Management Division Director does not modify the director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the director's decision is final.

c. Where the request is submitted by the industrial user or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the director's decision, the Water Management Division Director's decision will be final.

d. The director shall send a copy of the determination to the affected industrial user and the POTW.

5. Requests for public hearing or legal decision. Within 30 days following the date of receipt of notice of the final

determination as provided for by subdivision A 4 d of this section, the requester may submit a petition to reconsider or contest the decision to the regional administrator who shall act on such petition expeditiously and state the reasons for his determination in writing.

B. Deadline for compliance with categorical standards. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the regulations incorporated by reference in 9 VAC 25-31-30. Direct dischargers with VPDES permits modified or reissued to provide a variance pursuant to § 301(i)(2) of the CWA shall be required to meet compliance dates set in any applicable categorical pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of a new source as defined in 9 VAC 25-31-10. New sources shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

C. 1. Concentration and mass limits pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, state or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

2. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day ~~of~~ or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

3. A control authority calculating equivalent mass-per-day limitations under subdivision 2 of this subsection shall calculate such limitations by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

4. A control authority calculating equivalent concentration limitations under subdivision 2 of this subsection shall calculate such limitations by dividing the mass limitations derived under subdivision 3 of this subsection by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term

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average flow rate, such as the average daily flow rate during the representative year.

5. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all the following conditions in subdivisions 5 a (1) through (5) of this subsection as follows.

a. To be eligible for equivalent mass limits, the industrial user must:

(1) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(2) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

(3) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(4) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(5) Have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

b. An industrial user subject to equivalent mass limits must:

(1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(2) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(3) Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20% from its baseline production rates determined in subdivision 5 a (3) of this subsection. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(4) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subdivision 5 a (1) of this subsection so long as it discharges under an equivalent mass limit.

c. A control authority that chooses to establish equivalent mass limits:

(1) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of

the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(2) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(3) May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to subdivision 5 d of this subsection. The industrial user must also be in compliance with 9 VAC 25-31-890 (regarding the prohibition of bypass).

d. The control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

6. The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions: when converting such limits to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by subsection D of this section.

~~5-~~ 7. Equivalent limitations calculated in accordance with subdivisions 3 ~~and~~ 4, 5 and 6 of this subsection ~~shall be~~ are deemed pretreatment standards for the purposes of § 307(d) of the CWA and this part. ~~Industrial users will be required to.~~ The control authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the individual user must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

~~6-~~ 8. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations. Where such standards are being applied, the same production ~~or~~ flow figure shall be used in calculating both ~~types of equivalent limitations~~ the average and the maximum equivalent limitation.

~~7-~~ 9. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.



D. Dilution prohibited as substitute for treatment. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority ~~as defined in 9 VAC 25-31-840-A,~~ may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

E. Combined wastestream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority, ~~as defined in 9 VAC 25-31-840-A,~~ or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standard or standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

1. Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

a. Alternative concentration limit.

$$C_T = \left( \frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left( \frac{F_T - F_D}{F_T} \right)$$

where:

$C_T$  = the alternative concentration limit for the combined wastestream.

$C_i$  = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream  $i$ .

$F_i$  = the average daily flow (at least a 30-day average) of stream  $i$  to the extent that it is regulated for such pollutant.

$F_D$  = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, noncontact cooling streams,

stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; (ii) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (iii) any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403 ~~(2000)~~ (2005)):

- (1) The pollutants of concern are not detectable in the effluent from the industrial user;
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or
- (4) The wastestream contains only pollutants which are compatible with the POTW.

$F_T$  = The average daily flow (at least a 30-day average) through the combined treatment facility (includes  $F_i$ ,  $F_D$  and unregulated streams).

$N$  = The total number of regulated streams.

b. Alternative mass limit.

$$M_T = \left( \sum_{i=1}^N M_i \right) \left( \frac{F_T - F_D}{\sum_{i=1}^N F_i} \right)$$

where:

$M_T$  = the alternative mass limit for a pollutant in the combined wastestream.

$M_i$  = the categorical pretreatment standard mass limit for a pollutant in the regulated stream  $i$  (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

$F_i$  = the average flow (at least a 30-day average) of stream  $i$  to the extent that it is regulated for such pollutant.

$F_D$  = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of

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that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; (ii) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (iii) any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403 ~~(2000)~~ (2005)):

- (1) The pollutants of concern are not detectable in the effluent from the industrial user;
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or
- (4) The wastestream contains only pollutants which are compatible with the POTW.

$F_T$  = The average flow (at least a 30-day average) through the combined treatment facility (includes  $F_i$ ,  $F_D$  and unregulated streams).

$N$  = The total number of regulated streams.

2. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.
3. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of 9 VAC 25-31-840 G.
4. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring point or points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

## **9 VAC 25-31-790. Removal credits.**

### A. General.

1. Definitions for the purpose of this section:

"Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

"Sludge requirements" means the following statutory provisions and regulations or permits issued thereunder (or more stringent Virginia or local regulations): § 405 of the CWA; the Solid Waste Disposal Act (SWDA) (42 USC § 6901 et seq.) (including Title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) (42 USC § 6901 et seq.) and Virginia regulations contained in any Virginia sludge management plan prepared pursuant to Subtitle D of SWDA); the Clean Air Act (42 USC § 4701 et seq.); the Toxic Substances Control Act (15 USC § 2601 et seq.); and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

2. General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standards applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with subdivision 4 of this subsection. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment statement so specifies.

3. Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met;

- a. Application. The POTW applies for, and receives, authorization from the director to give a removal credit in accordance with the requirements and procedures specified in subsection E of this section;
- b. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection B of this section;
- c. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this part; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection D of this section;
- d. Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply is required to meet its categorical pretreatment standards as modified by the removal credit. If

granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal costs, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

(1) For any pollutant listed in Appendix G-I of the regulation incorporated by reference in 9 VAC 25-31-750 for the use or disposal practice employed by the POTW, when the requirements of Part VI of this chapter for that practice are met;

(2) For any pollutant listed in Appendix G-II of the regulation incorporated by reference in 9 VAC 25-31-750 for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in Appendix G-II of the regulation incorporated by reference in 9 VAC 25-31-750 in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in Appendix G-II of the regulation incorporated by reference in 9 VAC 25-31-750; and

(3) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill that meets the criteria in the Code of Virginia and the Solid Waste Management Regulation, 9 VAC 20-80-40 ~~et seq.~~;

e. VPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable limitations and conditions in its VPDES permit, it will be in compliance when the industrial user or users to whom the removal credit would apply is required to meet its categorical pretreatment standard or standards, as modified by the removal credit provision.

4. Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard

r = removal credit for that pollutant as established under subsection B of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y = revised discharge limit for the specified pollutant (expressed in same units as x)

B. Establishment of removal credits; demonstration of consistent removal.

1. *Definition of "consistent removal."* "Consistent removal" means the average of the lowest 50% of the removal measured according to subdivision 2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in subdivision 2 of this subsection must be reported and used in computing consistent removal. If a

substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between eight and 12, the average of the lowest six removals shall be used. If there are less than eight samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

2. *Consistent removal data.* Influent and effluent operational data demonstrating consistent removal or other information, as provided for in subdivision B 1 of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. *Representative data; seasonal.* The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed;

b. *Representative data; quality and quantity.* The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in subdivision B 1 of this subsection;

c. Sampling procedures: composite.

(1) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(2) (a) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include non-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(b) In addition, upon the director's concurrence, a POTW may utilize an historical data base amassed prior to July 24, 1996, provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

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(3) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample or samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes;

e. Analytical methods. The sampling referred to in subdivisions 2 a through d of this subsection and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (~~2000~~) (2005) and amendments thereto. Where 40 CFR Part 136 (~~2000~~) (2005) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator; and

f. Calculation of removal. All data acquired under the provisions of this section must be submitted to the department. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percentage of the influent concentration, or, where such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director as provided for in subdivision 1 of this subsection.

C. Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must

be demonstrated pursuant to the requirements of subsection B of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection B of this section, the authority to grant provisional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director.

D. Exception to POTW pretreatment program requirement. A POTW required to develop a local pretreatment program by 9 VAC 25-31-800 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

1. All industrial users who are currently subject to a categorical pretreatment standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in 9 VAC 25-31-840 B 1 through 7 (except new or modified industrial users must only submit the information required by 9 VAC 25-31-840 B 1 through 6), pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment *standard* or standards as modified by the removal credit;

2. The POTW must have submitted to the department an application for pretreatment program approval meeting the requirements of 9 VAC 25-31-800 and 9 VAC 25-31-810 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's VPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

3. The POTW must:

a. Compile and submit data demonstrating its consistent removal in accordance with subsection B of this section;

b. Comply with the conditions specified in subdivision A 3 of this section; and

c. Submit a complete application for removal credit authority in accordance with subsection E of this section;

4. If a POTW receives authority to grant conditional removal credits and the director subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in subdivisions 2 and 3 of this subsection, the authority to grant conditional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director;

5. If a POTW grants conditional removal credits and the POTW or the director subsequently makes a final determination, after appropriate notice, that the industrial user

or users failed to comply with the conditions in subdivision 1 of this subsection, the conditional credit shall be terminated by the POTW or the director for the noncomplying industrial user or users and the industrial user or users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the industrial user or users or the industrial user or users had demonstrated subsequential compliance; and

6. The director may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures of 9 VAC 25-31-830, but in no event later than the time of any pretreatment program approval or any VPDES permit reissuance thereunder.

E. POTW application for authorization to give removal credits and director review.

1. Who must apply. Any POTW that wants to give a removal credit must apply for authorization from the director.

2. To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the department.

3. When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

4. Contents of the application. An application for authorization to give removal credits must be supported by the following information:

a. List of pollutants. A list of pollutants for which removal credits are proposed;

b. Consistent removal data. The data required pursuant to subsection B of this section;

c. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subdivision A 4 of this section;

d. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection D of this section;

e. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subdivision A 3 d of this section; and

f. VPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's VPDES permit limits and conditions as required in subdivision A 3 e of this section.

5. Director review. The director shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of 9 VAC 25-31-830 and shall, in no event, have more than 180 days from public notice of an application to complete review.

6. Nothing in this part precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

F. Continuation and withdrawal of authorization.

1. Effect of authorization. Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in subdivision A 3 d of this section or its VPDES permit limits and conditions as required by subdivision A 3 e of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one or more industrial users that initially were not granted removal credits, it must notify the department.

2. Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's VPDES permit as soon as possible and shall become an enforceable requirement of the POTW's VPDES permit. The removal credits will remain in effect for the term of the POTW's VPDES permit, provided the POTW maintains compliance with the conditions specified in subdivision 4 of this subsection.

3. Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the director, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

4. Modification or withdrawal of removal credits.

a. Notice of POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to subdivision 3 of this subsection or other relevant information available to it, the director determines:

(1) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(2) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's VPDES Permit.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

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c. Public notice of withdrawal or modification. The director shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a public hearing. Following such notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical pretreatment standards) as may be specified by the director.

G. Removal credits in state-run pretreatment programs. Where the director elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of subdivision A 3 of this section.

H. Compensation for overflow. For the purpose of this section, "overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subdivisions subdivision 1 or 2 of this subsection. However, this subsection shall not apply where industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant:

1. The industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the department evidence that:

a. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

b. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in subdivision 1 c of this subsection, to insure that industrial users are containing,

ceasing or reducing operations during POTW system overflow; and

c. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, the director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

2. a. The consistent removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

where:

$r_m$  = POTW's consistent removal rate for that pollutant as established under subsections A 1 and B 2 of this section

$r_c$  = removal corrected by the overflow factor

Z = hours per year that overflow occurred between the industrial user or users and the POTW treatment plant, the hours either to be shown in the POTW's current VPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant; and.

~~b. After July 1, 1983, consistent removal may be claimed only where efforts to correct the conditions resulting in untreated discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" or "Program Guidance Memorandum 61" (same document) published on December 16, 1975, by EPA Office of Water Program Operations (WH-546). Revisions to discharge limits in categorical pretreatment standards may not be made where efforts have not been committed to by the POTW to minimize pollution from overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75-34 and be making an effort to implement the plan. The POTW is complying with all NPDES VPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Clean Water Act affecting combined sewer overflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.~~

~~c. If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the director, may continue to be claimed according to the formula in subdivision 2 a of this subsection as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the nonstructural cost effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost effective overflow controls identified in the analysis should federal funds become available, so applies for such~~

~~funds, and proceeds with the required construction in an expeditious manner. In addition, consistent removal may, subject to the approval of the director, continue to be claimed according to the formula in subdivision 2 a of this subsection where the POTW has completed and the director has accepted the analysis required by PRM 75-34 and the POTW has requested inclusion in its VPDES permit of an acceptable compliance schedule providing for timely implementation of cost effective measures identified in the analysis. (In considering what is timely implementation, the director shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.)~~

**9 VAC 25-31-800. Pretreatment program requirements: development and implementation by POTW.**

A. ~~POTW~~ POTWs required to develop a pretreatment program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards will be required to establish a POTW pretreatment program unless the director exercises his or her option to assume local responsibilities. The regional administrator or director may require that a POTW with a design flow of five mgd or less develop a POTW pretreatment program if he finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, violations of water quality standards, or other circumstances warrant in order to prevent interference with the POTW or pass through.

B. Deadline for program approval. POTWs identified as being required to develop a POTW pretreatment program under subsection A of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the director of such identification. The approved program shall be in operation within two years of the effective date of the permit. The POTW pretreatment program shall meet the criteria set forth in subsection F of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

C. Incorporation of approved programs in permits. A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in subsection B of this section. The POTW's VPDES permit will be reissued or modified to incorporate the approved program as enforceable conditions of the permit. The modification of a POTW's VPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in 9 VAC 25-31-830 shall be deemed a minor permit modification subject to the procedures in 9 VAC 25-31-400.

D. Incorporation of compliance schedules in permits. (Reserved.)

E. Cause for revocation and reissuance or modification of permits. Under the authority of the law and § 402 (b)(1)(C) of

the CWA, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;
2. Coordinate the issuance of § 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;
3. Incorporate a modification of the permit approved under § 301(h) or § 301(i) of the CWA;
4. Incorporate an approved POTW pretreatment program in the POTW permit;
5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or
6. Incorporate the removal credits (established under 9 VAC 25-31-790) in the POTW permit.

F. POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit.
- b. Require compliance with applicable pretreatment standards and requirements by industrial users.

c. Control through permit, or order the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under 9 VAC 25-31-10, this control shall be achieved through *individual* permits or equivalent individual control mechanisms issued to each such user. ~~Such control mechanisms must be enforceable and contain, at a minimum, the following conditions except as follows:~~

(1) (a) *At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:*

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(i) *Involve the same or substantially similar types of operations;*

(ii) *Discharge the same types of wastes;*

(iii) *Require the same effluent limitations;*

(iv) *Require the same or similar monitoring; and*

(v) *In the opinion of the POTW, be more appropriately controlled under a general control mechanism than under individual control mechanisms.*

(b) *To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with 9 VAC 25-31-840 E 2 for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with 9 VAC 25-31-840 E 2. The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in subdivisions 1 c (1) (a) (i) through (v) of this subsection, and a copy of the user's written request for coverage for three years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (9 VAC 25-31-780 E and 9 VAC 25-31-870).*

~~Such~~ (2) *Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:*

~~(1)~~ (i) *Statement of duration (in no case more than five years);*

~~(2)~~ (ii) *Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;*

~~(3)~~ (iii) *Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;*

(4) (iv) *Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 9 VAC 25-31-840 E 2, or a specific waiver pollutant in the case of an individual control mechanism), sampling location, sampling*

*frequency, and sample type, based on the applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;*

~~(5)~~ (v) *Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and* ~~(6)~~ *any applicable compliance schedules, which may not extend beyond applicable federal deadlines.*

~~(4)~~ (f) *Requirements to control slug discharges, if determined by the POTW to be necessary.*

d. *Require:*

(1) *The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and*

(2) *The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and ensure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in 9 VAC 25-31-840.*

e. *Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under 9 VAC 25-31-840 O to ensure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under § 308 of the CWA.*

f. *Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards and requirements.*

*Pretreatment requirements which will be enforced through the remedies set forth in this subdivision, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or this part. The POTW shall have authority and procedures (after informal notice to the discharger) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has*



sought a monetary penalty which the director believes to be insufficient.

g. Comply with the confidentiality requirements set forth in 9 VAC 25-31-860.

2. *Procedures.* The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this subdivision shall be made available to the regional administrator or department upon request.

b. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subdivision 2 a of this subsection. This information shall be made available to the regional administrator or department upon request.

c. Notify industrial users identified under subdivision 2 a of this subsection, of applicable pretreatment standards and any applicable requirements under §§ 204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (42 USC § 6901 et seq.). Within 30 days of approval pursuant to 9 VAC 25-31-800 F 6, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 9 VAC 25-31-840.

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year *except as otherwise specified below.*

*(1) Where the POTW has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with 9 VAC 25-31-840 E the POTW must sample for the waived pollutant(s) at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW must immediately begin at least annual effluent monitoring of the user's discharge and inspection.*

*(2) Where the POTW has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the POTW must evaluate, at least once per year, whether an industrial user continues to meet the criteria in 9 VAC 25-31-10.*

*(3) In the case of industrial users subject to reduced reporting requirements under 9 VAC 25-31-840 E, the POTW must*

*randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in 9 VAC 25-31-840 E, the POTW must immediately begin sampling and inspecting the industrial user at least once a year.*

*f. Evaluate, at least once every two years, whether each such significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2005; additional significant industrial users must be evaluated within one year of being designated a significant industrial user. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTWs regulating local limits or permit conditions. The results of such activities shall be available to the department upon request. Significant industrial users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:*

*(1) Description of discharge practices, including nonroutine batch discharges;*

*(2) Description of stored chemicals;*

*(3) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 9 VAC 25-31-770 B, with procedures for follow-up written notification within five days; and*

*(4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment necessary for emergency response.*

*g. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under 9 VAC 25-31-840, or indicated by analysis, inspection, and surveillance activities described in subdivision 2 e of this subsection. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.*

*h. Comply with the public participation requirements of the Code of Virginia and 40 CFR Part 25 (2000) (2005) in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of industrial users which, at any time during the previous 12 months were in significant noncompliance with applicable pretreatment requirements.*

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For the purposes of this provision, ~~an~~ a significant industrial user (or any industrial user that violates subdivision 2 h (3), (4) or (8) of this subsection) is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) ~~the daily maximum limit or the average limit for the same pollutant parameter~~ a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9 VAC 25-31-10;

(2) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the ~~daily maximum limit or the average limit~~ numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9 VAC 25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment ~~effluent limit (daily maximum or longer term average)~~ standard or requirement as defined by 9 VAC 25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under subdivision 1 f of this subsection to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within ~~30~~ 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations *that may include a violation of Best Management Practices* which the control authority POTW determines will adversely affect the operation or implementation of the local pretreatment program.

3. *Funding.* The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subdivisions 1 and 2 of this subsection. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section, and (ii) a limited aspect of the program does not need to be implemented immediately (see 9 VAC 25-31-810 B).

4. *Local limits.* The POTW shall develop local limits as required in 9 VAC 25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official or officials responsible for each type of response; and

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subdivisions 1 and 2 of this subsection.

6. The POTW shall prepare and maintain a list of its significant industrial users. The list shall identify the criteria in the definition of significant industrial user in Part I (9 VAC 25-31-10 et seq.) of this chapter which are applicable to each industrial user and, ~~for industrial users meeting the criteria in subdivision 2 of that definition where applicable,~~ shall also indicate whether the POTW has made a determination pursuant to subdivision 3 of that definition that such industrial user should not be considered a significant industrial user. This list shall be submitted to the department pursuant to 9 VAC 25-31-810 as a nonsubstantial program modification pursuant to 9 VAC 25-31-900 D. Modifications to the list shall be submitted to the department pursuant to 9 VAC 25-31-840 I 1.

G. A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (electronic reporting).

## **9 VAC 25-31-840. Reporting requirements for POTWs and industrial users.**

A. ~~The term "control authority" as it is used in this section refers to:~~ (Reserved.)

~~1. The POTW if the POTW's submission for its pretreatment program, as defined in 9 VAC 25-31-10, has been approved in accordance with the requirements of 9 VAC 25-31-830; or~~

~~2. The director if the submission has not been approved.~~

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 9 VAC 25-31-780 A 4, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit

to the control authority a report which contains the information listed in subdivisions 1 through 7 of this subsection. At least 90 days prior to commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 5 of this subsection. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subdivisions 4 and 5 of this subsection.

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. Regulated process streams; and

b. Other streams as necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E. (See subdivision 5 e d of this subsection.)

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process-;

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. *In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard-;*

~~e. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24 hour composite samples must be obtained through flow proportional composite sampling techniques where feasible. The control authority may waive flow proportional composite sampling for any~~

~~industrial user that demonstrates that flow proportional sampling is infeasible. In such cases, samples may be obtained through time proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.~~

~~d. c.~~ The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection-;

~~e. d.~~ Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 9 VAC 25-31-780 E, this adjusted limit along with supporting data shall be submitted to the control authority-;

~~f. e.~~ Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (2000) (2005) and amendments thereto. Where 40 CFR Part 136 (2000) (2005) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator-;

~~g. f.~~ The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures-; and

~~h. g.~~ The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW-

6. Certification. ~~The user shall submit~~ A statement, reviewed by an authorized representative of the industrial user (as defined in subsection L M of this section) and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, are required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment or O and M, or both, will be required to meet the pretreatment standards, ~~the user shall submit~~, the shortest schedule by which the industrial user will provide such additional pretreatment or O and M, or both. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. Where the industrial user's categorical pretreatment standard has been modified by a removal allowance (9 VAC

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25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), or a fundamentally different factors variance (9 VAC 25-31-850), or any *combination* of them, at the time the user submits the report required by *this* subsection ~~B of this section~~, the information required by subdivisions 6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), or a fundamentally different factors variance (9 VAC 25-31-850), or any *combination* of them, after the user submits the report required by this subsection, any necessary amendments to the information requested by subdivisions 6 and 7 of this subsection shall be submitted by the user to the control authority within 60 days after the modified limit is approved.

C. Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subdivision B 7 of this section:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subdivisions B 4 through B 6 of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9 VAC 25-31-780 C, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subdivision B 4 of this section except that the control authority may require more detailed reporting of flows. *In cases where the pretreatment standard requires compliance with a Best Management Practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user.* At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. *The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:*

a. *The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.*

b. *The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.*

c. *In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with ~~subdivision 4~~ subsection L of this subsection, and include the certification statement in 9 VAC 25-31-780 A 2 b. Nondetectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.*

d. Any grant of the monitoring waiver by the control authority must be included as a condition in the user's control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the control authority for three years after expiration of the waiver.

e. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 9 VAC 25-31-840 E 1."

f. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of subdivision 1 of this subsection or other more frequent monitoring requirements imposed by the control authority, and notify the control authority.

g. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

3. The control authority may reduce the requirement in the subdivision 1 of this subsection to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the approval authority, where the industrial user meets all of the following conditions:

a. The industrial user's total categorical wastewater flow does not exceed any of the following:

(1) 0.01% of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

(2) 0.01% of the design dry weather organic treatment capacity of the POTW; and

(3) 0.01% of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with 9 VAC 25-31-770 C and D.

b. The industrial user has not been in significant noncompliance, as defined in 9 VAC 25-31-800 F 2 g, for any time in the past two years;

c. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of

conditions occurring during the reporting period pursuant to subdivision G 3 of this section;

d. The industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subdivision 3 a or b of this subsection. Upon notification, the industrial user must immediately begin complying with the minimum reporting in subdivision 1 of this subsection; and

e. The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under subdivision 3 of this subsection for a period of three years after the expiration of the term of the control mechanism.

2. 4. Where the control authority has imposed mass limitations on industrial users as provided for by 9 VAC 25-31-780 D C, the report required by subdivision 1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

3. 5. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9 VAC 25-31-780 C, the report required by subdivision 1 of this subsection shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subdivision 1 of this subsection shall include the user's actual average production rate for the reporting period.

F. Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9 VAC 25-31-770 B, by the industrial user.

G. Monitoring and analysis to demonstrate continued compliance with pretreatment standards and requirements.

1. Except in the case of nonsignificant categorical users, the reports required in subsections B, D, and E, and H of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subsections subdivision B 6 and subsection D of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after

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becoming aware of the violation, ~~except the industrial user is not required to resample if~~. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user or the control authority receives the results of this sampling.

3. The reports required in subsection E of this section ~~shall~~ must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data ~~is~~ are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and ~~ensure~~ assure compliance by industrial users with applicable pretreatment standards and requirements. *Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.*

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections B and D of this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by subsections E and H of this section, the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

4- 5. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 ~~(2000)-(2005)~~ and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the control authority. Sampling shall be performed in accordance with

EPA-approved techniques. Where 40 CFR Part 136 ~~(2000)~~ (2005) does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

5- 6. If an industrial user subject to the reporting requirement in subsection E or H of this section monitors any *regulated* pollutant *at the appropriate sampling location* more frequently than required by the control authority, using the procedures prescribed in subdivision 4 5 of this subsection, the results of this monitoring shall be included in the report.

H. Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority ~~shall~~ must require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users ~~shall~~ must submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. *In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine the compliance status of the user.* These reports ~~shall~~ must be based on sampling and analysis performed in the period covered by the report, and ~~performed~~ in accordance with the techniques described in 40 CFR Part 136 ~~(2000)-(2005)~~ and amendments thereto. ~~Where 40 CFR Part 136 (2000) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the administrator.~~ This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. ~~Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.~~

I. Annual POTW reports. POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each

industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements; *The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under subdivision E 3 of this section and identify which industrial users are nonsignificant categorical industrial users.*

2. A summary of the status of industrial user compliance over the reporting period;

3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the department; and

5. Any other relevant information requested by the director.

J. Notification of changed discharge. All industrial users shall promptly notify the ~~POTW control authority~~ *(and the POTW if the POTW is not the control authority)* in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the Code of Virginia and this section.

K. Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by 9 VAC 25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the department including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the department.

L. Signatory requirements for industrial user reports. The reports required by subsections B, D, and E of this section shall include the certification statement as set forth in 9 VAC 25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the industrial user submitting the reports required by subsections B, D and E of this section is a corporation. For the purpose of this subdivision, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the

corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or ~~operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars)~~, *if operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.*

2. By a general partner or proprietor if the industrial user submitting the reports required by subsections B, D and E of this section is a partnership or sole proprietorship, respectively.

3. By a duly authorized representative of the individual designated in subdivision 1 or 2 of this subsection if:

a. The authorization is made in writing by the individual described in subdivision 1 or 2 of this subsection;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the control authority.

4. If an authorization under subdivision 3 of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision 3 of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports. Reports submitted to the department by the POTW in accordance with subsection I of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee ~~if such employee is responsible for overall operation of the POTW.~~ *The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.*

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N. Provision governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

1. The provisions of 18 USC § 1001 relating to fraud and false statements;
2. The provisions of the law or § 309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and
3. The provisions of § 309(c)(6) of the CWA regarding responsible corporate officers.

O. Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section *including documentation associated with Best Management Practices*. Such records shall include for all samples:

- a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
- b. The dates analyses were performed;
- c. Who performed the analyses;
- d. The analytical techniques/methods used; and
- e. The results of such analyses.

2. Any industrial user or POTW subject to the reporting requirements established in this section (*including documentation associated with Best Management Practices*) shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the director and the regional administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

3. Any POTW to which reports are submitted by an industrial user pursuant to subsections B, D, E, and H of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the director and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director or the regional administrator.

P. 1. The industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261 (2000)–(2005). Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261 (2000)–(2005), the EPA hazardous waste number, and the type of discharge

(continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subsection J of this section. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of subsections B, D, and E of this section.

2. Dischargers are exempt from the requirements of subdivision 1 of this subsection during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2000) (2005). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2000)–(2005), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under § 3001 of RCRA (42 USC § 6901 et seq.) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

*Q. Annual certification by nonsignificant categorical industrial users. A facility determined to be a nonsignificant categorical industrial user pursuant to 9 VAC 25-31-10 must annually submit the following certification statement, signed in accordance with the signatory requirements in subsection L of this section. This certification must accompany an alternative report required by the control authority:*

*"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR \_\_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ [months, days, year]:*



1. The facility described as \_\_\_\_\_ [facility name] met the definition of a nonsignificant categorical industrial user as described in 9 VAC 25-31-10;

2. The facility ~~compiled~~ complied with all applicable pretreatment standards and requirements during this reporting period; and

3. The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.

R. The control authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (Electronic reporting).

**9 VAC 25-31-870. Net/gross calculation.**

~~Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section.~~

A. Application. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section. Any industrial user wishing to obtain credit for intake pollutants must make application to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of ~~subsections~~ subsection B and C of this section are met.

B. Criteria.

1. Either

a. The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

4. b. The industrial user ~~must demonstrate~~ demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards or standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this section.

4. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may

waive this requirement if it finds that no environmental degradation will result.

~~C. The applicable regulations incorporated by reference in 9 VAC 25-31-30 specifically provide that they shall be applied on a net basis.~~

VA.R. Doc. No. R06-254; Filed June 5, 2006, 12:47 p.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 5-590. Waterworks Regulations (amending 12 VAC 5-590-10, 12 VAC 5-590-370, 12 VAC 5-590-410, 12 VAC 5-590-440, 12 VAC 5-590-545, and 12 VAC 5-590-820, and Appendix N).

**Statutory Authority:** §§ 32.1-12 and 32.1-170 of the Code of Virginia.

**Effective Date:** September 6, 2006.

**Agency Contact:** Tamara Metzfield, Regulatory Compliance Paralegal, Department of Health, 109 Governor Street, Room 632, Richmond, VA 23219, telephone (804) 864-7499, FAX (804) 864-7521 or e-mail tamara.metzfield@vdh.virginia.gov.

**Summary:**

The amendments conform the regulation to 40 CFR Parts 9, 141 and 142 – found in the National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule dated January 22, 2001.

The amendments (i) add new definitions and clarify existing definitions; (ii) add new requirements and clarify existing requirements for monitoring and testing; (iii) update and clarify existing requirements for determining compliance; (iv) update and clarify existing requirements and add new requirements for analytical methods; (v) update and clarify consumer confidence report requirements; (vi) add data on the best available technologies/treatment techniques for arsenic; and (vii) clarify consumer confidence report and public notification requirements.

**12 VAC 5-590-10. Definitions.**

As used in this chapter, the following words and terms shall have meanings respectively set forth unless the context clearly requires a different meaning:

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"Action level" means the concentration of lead or copper in water specified in 12 VAC 5-590-410 E, which determines, in some cases, the treatment requirements contained in 12 VAC 5-590-420 C, D, E and F that a waterworks is required to complete.

"Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying pure water to a tank, plumbing fixture, or other device and the rim of the receptacle.

"Annual daily water demand" means the average rate of daily water usage over at least the most recent three-year period.

"Applied water" means water that is ready for filtration.

"Approved" means material, equipment, workmanship, process or method that has been accepted by the division as suitable for the proposed use.

"Auxiliary water system" means any water system on or available to the premises other than the waterworks. These auxiliary waters may include water from a source such as wells, lakes, or streams; or process fluids; or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

"Backflow" means the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

"Backflow prevention device" means any approved device, method, or type of construction intended to prevent backflow into a waterworks.

"Best available technology (BAT)" means the best technology, treatment techniques, or other means which the commissioner finds, after examination for efficacy under field conditions and not solely under laboratory conditions and in conformance with applicable EPA regulations, are available (taking cost into consideration).

"Board" means the State Board of Health.

"Breakpoint chlorination" means the addition of chlorine to water until the chlorine demand has been satisfied and further additions result in a residual that is directly proportional to the amount added.

"Chlorine" means dry chlorine.

"Chlorine gas" means dry chlorine in the gaseous state.

"Chlorine solution (chlorine water)" means a solution of chlorine in water. Note: the term chlorine solution is sometimes used to describe hypochlorite solutions. This use of the term is incorrect.

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

"Coliform bacteria group" means a group of bacteria predominantly inhabiting the intestines of man or animal but also occasionally found elsewhere. It includes all aerobic and facultative anaerobic, gram-negative, non-sporeforming bacilli that ferment lactose with production of gas. Also included are

all bacteria that produce a dark, purplish-green colony with metallic sheen by the membrane filter technique used for coliform identification.

"Commissioner" means the State Health Commissioner.

"Community ~~water system~~ waterworks" means a waterworks which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which a waterworks must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001.

"Comprehensive performance evaluation" (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operational and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 12 VAC 5-590-530 C 1 b (2), the comprehensive performance evaluation must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Consecutive waterworks" means a waterworks which has no water production or source facility of its own and which obtains all of its water from another permitted waterworks.

"Consumer" means any person who drinks water from a waterworks.

"Consumer's water system" means any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

"Contaminant" means any objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials,

especially lead and copper, by forming a protective film on the interior surface of those materials.

"Cross connection" means any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

"CT" or "CT<sub>calc</sub>" means the product of "residual disinfectant concentration" (C) in mg/L determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T."

"Daily fluid intake" means the daily intake of water for drinking and culinary use and is defined as two liters.

"Dechlorination" means the partial or complete reduction of residual chlorine in water by any chemical or physical process at a waterworks with a treatment facility.

"Degree of hazard" means the level of health hazard, as derived from an evaluation of the potential risk to health and the adverse effect upon the waterworks.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (i) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (ii) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

"Disinfectant" means any oxidant (including chlorine) that is added to water in any part of the treatment or distribution process for the purpose of killing or deactivating pathogenic organisms.

"Disinfectant contact time ("T" in CT calculations)" means the time in minutes that it takes for water to move from the point of disinfectant application to the point where residual disinfectant concentration ("C") is measured.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Disinfection profile" means a summary of *Giardia lamblia* or virus inactivation through the treatment plant.

"Distribution main" means a water main whose primary purpose is to provide treated water to service connections.

"Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a waterworks with more than one service connection that is limited to the specific service connection from which the coliform positive sample was taken.

"Domestic use or usage" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Double gate-double check valve assembly" means an approved assembly composed of two single independently acting check valves including tightly closing shutoff valves

located at each end of the assembly and petcocks and test gauges for testing the watertightness of each check valve.

"Effective corrosion inhibitor residual," for the purpose of 12 VAC 5-590-420 C 1 only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Entry point" means the place where water from the source after application of any treatment is delivered to the distribution system.

"Equivalent residential connection" means a volume of water used equal to a residential connection which is 400 gallons per day unless supportive data indicates otherwise.

"Exception" means an approved deviation from a "shall" criteria contained in Part III (12 VAC 5-590-640 et seq.) of this chapter.

"Exemption" means a conditional waiver of a specific PMCL or treatment technique requirement which is granted to a specific waterworks for a limited period of time.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"First draw sample" means a one-liter sample of tap water, collected in accordance with 12 VAC 5-590-370 B 6 a (2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Free available chlorine" means that portion of the total residual chlorine remaining in water at the end of a specified contact period which will react chemically and biologically as hypochlorous acid or hypochlorite ion.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

"Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district or any other governmental body established under the Code of Virginia, including departments, divisions, boards or commissions.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

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"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Groundwater" means all water obtained from sources not classified as surface water (or surface water sources).

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or *Cryptosporidium*. It also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions. The office in accordance with 12 VAC 5-590-430 will determine direct influence of surface water.

"Haloacetic acids (five)" or "(HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Halogen" means one of the chemical elements chlorine, bromine, fluorine, astatine or iodine.

"Health hazard" means any condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

"Health regulations" means regulations which include all primary maximum contaminant levels, treatment technique requirements, and all operational regulations, the violation of which would jeopardize the public health.

"Hypochlorite" means a solution of water and some form of chlorine, usually sodium hypochlorite.

"Initial compliance period" means for all regulated contaminants, the initial compliance period is the first full three-year compliance period beginning at least 18 months after promulgation with the exception of waterworks with 150 or more service connections for contaminants listed at Table 2.3, VOC 19-21; Table 2.3, SOC 19-33; and antimony, beryllium, cyanide (as free cyanide), nickel, and thallium which shall begin January 1993.

"Interchangeable connection" means an arrangement or device that will allow alternate but not simultaneous use of two sources of water.

"Karstian geology" means an area predominantly underlain by limestone, dolomite, or gypsum and characterized by rapid underground drainage. Such areas often feature sinkholes, caverns, and sinking or disappearing creeks. In Virginia, this generally includes all that area west of the Blue Ridge and, in Southwest Virginia, east of the Cumberland Plateau.

"Large waterworks," for the purposes of 12 VAC 5-590-370 B 6, 12 VAC 5-590-420 C through F, 12 VAC 5-590-530 D, and 12 VAC 5-590-550 D only, means a waterworks that serves more than 50,000 persons.

"Lead free" when used with respect to solders and flux refers to solders and flux containing not more than 0.2% lead; when used with respect to pipes and pipe fittings refers to pipes and

pipe fittings containing not more than 8.0% lead; and, when used with respect to plumbing fittings and fixtures intended by the plumbing manufacture to dispense water for human ingestion refers to fittings and fixtures that are in compliance with standards established in accordance with 42 USC § 300g-6(e).

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Liquid chlorine" means a liquefied, compressed gas as shipped in commerce. Note: The term liquid chlorine is sometimes used to describe a hypochlorite solution often employed for swimming pool sanitation. This use of the term is incorrect.

"Log inactivation (log removal)" means that a 99% reduction is a 2-log inactivation; a 99.9% reduction is a 3-log inactivation; a 99.99% reduction is a 4-log inactivation.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in the most current edition of "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum daily water demand" means the rate of water usage during the day of maximum water use.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water which is delivered to any user of a waterworks, except in the cases of turbidity and VOCs, where the maximum permissible level is measured at each entry point to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. *MCLs are set as close to the MCLGs as feasible using the best available treatment technology.* Maximum contaminant levels may be either "primary" (PMCL), meaning based on health considerations or "secondary" (SMCL) meaning based on aesthetic considerations.

"Maximum residual disinfectant level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a waterworks is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a waterworks is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels. There is convincing evidence that

addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in Table 2.12, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal (MRDLG)" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25°C or above.

"Medium-size waterworks," for the purpose of 12 VAC 5-590-370 B 6, 12 VAC 5-590-420 C through F, 12 VAC 5-590-530, and 12 VAC 5-590-550 D only, means a waterworks that serves greater than 3,300 and less than or equal to 50,000 persons.

*"Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.*

"Most probable number (MPN)" means that number of organisms per unit volume that, in accordance with statistical theory, would be more likely than any other number to yield the observed test result or that would yield the observed test result with the greatest frequency, expressed as density of organisms per 100 milliliters. Results are computed from the number of positive findings of coliform-group organisms resulting from multiple-portion decimal-dilution plantings.

"Noncommunity ~~water system~~ waterworks" means a waterworks that is not a community waterworks, but operates at least 60 days out of the year.

"Nonpotable water" means water not classified as pure water.

"Nontransient noncommunity ~~water system~~ waterworks (NTNC)" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Office" means the Commonwealth of Virginia, Department of Health, Office of Drinking Water.

"One hundred year flood level" means the flood elevation which will, over a long period of time, be equaled or exceeded on the average once every 100 years.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include

testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks.

"Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the waterworks to violate any other section of this chapter.

"Owner" or "water purveyor" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government which supplies or proposes to supply water to any person within this state from or by means of any waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Point-of-entry treatment device (POE)" means a treatment device applied to the water entering a house or building for the purpose of reducing contaminants in the water distributed throughout the house or building.

"Point-of-use treatment device (POU)" means a treatment device applied to a single tap for the purpose of reducing contaminants in the water at that one tap.

"Pollution" means the presence of any foreign substance (chemical, physical, radiological, or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

"Pollution hazard" means a condition through which an aesthetically objectionable or degrading material may enter the waterworks or a consumer's water system.

"Post-chlorination" means the application of chlorine to water subsequent to treatment.

"Practical quantitation level (PQL)" means the lowest level achievable by good laboratories within specified limits during routine laboratory operating conditions.

"Prechlorination" means the application of chlorine to water prior to filtration.

"Process fluids" means any fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted which would constitute a health, pollutional, or system hazard if introduced into the waterworks. This includes, but is not limited to:

1. Polluted or contaminated water;
2. Process waters;
3. Used waters, originating from the waterworks which may have deteriorated in sanitary quality;

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4. Cooling waters;
5. Contaminated natural waters taken from wells, lakes, streams, or irrigation systems;
6. Chemicals in solution or suspension; and
7. Oils, gases, acids, alkalis, and other liquid and gaseous fluid used in industrial or other processes, or for fire fighting purposes.

"Pure water" or "potable water" means water fit for human consumption and domestic use which is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Raw water main" means a water main which conveys untreated water from a source to a treatment facility.

"Reduced pressure principle backflow prevention device (RPZ device)" means a device containing a minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit must include tightly closing shut-off valves located at each end of the device, and each device shall be fitted with properly located test cocks. These devices must be of the approved type.

"REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (MREM) is 1/1000 of a REM.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Residual disinfectant concentration ("C" in CT Calculations)" means the concentration of disinfectant measured in mg/L in a representative sample of water.

"Responsible charge" means designation by the owner of any individual to have duty and authority to operate or modify the operation of waterworks processes.

"Sanitary facilities" means piping and fixtures, such as sinks, lavatories, showers, and toilets, supplied with potable water and drained by wastewater piping.

"Sanitary survey" means an investigation of any condition that may affect public health.

"Secondary water source" means any approved water source, other than a waterworks' primary source, connected to or available to that waterworks for emergency or other nonregular use.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;
2. If a meter is not installed, the service connection is the point of connection to the waterworks;
3. When the water purveyor is also the building owner, the service connection is the entry point to the building.

"Service line sample" means a one-liter sample of water, collected in accordance with 12 VAC 5-590-370 B 6 a (2) (c), that has been standing for at least six hours in a service line.

"Sewer" means any pipe or conduit used to convey sewage or industrial waste streams.

"Single family structure," for the purpose of 12 VAC 5-590-370 B 6 (a) only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

"Small waterworks," for the purpose of 12 VAC 5-590-370 B 6, 12 VAC 5-590-420 C through F, 12 VAC 5-590-530 D and 12 VAC 5-590-550 D only, means a waterworks that serves 3,300 persons or fewer.

"Standard sample" means that portion of finished drinking water that is examined for the presence of coliform bacteria.

"Surface water" means all water open to the atmosphere and subject to surface runoff.

"SUVA" means specific ultraviolet absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV sub254 ) (in m-1) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"Synthetic organic chemicals (SOC)" means one of the family of organic man-made compounds generally utilized for agriculture or industrial purposes.

"System hazard" means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water system.

"Terminal reservoir" means an impoundment providing end storage of water prior to treatment.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Total effective storage volume" means the volume available to store water in distribution reservoirs measured as the difference between the reservoir's overflow elevation and the minimum storage elevation. The minimum storage elevation is that elevation of water in the reservoir that can provide a minimum pressure of 20 psi at a flow as determined in

12 VAC 5-590-690 C to the highest elevation served within that reservoir's service area under systemwide maximum daily water demand.

"Total organic carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes (TTHM)" means the sum of the concentrations of the trihalomethanes expressed in milligrams per liter (mg/L) and rounded to two significant figures. For the purpose of these regulations, the TTHM's shall mean trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform).

"Transmission main" means a water main whose primary purpose is to move significant quantities of treated water among service areas.

"Treatment technique requirement" means a requirement which specifies for a contaminant a specific treatment technique(s) demonstrated to the satisfaction of the division to lead to a reduction in the level of such contaminant sufficient to comply with these regulations.

"Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment (except residual disinfection) and is open to the atmosphere.

"Unregulated contaminant (UC)" means a contaminant for which a monitoring requirement has been established, but for which no MCL or treatment technique requirement has been established.

"Used water" means any water supplied by a water purveyor from the waterworks to a consumer's water system after it has passed through the service connection.

"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

"Variance" means a conditional waiver of a specific regulation which is granted to a specific waterworks. A PMCL Variance is a variance to a Primary Maximum Contaminant Level, or a treatment technique requirement. An Operational Variance is a variance to an operational regulation or a Secondary Maximum Contaminant Level. Variances for monitoring, reporting and public notification requirements will not be granted.

"Volatile synthetic organic chemical (VOC)" means one of the family of manmade organic compounds generally characterized by low molecular weight and rapid vaporization at relatively low temperatures or pressures.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a waterworks

which is deficient in treatment, as determined by the commissioner or the State Epidemiologist.

"Water purveyor" (same as owner).

"Water supply" means water that shall have been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term "water supply" shall not include any waters above the point of intake of such waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Water supply main" or "main" means any water supply pipeline that is part of a waterworks distribution system.

"Water Well Completion Report" means a report form published by the State Water Control Board entitled "Water Well Completion Report" which requests specific information pertaining to the ownership, driller, location, geological formations penetrated, water quantity and quality encountered as well as construction of water wells. The form is to be completed by the well driller.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Waterworks with a single service connection" means a waterworks which supplies drinking water to consumers via a single service line.

## **12 VAC 5-590-370. Sampling frequency.**

The commissioner may exempt consecutive waterworks that obtain potable water from another water system for distribution from all monitoring requirements in this section except for bacteriological (subsection A of this section), disinfectant residuals, byproducts and disinfection byproduct precursors (subdivision B 3 of this section), and lead and copper (subdivision B 6 of this section). The required sampling frequencies are as follows:

### **A. Bacteriological.**

1. The waterworks owner shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting report. The report shall be established or approved by the division after investigation of the source, method of treatment and storage, and protection of the water concerned. The report must include, but is not limited to, the following:

- a. The frequency of sampling distributed evenly throughout the month/quarter.
- b. Distribution map showing the generalized location where specific sampling sites will be selected.

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c. Supporting statement explaining how specific individual sites are selected, how sampling will be rotated among the sites, how repeat samples will be collected and other information demonstrating that sampling will be conducted in a manner to comply with this chapter.

d. Adequate sampling points to provide sampling representative of all the conditions in the system.

e. For small systems (less than 3,301 population), sample sites must also be identified by address and code number location.

f. Minimum of three sample locations for each sample required monthly so repeat sample locations are previously ascertained as being adequate in number and five customer service connections upstream and downstream. (See Appendix J for an example.)

g. The sampling point required to be repeat sampled shall not be eliminated from future collections based on a history of questionable water quality unless the sampling point is unacceptable as determined by the division.

2. The minimum number of bacteriological samples for total coliform evaluation to be collected and analyzed monthly from the distribution system of a community or nontransient noncommunity waterworks shall be in accordance with Table 2.1. All noncommunity waterworks that use a surface water source or a groundwater source under the direct influence of surface water, and all large noncommunity (serving 1,000 or more persons per day) waterworks, shall collect and submit samples monthly for analysis in accordance with Table 2.1. All other noncommunity waterworks shall submit samples for analysis each calendar quarter in accordance with Table 2.1.

3. The samples shall be taken at reasonably evenly spaced time intervals throughout the month or quarter.

If the results of a sanitary survey or other factors determine that some other frequency is more appropriate than that stated above, a modified sampling program report may be required. The altered frequency shall be confirmed or changed on the basis of subsequent surveys.

TABLE 2.1.

POPULATION SERVED PER DAY	MINIMUM NUMBER OF SAMPLES (See 12 VAC 5-590-370 A 2)
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15

17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390

4. All bacteriological analyses shall be performed in accordance with 12 VAC 5-590-440 by the DCLS or by a laboratory certified by DCLS for drinking water samples.

B. Chemical. The location of sampling points, the chemicals measured, the frequency, and the timing of sampling within each compliance period shall be established or approved by the commissioner *at the time of issuance of a waterworks operation permit*. The commissioner may increase required monitoring where necessary to detect variations within the waterworks. Analysis of field composite samples shall not be allowed. Samples for contaminants that may exhibit seasonal variations shall be collected during the period of the year when contamination is most likely to occur. Failure to comply with the sampling schedules in this section will require public notification pursuant to 12 VAC 5-590-540.

*Any other dates contained in this chapter notwithstanding, all waterworks shall comply with all applicable PMCLs listed in Tables 2.2 and 2.3.*

*Design criteria for new or modified waterworks or waterworks developing new sources of supply are found in 12 VAC 5-590-820, 12 VAC 5-590-830 and 12 VAC 5-590-840.*

1. Inorganic chemical. Community and nontransient noncommunity waterworks owners shall conduct monitoring to determine compliance with the MCLs in Table 2.2 in accordance with this section. All other noncommunity waterworks owners shall conduct monitoring to determine compliance with the nitrate and nitrite PMCLs in Table 2.2 (as appropriate) in accordance with this section. Monitoring shall be conducted as follows:

a. The owner of any groundwater source waterworks with 150 or more service connections shall take a minimum of one sample at each entry point to the distribution system which is representative of each source, after treatment,



unless a change in condition makes another sampling point more representative of each source or treatment plant (hereafter called a sampling point) starting in the compliance period beginning January 1, 1993. The owner of any groundwater source waterworks with fewer than 150 service connections shall take a minimum of one sample at each sampling point for asbestos, barium, cadmium, chromium, fluoride, mercury, nitrate, nitrite, and selenium in the compliance period beginning January 1, 1993, ~~and~~ for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium in the compliance period beginning January 1, 1996, *and for arsenic (for community and nontransient noncommunity waterworks) in compliance with 12 VAC 5-590-370 B 1 d (6) (b).*

b. The owner of any waterworks which uses a surface water source in whole or in part with 150 or more service connections shall take a minimum of one sample at each entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source, after treatment, unless a change in conditions makes another sampling point more representative of each source or treatment plant (hereafter called a sampling point) beginning January 1, 1993. The owner of any waterworks which use a surface water source in whole or in part with fewer than 150 service connections shall take a minimum of one sample at each sampling point for asbestos, barium, cadmium, chromium, fluoride, mercury, nitrate, nitrite, and selenium beginning January 1, 1993, ~~and~~ for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium beginning January 1, 1996, *and for arsenic (for community and nontransient noncommunity waterworks) in compliance with 12 VAC 5-590-370 B 1 d (6) (a).*

c. If a waterworks draws water from more than one source and the sources are combined before distribution, the waterworks owner shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

d. The frequency of monitoring for asbestos shall be in accordance with subdivision B 1 d (1) of this section; the frequency of monitoring for barium, cadmium, chromium, fluoride, mercury, and selenium shall be in accordance with subdivision B 1 d (2) of this section; the frequency of monitoring for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium shall be in accordance with subdivision B 1 d (3) of this section; the frequency of monitoring for nitrate shall be in accordance with subdivision B 1 d (4) of this section; the frequency of monitoring for nitrite shall be in accordance with subdivision B 1 d (5) of this section; and the frequency of monitoring for arsenic shall be in accordance with subdivision B 1 d (6) of this section.

(1) The frequency of monitoring conducted to determine compliance with the PMCL for asbestos specified in Table 2.2 shall be conducted as follows:

(a) The owner of each community and nontransient noncommunity waterworks is required to monitor for asbestos during the first three-year compliance

period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(b) If the waterworks owner believes the waterworks is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, the owner may apply to the commissioner for a waiver of the monitoring requirement in subdivision B 1 d (1) (a) of this section. If the commissioner grants the waiver, the waterworks owner is not required to monitor.

(c) The commissioner may grant a waiver based on a consideration of the following factors:

(i) Potential asbestos contamination of the water source; and

(ii) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(d) A waiver remains in effect until the completion of the three-year compliance period. Waterworks not receiving a waiver shall monitor in accordance with the provisions of subdivision B 1 d (1) (a) of this section.

(e) The owner of a waterworks vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(f) The owner of a waterworks vulnerable to asbestos contamination due solely to source water shall monitor sampling points in accordance with subdivision B 1 of this section.

(g) The owner of a waterworks vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(h) The owner of a waterworks which exceeds the PMCL as determined in 12 VAC 5-590-410 B 1 shall monitor quarterly beginning in the next quarter after the ~~violation~~ exceedance occurred.

(i) The commissioner may decrease the quarterly monitoring requirement to the frequency specified in subdivision B 1 d (1) (a) of this section provided the commissioner has determined that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks which uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(j) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of

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subdivision B 1 d (1) of this section, then the commissioner may allow waterworks owner to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(2) The frequency of monitoring conducted to determine compliance with the MCLs in Table 2.2 for barium, cadmium, chromium, fluoride, mercury, and selenium shall be as follows:

(a) The owner of a groundwater source waterworks shall take one sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1993.

(b) The owner of a waterworks which uses a surface water source in whole or in part shall take one sample annually at each sampling point beginning January 1, 1993.

(c) A waterworks owner may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision B 1 d (2) (a) or (b) of this section.

(d) A condition of the waiver shall require that the waterworks owner shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(e) The commissioner may grant a waiver provided the owner of a waterworks which uses a surface water source in whole or in part has monitored annually for at least three years and groundwater waterworks have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) The owner of any waterworks which uses a surface water source in whole or in part or a groundwater source waterworks shall demonstrate that all previous analytical results were less than the PMCL. Waterworks that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(f) In determining the appropriate reduced monitoring frequency, the commissioner shall consider:

(i) Reported concentrations from all previous monitoring;

(ii) The degree of variation in reported concentrations; and

(iii) Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the waterworks configuration, changes in the waterworks operating procedures, or changes in stream flows or characteristics.

(g) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The request for a waiver may be initiated by the commissioner or upon an

application by the waterworks owner. The owner shall specify the basis for the request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when the waterworks owner submits new monitoring data or when other data relevant to the waterworks appropriate monitoring frequency become available.

(h) Owners of waterworks which exceed the PMCLs as calculated in 12 VAC 5-590-410 shall monitor quarterly beginning in the next quarter after the ~~violation~~ exceedance occurred.

(i) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivision B 2 d (2) (a), (b) or (c) of this section provided a determination has been made that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks which uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(3) The frequency of monitoring conducted to determine compliance with the PMCLs in Table 2.2 for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium shall be as follows:

(a) The owner of a groundwater source waterworks with 150 or more service connections shall take one sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1993. The owner of a groundwater source waterworks with fewer than 150 service connections shall take one sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1996.

(b) The owner of a waterworks which uses a surface water source in whole or in part with 150 or more service connections shall take one sample annually at each sampling point beginning January 1, 1993. The owner of a waterworks which uses a surface water source in whole or in part with fewer than 150 service connections shall take one sample annually at each sampling point beginning January 1, 1996.

(c) A waterworks owner may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision B 2 d (3) (a) or (b) of this section.

(d) A condition of the waiver shall require that the waterworks owner shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(e) The commissioner may grant a waiver provided the owner of a waterworks which uses a surface water source in whole or in part has monitored

annually for at least three years and groundwater waterworks have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) The owner of any waterworks which uses a surface water source in whole or in part or a groundwater source waterworks shall demonstrate that all previous analytical results were less than the PMCL. Waterworks that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(f) In determining the appropriate reduced monitoring frequency, the commissioner shall consider:

- (i) Reported concentrations from all previous monitoring;
- (ii) The degree of variation in reported concentrations; and
- (iii) Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the waterworks configuration, changes in the waterworks operating procedures, or changes in stream flows or characteristics.

(g) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The request for a waiver may be initiated by the commissioner or upon an application by the waterworks owner. The owner shall specify the basis for the request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when the waterworks owner submits new monitoring data or when other data relevant to the waterworks appropriate monitoring frequency become available.

(h) Owners of waterworks which exceed the PMCLs as calculated in 12 VAC 5-590-410 shall monitor quarterly beginning in the next quarter after the violation exceedance occurred.

(i) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivision B 2 d (3) (a), (b) or (c) of this section provided a determination has been made that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks which uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(4) All community, nontransient noncommunity and noncommunity waterworks owners shall monitor to determine compliance with the PMCL for nitrate in Table 2.2.

(a) Owners of community and nontransient noncommunity waterworks which use a groundwater

source shall monitor annually beginning January 1, 1993.

(b) Owners of community and nontransient noncommunity waterworks which use a surface water source in whole or in part shall monitor quarterly beginning January 1, 1993.

(c) For community and nontransient noncommunity waterworks which use groundwater, the repeat monitoring frequency shall be quarterly for at least one year following any one sample in which the concentration is  $\geq 50\%$  of the PMCL. The commissioner may allow the owner of a waterworks, which uses groundwater, to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the PMCL.

(d) For community and nontransient noncommunity waterworks, the commissioner may allow the owner of a waterworks which uses a surface water source in whole or in part, to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are  $< 50\%$  of the PMCL. Such waterworks shall return to quarterly monitoring if any one sample is  $\geq 50\%$  of the PMCL.

(e) The owners of all other noncommunity waterworks shall monitor annually beginning January 1, 1993.

(f) After the initial round of quarterly sampling is completed, the owner of each community and nontransient noncommunity waterworks which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(5) All community, nontransient noncommunity and noncommunity waterworks owners shall monitor to determine compliance with the PMCL for nitrite in Table 2.2.

(a) All waterworks owners shall take one sample at each sampling point in the compliance period beginning January 1, 1993.

(b) After the initial sample, the owner of any waterworks where an analytical result for nitrite is  $< 50\%$  of the PMCL shall monitor at the frequency specified by the commissioner.

(c) The repeat monitoring frequency for any waterworks owner shall be quarterly for at least one year following any one sample in which the concentration is  $\geq 50\%$  of the PMCL. The commissioner may allow a waterworks owner to reduce the sampling frequency to annually after determining the analysis results are reliably and consistently less than the PMCL.

(d) Owners of waterworks which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

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(6) The frequency of monitoring conducted to determine compliance with the PMCLs in Table 2.2 for arsenic shall be as follows:

(a) The owner of each community *and nontransient noncommunity* waterworks ~~which that~~ use a surface water source in whole or in part shall take one sample annually at each sampling point beginning ~~June 1, 1978~~ *January 23, 2006*.

(b) The owner of each community *and nontransient noncommunity* groundwater source waterworks shall take one sample at each ~~sampling entry point within a three-year~~ *during each compliance period starting June 1, 1979* *January 23, 2006*.

~~(c) Owners of waterworks which exceed the PMCL listed in Table 2.2 shall report to the commissioner within seven days and initiate three additional samples at the same sampling point within one month.~~

~~(d) For initial analyses required by subdivision B 1 d (6) (a) or (b) of this section, data for waterworks which use surface water source in whole or in part acquired within one year prior to the effective date for arsenic monitoring and data for groundwater waterworks acquired within three years prior to the effective date for arsenic monitoring may be substituted at the discretion of the commissioner.~~

*(c) Owners of waterworks that exceed the PMCL, as calculated in 12 VAC 5-590-410, shall monitor quarterly beginning in the next quarter after the exceedance has occurred.*

*(d) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivision B 2 d (6) (a) or (b) of this section provided a determination has been made that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks that uses a surface water source in whole or in part takes a minimum of four quarterly samples.*

*(e) No waivers shall be granted by the commissioner for arsenic.*

2. Organic chemicals. Owners of all community and nontransient noncommunity waterworks shall sample for organic chemicals in accordance with their water source. Where two or more sources are combined before distribution, the waterworks owner shall sample at the entry point for the combined sources during periods of normal operating conditions.

a. Owners of waterworks ~~which that~~ use groundwater shall take a minimum of one sample at each entry point to the distribution system which is representative of each source, after treatment (hereafter called a sampling point).

b. Owners of waterworks ~~which that~~ use a surface water source in whole or in part shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system, after treatment (hereafter called a sampling point).

c. The owner of each community and nontransient noncommunity waterworks shall take four consecutive quarterly samples for each contaminant listed in Table 2.3-VOC 2 through 21 and SOC during each compliance period, beginning in the compliance period starting January 1, 1993.

d. Reduced monitoring.

(1) VOC.

(a) If the initial monitoring for contaminants listed in Table 2.3-VOC 1 through 8 and the monitoring for the contaminants listed in Table 2.3-VOC 9 through 21 as allowed in subdivision B 2 d (1) (c) of this section has been completed by December 31, 1992, and the waterworks did not detect any contaminant listed in Table 2.3-VOC 1 through 21, then the owner of each groundwater waterworks and waterworks which use a surface water source in whole or in part shall take one sample annually beginning January 1, 1993.

(b) After a minimum of three years of annual sampling, the commissioner may allow the owner of a groundwater waterworks with no previous detection of any contaminant listed in Table 2.3-VOC 2 through 21 to take one sample during each compliance period.

(c) The commissioner may allow the use of monitoring data collected after January 1, 1988, for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements in this section, the commissioner may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of subdivision B 2 c of this section. Waterworks which use grandfathered samples and did not detect any contaminants listed in Table 2.3-VOC, 2 through 21, shall begin monitoring annually in accordance with subdivision B 2 d (1) (a) of this section beginning January 1, 1993.

(2) SOC.

(a) Waterworks serving more than 3,300 persons which do not detect a contaminant listed in Table 2.3-SOC in the initial compliance period, may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period.

(b) Waterworks serving less than or equal to 3,300 persons which do not detect a contaminant listed in Table 2.3-SOC in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

e. Waiver application.

(1) For VOCs. The owner of any community and nontransient noncommunity groundwater waterworks which does not detect a contaminant listed in Table 2.3-VOC may apply to the commissioner for a waiver from the requirements of subdivisions B 2 d (1) (a) and (b) of this section after completing the initial monitoring. A waiver shall be effective for no more than six years (two compliance periods). The commissioner may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(2) For SOCs. The owner of any community and nontransient noncommunity waterworks may apply to the commissioner for a waiver from the requirement of subdivisions B 2 c and d (2) of this section. The waterworks owner shall reapply for a waiver for each compliance period.

f. The commissioner may grant a waiver after evaluating the following factors: Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the source. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

(1) Previous analytical results.

(2) The proximity of the waterworks to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a waterworks or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources for SOCs include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.

(3) The environmental persistence and transport of the contaminants listed in Table 2.3 VOC and SOC.

(4) How well the water source is protected against contamination, such as whether it is a waterworks which uses a surface water source in whole or in part or whether it is a groundwater source waterworks. Groundwater source waterworks shall consider factors such as depth of the well, the type of soil, wellhead protection, and well structure integrity. Waterworks which use surface water in whole or in part shall consider watershed protection.

(5) Special factors.

(a) For VOCs. The number of persons served by the waterworks and the proximity of a smaller waterworks to a larger waterworks.

(b) For SOCs. Elevated nitrate levels at the waterworks supply source.

(c) For SOCs. Use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

g. Condition for waivers.

(1) As a condition of the VOC waiver the owner of a groundwater waterworks shall take one sample at each sampling point during the time the waiver is effective (i.e., one sample during two compliance periods or six years) and update its vulnerability assessment considering the factors listed in subdivision B 2 f of this section. Based on this vulnerability assessment the commissioner shall reconfirm that the waterworks owner is nonvulnerable. If the commissioner does not make this reconfirmation within three years of the initial determination, then the waiver is invalidated and the waterworks is required to sample annually as specified in subdivision B 2 d (1) (a) of this section.

(2) The owner of any community and nontransient noncommunity waterworks which use surface water in whole or in part which does not detect a contaminant listed in Table 2.3-VOC may apply to the commissioner for a waiver from the requirements of subdivision B 2 d (1) (a) of this section after completing the initial monitoring. Waterworks meeting this criteria shall be determined by the commissioner to be nonvulnerable based on a vulnerability assessment during each compliance period. Each waterworks receiving a waiver shall sample at the frequency specified by the commissioner (if any).

(3) There are no conditions to SOC waivers.

h. If a contaminant listed in Table 2.3-VOC 2 through 21 or SOC 1 through 33 is detected then (NOTE: Detection occurs when a contaminant level exceeds the current detection limit as defined by EPA.):

(1) Each waterworks owner shall monitor quarterly at each sampling point which resulted in a detection.

(2) The commissioner may decrease the quarterly monitoring requirement specified in subdivision B 2 h (1) of this section provided it has determined that the waterworks is reliably and consistently below the PMCL. In no case shall the commissioner make this determination unless a groundwater waterworks takes a minimum of two quarterly samples and a waterworks which use surface water in whole or in part takes a minimum of four quarterly samples.

(3) If the commissioner determines that the waterworks is reliably and consistently below the PMCL, the commissioner may allow the waterworks to monitor annually. Waterworks which monitor annually shall monitor during the quarter(s) which previously yielded the highest analytical result.

(4) Waterworks which have three consecutive annual samples with no detection of a contaminant may apply to the commissioner for a waiver for VOC as specified in subdivision B 2 e (1) or to SOC as specified in subdivision B 2 e (2) of this section.

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(5) Subsequent monitoring due to contaminant detection.

(a) Groundwater waterworks which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the commissioner may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Waterworks which use surface water in whole or in part are required to monitor for vinyl chloride as specified by the commissioner.

(b) If monitoring results in detection of one or more of certain related contaminants (heptachlor and heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

i. Waterworks which violate the requirements of Table 2.3 for VOCs or SOCs, as determined by 12 VAC 5-590-410 C, shall monitor quarterly. After a minimum of four consecutive quarterly samples which show the waterworks is in compliance as specified in 12 VAC 5-590-410 C and the commissioner determines that the waterworks is reliably and consistently below the PMCL, the waterworks may monitor at the frequency and time specified in subdivision B 2 h (3) of this section.

3. Disinfectant residuals, disinfection byproducts and disinfection byproduct precursors.

a. Unless otherwise noted, all waterworks that use a chemical disinfectant must comply with the requirements of this section as follows:

(1) Community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water and serving 10,000 or more persons, must comply with this section beginning January 1, 2002.

(2) Community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water serving fewer than 10,000 persons and waterworks using only groundwater not under the direct influence of surface water must comply with this section beginning January 1, 2004.

(3) Transient noncommunity waterworks which use surface water or groundwater under the direct influence of surface water and serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2002.

(4) Transient noncommunity waterworks which use surface water or groundwater under the direct influence of surface water serving fewer than 10,000 persons

and using chlorine dioxide as a disinfectant or oxidant and waterworks using only groundwater not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2004.

b. Waterworks must take all samples during normal operating conditions.

(1) Analysis under this section for disinfection byproducts (TTHM, HAA5, chlorite and bromate) must be conducted by a laboratory that has received certification by EPA or the state except as noted in subdivision B 3 b (2) of this section.

(2) Measurement under this section of daily chlorite samples at the entry point to the distribution system, disinfection residuals (free chlorine, combined chlorine, total chlorine and chlorine dioxide), alkalinity, bromide, TOC, SUVA (DOC and UV sub254), and pH must be made by a party approved by the commissioner.

(3) DPD colorimetric test kits may be used to measure residual disinfectant concentrations for chlorine, chloramines and chlorine dioxide.

c. Failure to monitor in accordance with the monitoring plan required under subdivision B 3 j of this section is a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the waterworks' failure to monitor makes it impossible to determine compliance with PMCLs or MRDLs.

d. Waterworks may use only data collected under the provisions of this section or the US EPA Information Collection Rule, 40 CFR Part 141 Subpart M, Information Collection Requirements (ICR) for Public Water Systems, to qualify for reduced monitoring.

e. TTHM/HAA5 monitoring. Community or nontransient noncommunity waterworks must monitor TTHM and HAA5 at the frequency indicated below:

(1) Routine monitoring requirements.

(a) Waterworks using surface water or groundwater under the direct influence of surface water and serving at least 10,000 persons must collect four water samples per quarter per treatment plant. At least 25% of all samples collected each quarter must be at locations representing maximum residence time in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system and representative of the entire distribution system. When setting the sample locations the waterworks must take into account number of persons served, different sources of water, and different treatment methods.

(b) Waterworks using surface water or groundwater under the direct influence of surface water and serving from 500 to 9,999 persons must collect one sample per quarter per treatment plant. The sample

location must represent maximum residence time in the distribution system.

(c) Waterworks using surface water or groundwater under the direct influence of surface water and serving fewer than 500 persons must collect one sample per year per treatment plant during the month of warmest water temperature. The sample location must represent maximum residence time in the distribution system. If the sample (or average of annual samples, if more than one sample is taken) exceeds PMCL in Table 2.13, the waterworks must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until waterworks meets reduced monitoring criteria.

(d) Waterworks using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons must collect one sample per quarter per treatment plant. The sample location must represent maximum residence time in the distribution system.

(e) Waterworks using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons must collect one sample per year per treatment plant during the month of warmest water temperature. The sample location must represent maximum residence time in the distribution system. If the sample (or average of annual samples, if more than one sample is taken) exceeds PMCL in Table 2.13, the waterworks must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the waterworks meets the criteria for reduced monitoring found in subdivision B 3 e (4) of this section.

(f) If a waterworks elects to sample more frequently than the minimum required, at least 25% of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

(g) With prior approval of the commissioner, waterworks that utilize multiple wells from a common aquifer may consider these multiple sources as one treatment plant for determining the minimum number of samples to be collected for TTHM and HAA5 analysis.

(2) After one year of routine monitoring a waterworks may reduce monitoring, except as otherwise provided, as follows:

(a) Waterworks using surface water or groundwater under the direct influence of surface water and serving at least 10,000 persons that has a source water annual average TOC level, before any

treatment, of equal to or less than 4.0 mg/L and a TTHM annual average equal to or less than 0.040 mg/L and HAA5 annual average equal to or less than 0.030 mg/L may reduce its monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time.

(b) Waterworks using surface water or groundwater under the direct influence of surface water serving from 500 to 9,999 persons that has a source water annual average TOC level, before any treatment, equal to or less than 4.0 mg/L and a TTHM annual average equal to or less than 0.040 mg/L and HAA5 annual average equal to or less than 0.030 mg/L may reduce its monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(c) Waterworks using only groundwater not under the direct influence of surface water, using chemical disinfectant and serving at least 10,000 persons that has a TTHM annual average of equal to or less than 0.040 mg/L and HAA5 annual average of equal to or less than 0.030 mg/L may reduce its monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(d) Waterworks using only groundwater not under the direct influence of surface water, using chemical disinfectant and serving fewer than 10,000 persons that has a TTHM annual average equal to or less than 0.040 mg/L and HAA5 annual average equal to or less than 0.030 mg/L for two consecutive years or TTHM annual average equal to or less than 0.020 mg/L and HAA5 annual average of equal to or less than 0.015 mg/L for one year may reduce its monitoring to one sample per treatment plant per three-year monitoring cycle at a distribution system location reflecting maximum residence time during the month of warmest water temperature, with the three-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring.

(e) Waterworks using surface water or groundwater under the direct influence of surface water serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.

(3) Waterworks on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for waterworks that must monitor quarterly) or the result of the sample (for waterworks that must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Waterworks that do not meet these levels must resume monitoring at the frequency identified in subdivision B 3 e (1) of this section in the quarter immediately following the quarter in which the waterworks exceeds 0.060

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mg/L or 0.045 mg/L for TTHMs or HAA5, respectively. For waterworks using only groundwater not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHMs annual average is greater than 0.080 mg/L or the HAA5 annual average is greater than 0.060 mg/L, the waterworks must go to increased monitoring identified in subdivision B 3 e (1) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHM or HAA5 respectively.

(4) Waterworks on increased monitoring may return to routine monitoring if, after at least one year of monitoring, their TTHM annual average is equal to or less than 0.060 mg/L and their HAA5 annual average is equal to or less than 0.045 mg/L.

(5) The commissioner may return a waterworks to routine monitoring at the commissioner's discretion.

f. Chlorite. Community and nontransient noncommunity waterworks using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(1) Routine monitoring.

(a) Daily monitoring. Waterworks must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite PMCL in Table 2.13, the waterworks must take additional samples in the distribution system the following day at the locations required by subdivision B 3 f (1) (c) of this section, in addition to the sample required at the entrance to the distribution system.

(b) Monthly monitoring. Waterworks must take a three-sample set each month in the distribution system. The waterworks must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The waterworks may use the results of additional monitoring conducted under subdivision B 3 f (1) (c) of this section to meet the requirement for monitoring in this paragraph.

(c) Additional monitoring requirements. On each day following a routine sample monitoring result that exceeds the chlorite PMCL in Table 2.13 at the entrance to the distribution system, the waterworks is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(2) Reduced monitoring.

(a) Chlorite monitoring at the entrance to the distribution system required by subdivision B 3 f (1) (a) of this section may not be reduced.

(b) Chlorite monitoring in the distribution system required by subdivision B 3 f (1) (b) of this section may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under subdivision B 3 f (1) (b) of this section has exceeded the chlorite PMCL in Table 2.13 and the waterworks has not been required to conduct monitoring under subdivision B 3 f (1) (c) of this section. The waterworks may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under subdivision B 3 f (1) (b) of this section exceeds the chlorite PMCL or the waterworks is required to conduct monitoring under subdivision B 3 f (1) (c) of this section, at which time the waterworks must revert to routine monitoring.

g. Bromate.

(1) Each community and nontransient noncommunity waterworks treatment plant using ozone, for disinfection or oxidation, must take one sample per month and analyze it for bromate. Waterworks must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(2) Waterworks required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the waterworks demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The waterworks may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is equal to or greater than 0.05 mg/L, the waterworks must resume routine monitoring required by subdivision B 3 g (1) of this section.

(3) Bromide. Waterworks required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the waterworks demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The waterworks must continue bromide monitoring to remain on reduced bromate monitoring.

h. Monitoring requirements for disinfectant residuals.

(1) Chlorine and chloramines.

(a) Waterworks that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in subsection A of this section. Waterworks that use surface water or groundwater under the direct influence of surface water may use the results of residual disinfectant



concentration sampling found in subdivision B 7 c (1) of this section in lieu of taking separate samples.

(b) Residual disinfectant level monitoring may not be reduced.

(2) Chlorine dioxide.

(a) Waterworks that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL in Table 2.12, the waterworks must take samples in the distribution system the following day at the locations required by subdivision B 3 h (2) (b) of this section, in addition to the sample required at the entrance to the distribution system.

(b) On each day following a routine sample monitoring result that exceeds the MRDL in Table 2.12, the waterworks is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the waterworks must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the waterworks must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(c) Chlorine dioxide monitoring may not be reduced.

i. Monitoring requirements for disinfection byproduct precursors (DBPP).

(1) Community or nontransient noncommunity waterworks using surface water or groundwater under the direct influence of surface water and using conventional filtration treatment (as defined in 12 VAC 5-590-10) must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All waterworks required to monitor under this subdivision (B 3 i (1)) must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all waterworks must monitor for alkalinity in the source water prior to any treatment. Waterworks must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The waterworks must revert to routine monitoring in the month following the quarter when the annual average treated water TOC equal to or greater than 2.0 mg/L.

j. Each waterworks required to monitor under subdivision B 3 of this section must develop and implement a monitoring plan. The waterworks must maintain the plan and make it available for inspection by the commissioner and the general public no later than 30 days following the applicable compliance dates in subdivision B 3 a of this section. All community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water serving more than 3,300 people must submit a copy of the monitoring plan to the commissioner no later than the date of the first report required under 12 VAC 5-590-530 A. The commissioner may also require the plan to be submitted by any other waterworks. After review, the commissioner may require changes in any plan elements. The plan must include at least the following elements:

(1) Specific locations and schedules for collecting samples for any parameters included in subdivision B 3 of this section.

(2) How the waterworks will calculate compliance with PMCLs, MRDLs, and treatment techniques.

(3) The sampling plan for a consecutive waterworks must reflect the entire consecutive distribution system.

4. Unregulated contaminants (UCs). All community and nontransient noncommunity waterworks shall sample for the contaminants listed in Table 2.6 and Table 2.7 as follows:

a. Table 2.6--Group A

(1) Owners of waterworks which use a surface water source in whole or in part shall sample at the entry points to the distribution system which is representative of each source, after treatment (hereafter called a sampling point). The minimum number of samples is one year of consecutive quarterly samples per sampling point beginning in accordance with Table 2.8.

(2) Owners of waterworks which use groundwater shall sample at points of entry to the distribution system which is representative of each source (hereafter called a sampling point). The minimum number of samples is one sample per sampling point beginning in accordance with Table 2.8.

(3) The commissioner may require a confirmation sample for positive or negative results.

(4) Waterworks serving less than 150 connections may inform the commissioner, in writing, that their

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waterworks is available for sampling instead of performing the required sampling.

(5) All waterworks required to sample under this section shall repeat the sampling at least every five years.

b. Table 2.6--Group B and Table 2.7

(1) The owner of each community and nontransient noncommunity waterworks owner shall take four consecutive quarterly samples at the entry points to the distribution system which is representative of each source (hereafter called a sampling point) for each contaminant listed in Table 2.6 Group B and report the results to the commissioner. Monitoring shall be completed by December 31, 1995.

(2) The owner of each community and nontransient noncommunity waterworks shall take one sample at each sampling point for each contaminant listed in Table 2.7 and report the results to the commissioner. Monitoring shall be completed by December 31, 1995.

(3) The owner of each community and nontransient noncommunity waterworks may apply to the commissioner for a waiver from the monitoring requirements of subdivisions B 4 b (1) and (2) of this section for the contaminants listed in Table 2.6 Group B and Table 2.7.

(4) The commissioner may grant a waiver for the requirement of subdivision B 4 b (1) of this section based on the criteria specified in subdivision B 2 f of this section. The commissioner may grant a waiver from the requirement of subdivision B 4 b (2) of this section if previous analytical results indicate contamination would not occur, provided this data was collected after January 1, 1990.

(5) If the waterworks utilizes more than one source and the sources are combined before distribution, the waterworks shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(6) The commissioner may require a confirmation sample for positive or negative results.

(7) Instead of performing the monitoring required by this section, the owner of a community waterworks or nontransient noncommunity waterworks serving fewer than 150 service connections may send a letter to the commissioner stating that the waterworks is available for sampling. This letter shall be sent to the commissioner by January 1, 1994. The waterworks shall not send such samples to the commissioner unless requested to do so by the commissioner.

(8) All waterworks required to sample under this section shall repeat the sampling at least every five years.

5. Repealed.

6. Monitoring requirements for lead and copper. The owners of all community and nontransient noncommunity waterworks shall monitor for lead and copper in tap water

(subdivision B 6 a of this section), water quality (corrosion) parameters in the distribution system and at entry points (subdivision B 6 b of this section), and lead and copper in water supplies (subdivision B 6 c of this section). The monitoring requirements contained in this section are summarized in Appendix M.

a. Monitoring requirements for lead and copper in tap water.

(1) Sample site location.

(a) By the applicable date for commencement of monitoring under subdivision B 6 a (4) (a), each waterworks owner shall complete a materials evaluation of the distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the owner can collect the number of lead and copper tap samples required in subdivision B 6 a (3). All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(b) A waterworks owner shall use the information on lead, copper, and galvanized steel that the owner is required to collect when conducting a materials evaluation (reference Appendix B Corrosion). When this evaluation is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria of this section, the owner shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the owner shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(i) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(ii) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(iii) All existing water quality information, which includes the results of all prior analyses of the waterworks or individual structures connected to the waterworks, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(c) The sampling sites selected for a community waterworks' sampling pool ("tier 1 sampling sites") shall consist of single family structures that:

(i) Contain copper pipes with lead solder installed between January 1983 and April 1986 or contain lead pipes; and/or

(ii) Are served by a lead service line.

NOTE: When multiple-family residences comprise at least 20% of the structures served by a waterworks, the waterworks may include these types of structures in its sampling pool.

(d) The owner of any community waterworks with insufficient tier 1 sampling sites shall complete the sampling pool with "tier 2 sampling sites," consisting of buildings, including multiple-family residences that:

(i) Contain copper pipes with lead solder installed between January 1983 and April 1986 or contain lead pipes; and/or

(ii) Are served by a lead service line.

(e) The owner of any community waterworks with insufficient tier 1 and tier 2 sampling sites shall complete the sampling pool with "tier 3 sampling sites," consisting of single family structures that contain copper pipes with lead solder installed before 1983. The owner of a community waterworks with insufficient tier 1, tier 2, and tier 3 sampling sites shall complete the sampling pool with representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the waterworks.

(f) The sampling sites selected for a nontransient noncommunity waterworks ("tier 1 sampling sites") shall consist of buildings that:

(i) Contain copper pipes with lead solder installed between January 1983 and April 1986 or contain lead pipes; and/or

(ii) Are served by a lead service line.

(g) The owner of a nontransient noncommunity waterworks with insufficient tier 1 sites that meet the targeting criteria in subdivision B 6 a (1) (f) of this section shall complete the sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the owner of a nontransient noncommunity waterworks shall use representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the waterworks.

(h) The owner of any waterworks whose distribution system contains lead service lines shall draw 50% of the samples the owner collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50% of the samples the owner collects from sites served by a

lead service line. Any owner who cannot identify a sufficient number of sampling sites served by a lead service line shall collect first draw tap samples from all of the sites identified as being served by such lines.

(2) Sample collection methods.

(a) All tap samples for lead and copper, with the exception of lead service line samples collected under 12 VAC 5-590-420 E 3 and samples collected under subdivision B 6 a (2) (e) of this section, shall be first draw samples.

(b) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. Non-first-draw samples collected in lieu of first-draw samples pursuant to subdivision B 6 a (2) (e) of this section shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the waterworks owner or the owner may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first draw samples may be done up to 14 days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed. If an owner allows residents to perform sampling, the owner may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(c) Each lead service line sample collected pursuant to 12 VAC 5-590-420 E 3 for the purpose of avoiding replacement shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(i) At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(ii) Tapping directly into the lead service line; or

(iii) If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

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(d) A waterworks owner shall collect each first draw tap sample from the same sampling site from which the owner collected a previous sample. If, for any reason, the owner cannot gain entry to a sampling site in order to collect a follow-up tap sample, the owner may collect the follow-up tap sample from another sampling site in the sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(e) The owner of a nontransient noncommunity waterworks, or a community waterworks that meets the criteria of 12 VAC 5-590-420 F 3 g (1) and (2) that does not have enough taps that can supply first-draw samples, as defined in subdivision B 6 a (2) (b) of this section, may apply to the district engineer in writing to substitute non-first-draw samples. If approved by the commissioner, such owners must collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites.

(3) Number of samples. Waterworks owners shall collect at least one sample during each monitoring period specified in subdivision B 6 a (4) of this section from the number of sites listed in the first column ("standard monitoring") of the table in this paragraph. The owner of a waterworks conducting reduced monitoring under subdivision B 6 a (4) (d) of this section shall collect at least one sample from the number of sites specified in the second column ("reduced monitoring") of the table in this paragraph during each monitoring period specified in subdivision B 6 a (4) (d) of this section. Such reduced monitoring sites shall be representative of the sites required for standard monitoring. The commissioner may specify sampling locations when a waterworks owner is conducting reduced monitoring. The table is as follows:

System Size (Number of People Served)	Number of sites (Standard Monitoring)	Number of sites (Reduced Monitoring)
>100,000	100	50
10,001- 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
≤100	5	5

(4) Timing of monitoring.

(a) Initial tap sampling. The first six-month monitoring period for small (serving ≤3,300 population), medium-size (serving 3,301 to 50,000 population) and large waterworks (serving >50,000 population) shall be established by the commissioner.

(i) All large waterworks shall monitor during two consecutive six-month periods.

(ii) All small and medium-size waterworks shall monitor during each six-month monitoring period until: the waterworks exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under 12 VAC 5-590-420 C, in which case the owner shall continue monitoring in accordance with subdivision B 6 a (4) (b) of this section, or the waterworks meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the owner may reduce monitoring in accordance with subdivision B 6 a (4) (d) of this section.

(b) Monitoring after installation of corrosion control and water supply (source water) treatment.

(i) The owner of any large waterworks which installs optimal corrosion control treatment pursuant to 12 VAC 5-590-420 C 2 d (4) shall monitor during two consecutive six-month monitoring periods by the date specified in 12 VAC 5-590-420 C 2 d (5).

(ii) The owner of any small or medium-size waterworks which installs optimal corrosion control treatment pursuant to 12 VAC 5-590-420 C 2 e (5) shall monitor during two consecutive six-month monitoring periods by the date specified in 12 VAC 5-590-420 C 2 e (6).

(iii) The owner of any waterworks which installs source water treatment pursuant to 12 VAC 5-590-420 D 1 c shall monitor during two consecutive six-month monitoring periods by the date specified in 12 VAC 5-590-420 D 1 d.

(c) Monitoring after the commissioner specifies water quality parameter values for optimal corrosion control. After the commissioner specifies the values for water quality control parameters under 12 VAC 5-590-420 C 1 f, the waterworks owner shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the commissioner specifies the optimal values under 12 VAC 5-590-420 C 1 f.

(d) Reduced monitoring.

(i) The owner of a small or medium-size waterworks that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with subdivision B 6 a (3) of this section, and reduce the frequency of sampling to once per year.

(ii) The owner of any waterworks that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the commissioner under 12 VAC 5-590-420 C 1 f during each of two consecutive six-month monitoring periods may

reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with subdivision B 6 a (3) of this section if the owner receives written approval from the commissioner. The commissioner shall review monitoring, treatment, and other relevant information submitted by the waterworks owner in accordance with 12 VAC 5-590-530 D, and shall notify the waterworks owner in writing when a determination is made that the owner is eligible to commence reduced monitoring pursuant to this paragraph. The commissioner shall review, and where appropriate, revise its determination when the owner submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) The owner of a small or medium-size waterworks that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any waterworks that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the commissioner under 12 VAC 5-590-420 C 1 f during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if the owner receives written approval from the commissioner. The commissioner shall review monitoring, treatment, and other relevant information submitted by the owner in accordance with 12 VAC 5-590-530 D and shall notify the waterworks owner in writing when a determination is made that the owner is eligible to commence reduced monitoring pursuant to this paragraph. The commissioner shall review, and where appropriate, revise its determination when the owner submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) The owner of a waterworks that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in subdivision B 6 a (1) of this section. Waterworks owners sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September. For a nontransient noncommunity waterworks that does not operate during the months of June through September, the commissioner shall designate an alternate monitoring period that represents a time of normal operation for the waterworks.

(v) The owner of any waterworks that demonstrates for two consecutive six-month monitoring periods that the tap water lead level computed under 12 VAC 5-590-410 E 3 is less

than or equal to 0.005 mg/L and the tap water copper level computed under 12 VAC 5-590-410 E 3 is less than or equal to 0.65 mg/L may reduce the number of samples in accordance with subdivision B 6 a (3) of this section and reduce the frequency of sampling to once every three calendar years.

(vi) The owner of a small or medium-size waterworks subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with subdivision B 6 a (4) (c) of this section and collect the number of samples specified for standard monitoring under subdivision B 6 a (3) of this section. Such waterworks owner shall also conduct water quality parameter monitoring in accordance with subdivision B 6 b (2), (3), or (4) of this section (as appropriate) during the monitoring period in which the action level is exceeded. The owner of any such waterworks may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in subdivision B 6 a (3) of this section after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of subdivision B 6 a (4) (d) (i) of this section and/or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either subdivision B 6 a (4) (d) (iii) or (v) of this section.

(vii) The owner of any waterworks subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the commissioner under 12 VAC 5-590-420 C 1 f for more than nine days in any six-month period specified in subdivision B 6 b (4) of this section shall conduct tap water sampling for lead and copper at the frequency specified in subdivision B 6 a (4) (c) of this section, collect the number of samples specified for standard monitoring under subdivision B 6 a (3) of this section, and shall resume monitoring for water quality parameters within the distribution system in accordance with subdivision B 6 b (4) of this section. The owner of such a waterworks may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

((a)) The waterworks owner may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in subdivision B 6 a (3) of this section after completion of two subsequent six-month rounds of monitoring that meet the criteria of subdivision B 6 a (4) (d) (ii) of this section and the owner has received written approval from the commissioner that it is appropriate to resume reduced monitoring on an annual frequency.

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(b) The waterworks owner may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after demonstration through subsequent rounds of monitoring that it meets the criteria of either subdivision B 6 a (4) (d) (iii) or (v) of this section and the owner has received written approval from the commissioner that it is appropriate to resume triennial monitoring.

((c)) The waterworks owner may reduce the number of water quality parameter tap water samples required in accordance with subdivision B 6 b (5) (a) of this section and the frequency with which it collects such samples in accordance with subdivision B 6 b (5) (b) of this section. The owner of such a waterworks may not resume triennial monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of subdivision B 6 b (5) (b) of this section, that it has requalified for triennial monitoring.

(viii) The owner of any waterworks subject to a reduced monitoring frequency under subdivision B 6 a (4) (d) of this section that either adds a new source of water or changes any water treatment shall inform the district engineer in writing in accordance with 12 VAC 5-590-530 D 1 c. The commissioner may require the waterworks owner to resume sampling in accordance with subdivision B 6 a (4) (c) of this section and collect the number of samples specified for standard monitoring under subdivision B 6 a (3) of this section or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(5) Additional monitoring by waterworks owner. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the waterworks owner and the commissioner in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subpart.

(6) Invalidation of lead or copper tap water samples. A sample invalidated under this paragraph does not count toward determining lead or copper 90th percentile levels under 12 VAC 5-590-410 E or toward meeting the minimum monitoring requirements of subdivision B 6 a (3) of this section.

(a) The commissioner may invalidate a lead or copper tap water sample if at least one of the following conditions is met.

(i) The laboratory establishes that improper sample analysis caused erroneous results.

(ii) The commissioner determines that the sample was taken from a site that did not meet the site selection criteria of this section.

(iii) The sample container was damaged in transit.

(iv) There is substantial reason to believe that the sample was subject to tampering.

(b) The waterworks owner must report the results of all samples to the district engineer and all supporting documentation for samples the owner believes should be invalidated.

(c) To invalidate a sample under subdivision B 6 a (6) (a) of this section, the decision and the rationale for the decision must be documented in writing. The commissioner may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(d) The waterworks owner must collect replacement samples for any samples invalidated under this section if, after the invalidation of one or more samples, the owner has too few samples to meet the minimum requirements of subdivision B 6 a (3) of this section. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the commissioner invalidates the sample or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(7) Monitoring waivers for small systems. The owner of any small waterworks that meets the criteria of this section may apply to the commissioner to reduce the frequency of monitoring for lead and copper to once every nine years (i.e., a "full waiver") if the owner meets all of the materials criteria specified in subdivision B 6 a (7) (a) of this section and all of the monitoring criteria specified in subdivision B 6 a (7) (b) of this section. The owner of any small system that meets the criteria in subdivisions B 6 a (7) (a) and (b) of this section only for lead, or only for copper, may apply to the commissioner for a waiver to reduce the frequency of tap water monitoring to once every nine years for that contaminant only (i.e., a "partial waiver").

(a) Materials criteria. The waterworks owner must demonstrate that the distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the waterworks, are free of lead-containing materials and/or copper-containing materials, as those terms are defined in this paragraph, as follows:

(i) Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead (i.e., a "lead waiver"), the waterworks owner must provide certification and supporting documentation to the commissioner that the waterworks is free of all lead-containing materials, as follows:

((a)) It contains no plastic pipes that contain lead plasticizers, or plastic service lines that contain lead plasticizers; and

((b)) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 USC § 300g-6(e) (SDWA § 1417(e)).

(ii) Copper. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for copper (i.e., a "copper waiver"), the waterworks owner must provide certification and supporting documentation to the commissioner that the waterworks contains no copper pipes or copper service lines.

(b) Monitoring criteria for waiver issuance. The waterworks owner must have completed at least one six-month round of standard tap water monitoring for lead and copper at sites approved by the commissioner and from the number of sites required by subdivision B 6 a (3) of this section and demonstrate that the 90th percentile levels for any and all rounds of monitoring conducted since the owner became free of all lead-containing and/or copper-containing materials, as appropriate, meet the following criteria.

(i) Lead levels. To qualify for a full waiver, or a lead waiver, the waterworks owner must demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

(ii) Copper levels. To qualify for a full waiver, or a copper waiver, the waterworks owner must demonstrate that the 90th percentile copper level does not exceed 0.65 mg/L.

(c) Commissioner approval of waiver application. The commissioner shall notify the waterworks owner of its waiver determination, in writing, setting forth the basis of its decision and any condition of the waiver. As a condition of the waiver, the commissioner may require the owner to perform specific activities (e.g., limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the waiver) to avoid the risk of lead or copper concentration of concern in tap water. The owner of a small waterworks must continue monitoring for lead and copper at the tap as required by subdivisions B 6 a (4) (a) through (d) of this section, as appropriate, until it receives written notification from the commissioner that the waiver has been approved.

(d) Monitoring frequency for waterworks owners with waivers.

(i) A waterworks owner with a full waiver must conduct tap water monitoring for lead and copper in accordance with subdivision B 6 a (4) (d) (iv) of this section at the reduced number of sampling

sites identified in subdivision B 6 a (3) of this section at least once every nine years and provide the materials certification specified in subdivision B 6 a (7) (a) of this section for both lead and copper to the commissioner along with the monitoring results.

(ii) A waterworks owner with a partial waiver must conduct tap water monitoring for the waived contaminant in accordance with subdivision B 6 a (4) (d) (iv) of this section at the reduced number of sampling sites specified in subdivision B 6 a (3) of this section at least once every nine years and provide the materials certification specified in subdivision B 6 a (7) (a) of this section pertaining to the waived contaminant along with the monitoring results. Such a waterworks owner also must continue to monitor for the nonwaived contaminant in accordance with requirements of subdivisions B 6 a (4) (a) through (d) of this section, as appropriate.

(iii) If a waterworks owner with a full or partial waiver adds a new source of water or changes any water treatment, the owner must notify the commissioner in writing in accordance with 12 VAC 5-590-530 D 1 c. The commissioner has the authority to require the owner to add or modify waiver conditions (e.g., require recertification that the waterworks is free of lead-containing and/or copper-containing materials, require additional round(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the waterworks.

(iv) If a waterworks owner with a full or partial waiver becomes aware that it is no longer free of lead-containing or copper-containing materials, as appropriate, (e.g., as a result of new construction or repairs), the owner shall notify the commissioner in writing no later than 60 days after becoming aware of such a change.

(e) Continued eligibility. If the waterworks owner continues to satisfy the requirements of subdivision B 6 a (7) (d) of this section, the waiver will be renewed automatically, unless any of the conditions listed in subdivisions (i), (ii), or (iii) of this subdivision (e) occurs. A waterworks owner whose waiver has been revoked may reapply for a waiver at such time as it again meets the appropriate materials and monitoring criteria of subdivisions B 6 a (7) (a) and (b) of this section.

(i) A waterworks owner with a full waiver or a lead waiver no longer satisfies the materials criteria of subdivision B 6 a (7) (a) (i) of this section or has a 90th percentile lead level greater than 0.005 mg/L.

(ii) A waterworks owner with a full waiver or a copper waiver no longer satisfies the materials criteria of subdivision B 6 a (7) (a) (ii) of this section or has a 90th percentile copper level greater than 0.65 mg/L.

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(iii) The commissioner notifies the waterworks owner, in writing, that the waiver has been revoked, setting forth the basis of the decision.

(f) Requirements following waiver revocation. A waterworks owner whose full or partial waiver has been revoked by the commissioner is subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

(i) If the waterworks owner exceeds the lead and/or copper action level, the owner must implement corrosion control treatment in accordance with the deadlines specified in 12 VAC 5-590-420 C 2 e and any other applicable requirements of this subpart.

(ii) If the waterworks owner meets both the lead and the copper action level, the owner must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in subdivision B 6 a (3) of this section.

(g) Pre-existing waivers. Waivers for small waterworks approved by the commissioner in writing prior to April 11, 2000, shall remain in effect under the following conditions:

(i) If the waterworks owner has demonstrated that it is both free of lead-containing and copper-containing materials, as required by subdivision B 6 a (7) (a) of this section and that its 90th percentile lead levels and 90th percentile copper levels meet the criteria of subdivision B 6 a (7) (b) of this section, the waiver remains in effect so long as the owner continues to meet the waiver eligibility criteria of subdivision B 6 a (7) (e) of this section. The first round of tap water monitoring conducted pursuant to subdivision B 6 a (7) (d) of this section shall be completed no later than nine years after the last time the owner has monitored for lead and copper at the tap.

(ii) If the waterworks owner has met the materials criteria of subdivision B 6 a (7) (a) of this section but has not met the monitoring criteria of subdivision B 6 a (7) (b) of this section, the owner shall conduct a round of monitoring for lead and copper at the tap demonstrating that it meets the criteria of subdivision B 6 a (7) (b) of this section no later than September 30, 2000. Thereafter, the waiver shall remain in effect as long as the owner meets the continued eligibility criteria of subdivision B 6 a (7) (e) of this section. The first round of tap water monitoring conducted pursuant to subdivision B 6 a (7) (d) of this section shall be completed no later than nine years after the round of monitoring conducted pursuant to subdivision B 6 a (7) (b) of this section.

b. Monitoring requirements for water quality parameters. The owners of all large waterworks, and all small and medium-size waterworks that exceed the lead or copper action level shall monitor water quality parameters in

addition to lead and copper in accordance with this section. The requirements of this section are summarized in Appendix M.

(1) General requirements.

(a) Sample collection methods.

(i) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the waterworks, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under subdivision B 6 (a) (1) of this section. Waterworks owners may find it convenient to conduct tap sampling for water quality parameters at sites approved for coliform sampling.

(ii) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a waterworks draws water from more than one source and the sources are combined before distribution, the waterworks owner must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(b) Number of samples.

(i) Waterworks owners shall collect two tap samples for applicable water quality parameters during each monitoring period specified under subdivision B 6 b (2) through (5) of this section from the following number of sites.

System Size (Number of People Served)	Number of Sites for Water Quality Parameters
>100,000	25
10,001-100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(ii) Except as provided in subdivision B 6 b (3) (c) of this section, waterworks owners shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in subdivision B 6 b (2) of this section. During each monitoring period specified in subdivision B 6 b (3) through (5) of this section, waterworks owners shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(2) Initial sampling. The owners of all large waterworks shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in subdivision B 6 a (4) (a)



of this section. The owners of all small and medium-size waterworks shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in subdivision B 6 a (4) (a) of this section during which the waterworks exceeds the lead or copper action level.

(a) At taps:

- (i) pH;
- (ii) alkalinity;
- (iii) orthophosphate, when an inhibitor containing a phosphate compound is used;
- (iv) silica, when an inhibitor containing a silicate compound is used;
- (v) calcium;
- (vi) conductivity; and
- (vii) water temperature.

(b) At each entry point to the distribution system: all of the applicable parameters listed in subdivision B 6 b (2) (a) of this section.

(3) Monitoring after installation of corrosion control. The owner of any large waterworks which installs optimal corrosion control treatment pursuant to 12 VAC 5-590-420 C 2 d (4) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in subdivision B 6 a (4) (b) (i) of this section. The owner of any small or medium-size waterworks which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in subdivision B 6 a (4) (b) (ii) in which the waterworks exceeds the lead or copper action level.

(a) At taps, two samples for:

- (i) pH;
- (ii) alkalinity;
- (iii) orthophosphate, when an inhibitor containing a phosphate compound is used;
- (iv) silica, when an inhibitor containing a silicate compound is used;
- (v) calcium, when calcium carbonate stabilization is used as part of corrosion control.

(b) Except as provided in subdivision B 6 b (3) (c) of this section, at each entry point to the distribution system, at least one sample no less frequently than every two weeks (bi-weekly) for:

- (i) pH;
- (ii) when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(iii) when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(c) The owner of any ground water waterworks can limit entry point sampling described in subdivision B 6 b (3) (b) of this section to those entry points that are representative of water quality and treatment conditions throughout the waterworks. If water from untreated ground water sources mixes with water from treated ground water sources, the owner must monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the owner shall provide to the commissioner written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the waterworks.

(4) Monitoring after the commissioner specifies water quality parameter values for optimal corrosion control. After the commissioner specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under 12 VAC 5-590-420 C 1 f, the owners of all large waterworks shall measure the applicable water quality parameters in accordance with subdivision B 6 b (3) of this section and determine compliance with the requirements of 12 VAC 5-590-420 C 1 g every six months with the first six-month period to begin on the date the commissioner specifies the optimal values under 12 VAC 5-590-420 C 1 f. The owner of any small or medium-size waterworks shall conduct such monitoring during each six-month monitoring period specified in this subdivision in which the waterworks exceeds the lead or copper action level. For the owner of any such small and medium-size waterworks that is subject to a reduced monitoring frequency pursuant to subdivision B 6 a (4) (d) of this section at the time of the action level exceedance, the end of the applicable six-month period under this paragraph shall coincide with the end of the applicable monitoring period under subdivision B 6 a (4) (d) of this section. Compliance with the commissioner-designated optimal water quality parameter values shall be determined as specified under 12 VAC 5-590-420 C 1 g.

(5) Reduced monitoring.

(a) The owner of any waterworks that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under subdivision B 6 b (4) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in subdivision B 6 b (3) (b) of this section. The owner of such waterworks may collect two tap samples for applicable water

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quality parameters from the following reduced number of sites during each six-month monitoring period.

Size of Water System (Number of People Served)	Reduced Number of WQP Monitoring Sites
>100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(b) The owner of any waterworks that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the commissioner under 12 VAC 5-590-420 C 1f during three consecutive years of monitoring may reduce the frequency with which the owner collects the number of tap samples for applicable water quality parameters specified in subdivision B 6 b (5) (a) of this section from every six months to annually. The owner of any waterworks that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the commissioner under 12 VAC 5-590-420 C 1 f during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in subdivision B 6 a (5) (a) of this section from annually to every three years.

(c) The owner of a waterworks may reduce the frequency with which tap samples are collected for applicable water quality parameters specified in subdivision B 6 b (5) (a) of this section to every three years if the owner demonstrates during two consecutive monitoring periods that the tap water lead level at the 90th percentile is less than or equal to the PQL for lead (0.005 mg/L), that the tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper, and that the owner also has maintained the range of values for water quality parameters reflecting optimal corrosion control treatment specified by the commissioner under 12 VAC 5-590-420 C 1 f.

(d) The owner of a waterworks that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(e) The owner of any waterworks subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the commissioner under 12 VAC 5-590-420 C 1 f for more than nine days in any six-month period specified in 12 VAC 5-590-420 C 1 g shall resume distribution system tap water sampling in accordance with the number and frequency requirements in

subdivision B 6 b (4) of this section. Such a waterworks owner may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in subdivision B 6 b (5) of this section after completion of two subsequent consecutive six-month rounds of monitoring that meet the criteria of that subdivision and/or may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites after demonstration through subsequent rounds of monitoring that the criteria of either subdivision B 6 b (5) (b) or (c) of this section has been met.

(6) Additional monitoring by waterworks owners. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the waterworks owner and the commissioner in making any determinations under this section or 12 VAC 5-590-420 C 1.

c. Monitoring requirements for lead and copper in water supplies (source water).

(1) Sample location, collection methods, and number of samples.

(a) The owner of a waterworks that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with subdivision B 6 a of this section shall collect lead and copper water supply samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(i) The owner of a waterworks served by groundwater sources shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). The waterworks owner shall take one sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) The owner of a waterworks served by surface water sources shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point). The waterworks owner shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. Note that for the purpose of this paragraph, a waterworks served by a surface water source includes waterworks served by a combination of surface and ground sources.

(iii) If a waterworks draws water from more than one source and the sources are combined before distribution, the waterworks owner must collect samples at an entry point to the distribution system during periods of normal operating conditions (i.e.,

when water is representative of all sources being used).

(iv) The commissioner may reduce the total number of samples that must be analyzed by allowing the use of compositing. Compositing of samples must be done by certified laboratory personnel. Composite samples from a maximum of five samples are allowed, provided that if the lead concentration in the composite sample is greater than or equal to 0.001 mg/L or the copper concentration is greater than or equal to 0.160 mg/L, then either a follow-up sample shall be collected and analyzed within 14 days at each sampling point included in the composite or if duplicates of or sufficient quantities from the original samples from each sampling point used in the composite are available, the waterworks owner may use these instead of resampling.

(b) Where the results of sampling indicate an exceedance of maximum permissible water supply levels established under 12 VAC 5-590-420 D 4, the commissioner may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a commissioner required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the commissioner-specified maximum permissible levels. Any sample value below the *method* detection limit shall be considered to be zero. Any value above the *method* detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL. The PQL for Lead is equal to 0.005 mg/l and the PQL for Copper is equal to 0.050 mg/l.

(2) Monitoring frequency after waterworks exceeds tap action level. The owner of any waterworks which exceeds the lead or copper action level at the tap shall collect one water supply sample from each entry point to the distribution system within six months after the exceedance.

(3) Monitoring frequency after installation of water supply treatment. The owner of any waterworks which installs water supply treatment pursuant to 12 VAC 5-590-420 D 1 c shall collect an additional water supply sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in 12 VAC 5-590-420 D 1 d.

(4) Monitoring frequency after the commissioner specifies maximum permissible water supply lead and copper levels or determines that water supply treatment is not needed.

(a) A waterworks owner shall monitor at the frequency specified below in cases where the commissioner specifies maximum permissible water supply lead and copper levels under 12 VAC 5-590-

420 D 4 or determines that the owner is not required to install water supply treatment under 12 VAC 5-590-420 D 2 (b).

(i) The owner of a waterworks using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable commissioner determination under subdivision B 6 c (4) (a) of this section is made. Owners of such waterworks shall collect samples once during each subsequent compliance period.

(ii) The owner of a waterworks using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable commissioner determination is made under subdivision B 6 c (4) (a) of this section.

(b) A waterworks owner is not required to conduct water supply sampling for lead and/or copper if the waterworks meets the action level for the specific contaminant in tap water samples during the entire water supply sampling period applicable to the waterworks under subdivision B 6 c (4) (a) (i) or (ii) of this section.

(5) Reduced monitoring frequency.

(a) The owner of a waterworks using only groundwater may reduce the monitoring frequency for lead and copper in water supplies to once during each nine-year compliance cycle if the waterworks owner meets one of the following criteria:

(i) The waterworks owner demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the commissioner under 12 VAC 5-590-420 D 4 during at least three consecutive compliance periods under subdivision B 6 c (4) (a) of this section; or

(ii) The commissioner has determined that water supply treatment is not needed and the waterworks owner demonstrates that, during the last three consecutive compliance periods in which sampling was conducted under subdivision B 6 c (4) (a) of this section, the concentration of lead in the water supply was less than or equal to 0.005 mg/L and the concentration of copper in the water supply was less than or equal to 0.65 mg/L.

(b) The owner of a waterworks using surface water (or a combination of surface and ground waters) may reduce the monitoring frequency for lead and copper in water supplies to once during each nine-year compliance cycle if the waterworks owner meets one of the following criteria:

(i) The waterworks owner demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations

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specified by the commissioner under 12 VAC 5-590-420 D 4 for at least three consecutive years; or

(ii) The commissioner has determined that water supply treatment is not needed and the waterworks owner demonstrates that, during the last three consecutive years, the concentration of lead in the water supply was less than or equal to 0.005 mg/L and the concentration of copper in the water supply was less than or equal to 0.65 mg/L.

(c) A waterworks that uses a new water supply is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new supply during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the commissioner in 12 VAC 5-590-420 D 1 e.

## 7. Monitoring filtration and disinfection.

a. The owner of a waterworks that uses a surface water source or a groundwater source under the direct influence of surface water and provides filtration treatment must monitor in accordance with this section beginning June 29, 1993, or when filtration is installed, whichever is later.

b. Turbidity measurements as required by 12 VAC 5-590-410 F shall be performed on representative samples of the filtered water every four hours (or more frequently) that the waterworks serves water to the public. A waterworks owner may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Office. For any waterworks using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the office may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For waterworks serving 500 or fewer persons, the office may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the office determines that less frequent monitoring is sufficient to indicate effective filtration performance.

(1) In addition to the above, as of January 1, 2001, waterworks serving at least 10,000 people and as of January 1, 2005, waterworks serving less than 10,000 people supplied by surface water or groundwater under the direct influence of surface water using conventional filtration treatment or direct filtration must conduct continuous monitoring of turbidity for each individual filter, using an approved method in 12 VAC 5-590-440. The turbidimeter must be calibrated using the procedure specified by the manufacturer. Waterworks must record the results of individual filter turbidity monitoring every 15 minutes.

(2) If there is a failure in the continuous turbidity monitoring equipment, the waterworks must conduct grab sampling every four hours in lieu of continuous monitoring but for no more than five working days (for

waterworks serving at least 10,000 people) or 14 days (for waterworks serving less than 10,000 people) following the failure of the equipment.

(3) If a waterworks serving less than 10,000 people consists of two or fewer filters, continuous monitoring of the combined filter effluent may be used in lieu of individual filter monitoring.

c. The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment, and owners of waterworks serving 3,300 or fewer persons may take grab samples in lieu of continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

Waterworks Size By Population	Samples/Day <sup>1</sup>
500 or less	1
501 to 1,000	2
1,000 to 2,500	3
2,501 to 3,300	4

<sup>1</sup>The day's samples cannot be taken at the same time. The sampling intervals are subject to commissioner's review and approval.

If at any time the residual disinfectant concentration falls below 0.2 mg/L in a waterworks using grab sampling in lieu of continuous monitoring, the waterworks owner shall take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.2 mg/L.

(1) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in subsection A of this section, except that the division may allow a waterworks owner which uses both a surface water source or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the division determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in 12 VAC 5-590-420 B may be measured in lieu of residual disinfectant concentration.

(2) If the office determines, based on site-specific considerations, that a waterworks has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions and that the waterworks is providing adequate disinfection in the distribution system, the requirements of subdivision B 7 (1) of this section do not apply to that waterworks.

d. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 12 VAC 5-590-420 B shall be reported monthly to the division by the waterworks owner:

- (1) Number of instances where the residual disinfectant concentration is measured;
- (2) Number of instances where the residual disinfectant concentration is not measured but HPC is measured;
- (3) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;
- (4) Number of instances where no residual disinfectant concentration is detected and where the HPC is greater than 500/mL;
- (5) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/mL.
- (6) For the current and previous month the waterworks serves water to the public, the value of "V" in percent in the following formula:

$$V = (c + d + e) / (a + b) \times 100$$

where

- a = the value in subdivision B 7 d (1) of this section,  
b = the value in subdivision B 7 d (2) of this section,  
c = the value in subdivision B 7 d (3) of this section,  
d = the value in subdivision B 7 d (4) of this section,  
e = the value in subdivision B 7 d (5) of this section,

(7) If the division determines, based on site-specific considerations, that a waterworks owner has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions and that the waterworks is providing adequate disinfection in the distribution system, the requirements of subdivision B 7 c (1) of this section do not apply.

e. A waterworks owner need not report the data listed in 12 VAC 5-590-530 C 2 a if all data listed in 12 VAC 5-590-530 C 2 a through c remain on file at the waterworks and the division determines that the waterworks owner has submitted all the information required by 12 VAC 5-590-530 C 2 a through c for at least 12 months.

8. Operational. Waterworks owners may be required by the division to collect additional samples to provide quality control for any treatment processes that are employed.

C. Physical. All samples for turbidity analysis shall be taken at a representative entry point or points to the water distribution system unless otherwise specified. Turbidity samples shall be analyzed, at least once per day at all waterworks that use surface water sources or groundwater sources under the direct influence of surface water.

D. Radiological. The location of sampling points, the radionuclides measured in community waterworks, the frequency, and the timing of sampling within each compliance period shall be established or approved by the commissioner. The commissioner may increase required monitoring where necessary to detect variations within the waterworks. Failure to comply with the sampling schedules in this section will require public notification pursuant to 12 VAC 5-590-540.

Community waterworks owners shall conduct monitoring to determine compliance with the PMCLs in Table 2.5 and 12 VAC 5-590-400 in accordance with this section.

1. Monitoring and compliance requirements for gross alpha particle activity, radium-226, radium-228, and uranium.

a. Community waterworks owners must conduct initial monitoring to determine compliance with 12 VAC 5-590-400 B 2, 12 VAC 5-590-400 B 3 and 12 VAC 5-590-400 B 4 by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity in drinking water, "detection limit" is defined as in Appendix B of this chapter.

(1) Applicability and sampling location for existing community waterworks or sources. The owners of all existing community waterworks using ground water, surface water or waterworks using both ground and surface water must sample at every entry point to the distribution system that is representative of all sources being used under normal operating conditions. The community waterworks owner must take each sample at the same entry point unless conditions make another sampling point more representative of each source.

(2) Applicability and sampling location for new community waterworks or sources. All new community waterworks or community waterworks that use a new source of water must begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. Community waterworks owners must conduct more frequent monitoring when directed by the commissioner in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

b. Initial monitoring: Community waterworks owners must conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

(1) Community waterworks without acceptable historical data, as defined below, must collect four consecutive quarterly samples at all entry points before December 31, 2007.

(2) Grandfathering of data: The commissioner may allow historical monitoring data collected at an entry point to satisfy the initial monitoring requirements for that entry point, for the following situations:

(a) To satisfy initial monitoring requirements, a community waterworks owner having only one entry point to the distribution system may use the monitoring data from the last compliance monitoring

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period that began between June 2000 and December 8, 2003.

(b) To satisfy initial monitoring requirements, a community waterworks owner with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(3) For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the commissioner may waive the final two quarters of initial monitoring for an entry point if the results of the samples from the previous two quarters are below the *method* detection limit specified in Appendix B.

(4) If the average of the initial monitoring results for an entry point is above the PMCL, the community waterworks owner must collect and analyze quarterly samples at that entry point until the waterworks owner has results from four consecutive quarters that are at or below the PMCL, unless the community waterworks owner enters into another schedule as part of a formal compliance agreement with the commissioner.

c. Reduced monitoring: The commissioner may allow community waterworks owners to reduce the future frequency of monitoring from once every three years to once every six or nine years at each entry point, based on the following criteria:

(1) If the average of the initial monitoring results for each contaminant (i.e., gross alpha particle activity, uranium, radium-226, or radium-228) is below the *method* detection limit specified in Appendix B, the waterworks owner must collect and analyze for that contaminant using at least one sample at that entry point every nine years.

(2) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the *method* detection limit specified in Appendix B but at or below 1/2 of the PMCL, the community waterworks owner must collect and analyze for that contaminant using at least one sample at that entry point every six years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the *method* detection limit specified in Appendix B but at or below 1/2 the PMCL, the community waterworks owner must collect and analyze for that contaminant using at least one sample at that entry point every six years.

(3) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above 1/2 the PMCL but at or below the PMCL, the community waterworks owner must collect and analyze at least one sample at that entry point every three years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results

for radium-226 and radium-228 is above 1/2 the PMCL but at or below the MPCL, the community waterworks owner must collect and analyze at least one sample at that entry point every three years.

(4) Community waterworks owners must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (e.g., if a community waterworks' entry point is on a nine-year monitoring period, and the sample result is above 1/2 the PMCL, then the next monitoring period for that entry point is three years).

(5) If a community waterworks owner has a monitoring result that exceeds the PMCL while on reduced monitoring, the community waterworks owner must collect and analyze quarterly samples at that entry point until the community waterworks owner has results from four consecutive quarters that are below the PMCL, unless the community waterworks enters into another schedule as part of a formal compliance agreement with the commissioner.

d. Compositing. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a community waterworks owner may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. The commissioner will treat analytical results from the composited sample as the average analytical result to determine compliance with the PMCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than 1/2 the PMCL, the commissioner may direct the community waterworks owner to take additional quarterly samples before allowing the community waterworks owner to sample under a reduced monitoring schedule.

e. A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed 5 pCi/L. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/L.

The gross alpha measurement shall have a confidence interval of 95% (1.65, where is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a community waterworks owner uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than the *method* detection limit as specified in Appendix B, 1/2 the *method* detection limit will be used to determine compliance and the future monitoring frequency.

2. Monitoring and compliance requirements for beta particle and photon radioactivity. To determine compliance with the maximum contaminant levels in 12 VAC 5-590-400 B 5 for

beta particle and photon radioactivity, a community waterworks owner must monitor at a frequency as follows:

a. Community waterworks owners (using surface or groundwater) designated by the commissioner as vulnerable must sample for beta particle and photon radioactivity. Community waterworks owners must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the commissioner. Community waterworks already designated by the commissioner must continue to sample until the commissioner reviews and either reaffirms or removes the designation.

(1) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at an entry point has a running annual average (computed quarterly) less than or equal to 50 pCi/L (screening level), the commissioner may reduce the frequency of monitoring at that entry point to once every three years. Community waterworks owners must collect all samples required in subdivision 2 a of this subsection during the reduced monitoring period.

(2) For community waterworks in the vicinity of a nuclear facility, the commissioner may allow the community waterworks owners to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the community waterworks' entry point(s), where the commissioner determines if such data is applicable to a particular community waterworks. In the event that there is a release from a nuclear facility, community waterworks owners which are using surveillance data must begin monitoring at the community waterworks' entry point(s) in accordance with subdivision 2 a of this subsection.

b. Community waterworks owners (using surface or groundwater) designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Community waterworks owners must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the commissioner. Owners of community waterworks already designated by the commissioner as using waters contaminated by effluents from nuclear facilities must continue to sample until the commissioner reviews and either reaffirms or removes the designation.

(1) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

(2) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As directed by the commission, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(3) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite

of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(4) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the commissioner may reduce the frequency of monitoring at that sampling point to every three years. Community waterworks owners must collect all samples required in subdivision 2 b of this subsection during the reduced monitoring period.

(5) For community waterworks in the vicinity of a nuclear facility, the commissioner may allow the community waterworks owner to utilize environmental surveillance data collected by the nuclear facility in lieu of the monitoring at the community waterworks' entry point(s), where the commissioner determines such data is applicable to a particular waterworks. In the event that there is a release from a nuclear facility, community waterworks owners which are using surveillance data must begin monitoring at the community waterworks' entry point(s) in accordance with subdivision 2 b of this subsection.

c. Owners of community waterworks designated by the commissioner to monitor for beta particle and photon radioactivity can not apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision 2 a or b of this subsection.

d. Community waterworks owners may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Community waterworks owners are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/l) by a factor of 0.82.

e. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with 12 VAC 5-590-400 B 5 a, using the formula in 12 VAC 590-400 B 5 b. Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

f. Community waterworks owners must monitor monthly at the entry point(s) which exceed the maximum contaminant level in 12 VAC 5-590-400 B 5 beginning the month after the exceedance occurs. Community waterworks owners must continue monthly monitoring until the community waterworks has established, by a rolling average of three monthly samples, that the PMCL is being met. Community waterworks owners who establish that the PMCL is being met must return to

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quarterly monitoring until they meet the requirements set forth in subdivision 2 a (1) or 2 b (4) of this subsection.

### 3. General monitoring and compliance requirements for radionuclides.

a. The commissioner may require more frequent monitoring than specified in subdivisions 1 and 2 of this subsection, or may require confirmation samples at his discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

b. Each community waterworks owner shall monitor at the time designated by the commissioner during each compliance period.

c. Compliance: Compliance with 12 VAC 5-590-400 B 2 through 12 VAC 5-590-400 B 5 will be determined based on the analytical results(s) obtained at each entry point. If one entry point is in violation of a PMCL, the community waterworks is in violation of the PMCL.

(1) For community waterworks monitoring more than once per year, compliance with the PMCL is determined by a running annual average at each entry point. If the average of any entry point is greater than the PMCL, then the community waterworks is out of compliance with the PMCL.

(2) For community waterworks monitoring more than once per year, if any sample result will cause the running average to exceed the PMCL at any entry point, the community waterworks is out of compliance with the PMCL immediately.

(3) Community waterworks owners must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(4) If a community waterworks owner does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(5) If a sample result is less than the *method* detection limit as specified in Appendix B, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than the *method* detection limit as specified in Appendix B, 1/2 the *method* detection limit will be used to calculate the annual average.

d. The commissioner has the discretion to delete results of obvious sampling or analytic errors.

e. If the PMCL for radioactivity set forth in 12 VAC 5-590-400 B through 12 VAC 5-590-400 B 5 is exceeded, the owner of a community waterworks must give notice to the commissioner pursuant to 12 VAC 5-590-530 and to the public as required by 12 VAC 5-590-540.

### 12 VAC 5-590-410. Determination of compliance.

For the purposes of determining compliance with a PMCL or action level, the following criteria shall be used:

A. Bacteriological results. Compliance with the PMCL for coliform bacteria shall be determined as specified in 12 VAC 5-590-380 C. Repeat samples shall be used as a basis for determining compliance with these regulations.

B. Inorganic chemicals.

1. Antimony, *arsenic*, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium. Where the results of sampling for antimony, *arsenic*, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, or thallium exceed the PMCL, the waterworks shall take a confirmation sample, at the same sampling point, within two weeks of notification of the analytical results of the first sample.

a. The results of the initial and confirmation samples shall be averaged to determine compliance with subdivision 1 c of this subsection. The commissioner has the discretion to delete results of obvious sampling errors.

b. The commissioner may require more frequent monitoring.

c. Compliance with antimony, *arsenic*, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium in Table 2.2 of 12 VAC 5-590-440 shall be determined based on the analytical result(s) obtained at each sampling point.

(1) For waterworks which are conducting monitoring more frequently than annually, compliance with the PMCL for antimony, *arsenic*, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the PMCL, then the waterworks is out of compliance. If any one sample would cause the annual average to be exceeded, then the waterworks is out of compliance immediately. Any sample below the *method* detection limit shall be calculated at zero for the purpose of determining the annual average. ~~(NOTE: Refer to detection definition at 12 VAC 5-590-370 B 2 h.)~~ If a waterworks owner fails to collect the required number of samples, compliance (average concentration) shall be based on the total number of samples collected.

(2) For waterworks which are monitoring annually, or less frequently, the waterworks is out of compliance with the PMCL for antimony, *arsenic*, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium if the average of the original sample and a confirmation sample of a contaminant at any sampling point is greater than the PMCL. *Waterworks monitoring annually or less frequently whose sample result exceeds the PMCL must begin quarterly sampling. The waterworks shall not be considered in violation of the*



*PMCL until it has completed one year of quarterly sampling. However, if the confirmation sample is not collected, the waterworks is in violation of the PMCL for antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, or thallium. If a waterworks owner fails to collect the required number of samples, compliance (average concentration) shall be based on the total number of samples collected.*

2. Nitrate and nitrite. Compliance with the PMCL is determined based on one sample from each sampling point if the levels of these contaminants are below the PMCLs. Where nitrate or nitrite sample results exceed the PMCL, the waterworks owner shall take a confirmation sample from the same sampling point that exceeded the PMCL within 24 hours of the waterworks' receipt of the analytical results of the first sample. The results of the initial and confirmation sample shall be averaged to determine compliance with this subdivision. Waterworks owners unable to comply with the 24-hour sampling requirement must immediately notify the consumers in the area served by the waterworks in accordance with 12 VAC 5-590-540. Waterworks exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample. The commissioner may require more frequent monitoring. The commissioner has the discretion to delete results of obvious sampling errors.

~~3. Compliance with the PMCL for arsenic is determined by the average of four analyses made pursuant to 12 VAC 5-590-370 B 1 d (6). When the average is rounded off to the same number of significant figures as the PMCL and exceeds the PMCL the owner shall notify the commissioner and give notice to the public pursuant to 12 VAC 5-590-540. Monitoring after public notification shall be at a frequency designated by the commissioner and shall continue until the PMCL has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.~~

## C. Organic chemicals.

1. VOCs and SOCs. A confirmation sample shall be required for positive results for contaminants listed in Table 2.3. The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

a. The results of the initial and confirmation sample shall be averaged to determine the waterworks' compliance in accordance with subdivision 1 b of this subsection.

b. Compliance with Table 2.3 shall be determined based on the analytical results obtained at each sampling point. *Any samples below the detection limit shall be calculated as zero for the purposes of determining the annual average. (Note: Refer to detection definition at 12 VAC 5-590-370 B 2 h.) If a waterworks fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.*

(1) For waterworks which are conducting monitoring more frequently than annually, compliance is determined by a running annual average of all samples

taken at each sampling point. If the annual average of any sampling point is greater than the PMCL, then the waterworks is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the waterworks is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average. (Note: Refer to detection definition at 12 VAC 5-590-370 B 2 h.)

~~(2) If monitoring is conducted annually, or less frequently, the waterworks is out of compliance not in violation if the level of a contaminant at any sampling point is greater than the PMCL. The determination of compliance will be based on the average of the initial and confirmation sample sample is greater than the PMCL for that contaminant; however, the waterworks must begin quarterly sampling. The waterworks will not be considered in violation of the PMCL until it has completed one year of quarterly sampling. If any sample will cause the running annual average to exceed the PMCL at any sampling point, the waterworks is immediately out of compliance with the PMCL.~~

2. Disinfectant residuals, disinfection byproducts and disinfection byproduct precursors. Compliance with 12 VAC 5-590-370 B 3 a through B 3 k is as follows:

### a. General requirements.

(1) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the waterworks fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the waterworks' failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(2) All samples taken and analyzed under the provisions of this subpart must be included in determining compliance, even if that number is greater than the minimum required.

(3) If during the first year of monitoring under 12 VAC 5-590-370 B 3 b, any individual quarter's average will cause the running annual average of that waterworks to exceed the PMCL in Table 2.12 and Table 2.13, the waterworks is out of compliance at the end of that quarter.

### b. Disinfection byproducts.

#### (1) TTHMs and HAA5.

(a) For waterworks monitoring quarterly, compliance with PMCLs in Table 2.13 must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the waterworks as prescribed by 12 VAC 5-590-370 B 3 e (1).

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(b) For waterworks monitoring less frequently than quarterly, the waterworks demonstrate PMCL compliance if the average of samples taken that year under the provisions of 12 VAC 5-590-370 B 3 e (1) does not exceed the PMCLs in Table 2.13. If the average of these samples exceeds the PMCL, the waterworks must increase monitoring to once per quarter per treatment plant and such a waterworks is not in violation of the PMCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the PMCL, in which case the waterworks is in violation at the end of that quarter. Waterworks required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample that triggered the increase monitoring plus the following three quarters of monitoring.

(c) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the PMCL in Table 2.12 and Table 2.13, the waterworks is in violation of the PMCL and must notify the public pursuant to 12 VAC 5-590-540 in addition to reporting to the commissioner pursuant to 12 VAC 5-590-530.

(d) If a waterworks fails to complete four consecutive quarters of monitoring, compliance with the PMCL in Table 2.13 for the last four-quarter compliance period must be based on an average of the available data.

(2) Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the waterworks takes more than one sample, the average of all samples taken during the month) collected by the waterworks as prescribed by 12 VAC 5-590-370 B 3 g. If the average of samples covering any consecutive four-quarter period exceeds the PMCL in Table 2.13, the waterworks is in violation of the PMCL and must notify the public pursuant to 12 VAC 5-590-540, in addition to reporting to the commissioner pursuant to 12 VAC 5-590-530. If a waterworks fails to complete 12 consecutive months' monitoring, compliance with the PMCL for the last four-quarter compliance period must be based on an average of the available data.

(3) Chlorite. Compliance must be based on an arithmetic average of each three sample set taken in the distribution system as prescribed by 12 VAC 5-590-370 B 3 f (1) (a), (b) and (c). If the arithmetic average of any three sample set exceeds the PMCL in Table 2.13, the waterworks is in violation of the PMCL and must notify the public pursuant to 12 VAC 5-590-540, in addition to reporting to the commissioner pursuant to 12 VAC 5-590-530.

## c. Disinfectant residuals.

### (1) Chlorine and chloramines.

(a) Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the waterworks

under 12 VAC 5-590-370 B 3 h (1) (a). If the average covering any consecutive four-quarter period exceeds the MRDL in Table 2.12, the waterworks is in violation of the MRDL and must notify the public pursuant to 12 VAC 5-590-540, in addition to reporting to the commissioner pursuant to 12 VAC 5-590-530.

(b) In cases where waterworks switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to 12 VAC 5-590-530 must clearly indicate which residual disinfectant was analyzed for each sample.

### (2) Chlorine dioxide.

(a) Acute violations. Compliance must be based on consecutive daily samples collected by the waterworks under 12 VAC 5-590-370 B 3 h (2) (a). If any daily sample taken at the entrance to the distribution system exceeds the MRDL in Table 2.12, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the waterworks is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for Tier 1 conditions in 12 VAC 5-590-540 in addition to reporting to the commissioner in pursuant to 12 VAC 5-590-530. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the waterworks must notify the public of the violation in accordance with the provisions for Tier 1 conditions in 12 VAC 5-590-540 in addition to reporting to the commissioner in pursuant to 12 VAC 5-590-530.

(b) Nonacute violations. Compliance must be based on consecutive daily samples collected by the waterworks under 12 VAC 5-590-370 B 3 h (2) (a). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL in Table 2.12 and all distribution system samples taken are below the MRDL, the waterworks is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and shall notify the public pursuant to the procedures for Tier 2 conditions in 12 VAC 5-590-540 in addition to reporting to the commissioner in pursuant to 12 VAC 5-590-530. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the waterworks must notify the public of the violation in accordance with the provisions for Tier 2 conditions in 12 VAC 5-590-540 in addition to reporting to the commissioner in pursuant to 12 VAC 5-590-530.

d. Disinfection byproduct precursors (DBPP). Compliance must be determined as specified by 12 VAC 5-590-420 H 3. Waterworks may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the waterworks. This monitoring is not required and failure to monitor during this period is not a violation. However, any waterworks that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in 12 VAC 5-590-420 H 2 b and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to 12 VAC 5-590-420 H 2 c and is in violation. Waterworks may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For waterworks required to meet Step 1 TOC removals, if the value calculated under 12 VAC 5-590-420 H 3 a (4) is less than 1.00, the waterworks is in violation of the treatment technique requirements and must notify the public pursuant to 12 VAC 5-590-540 in addition to reporting to the commissioner pursuant to 12 VAC 5-90-530.

D. Radiological results (gross alpha, combined radium-226 and radium-228, uranium and man-made radioactivity). Compliance with the radiological Primary Maximum Contaminant Levels shall be in accordance with 12 VAC 5-590-370 D 3 c. Primary Maximum Contaminant Levels are indicated in subsection B of Table 2.5. Sampling for radiological analysis shall be in compliance with 12 VAC 5-590-370 D 1 and D 2. Furthermore, compliance shall be determined by rounding off results to the same number of significant figures as the ~~Primary Maximum Contaminant Level~~ PMCL for the substance in question.

E. Lead and copper action levels.

1. The lead action level is exceeded if the concentration of lead in more than 10% of tap water samples collected during any monitoring period conducted in accordance with 12 VAC 5-590-370 B 6 a is greater than 0.015 mg/l (i.e., if the "90th percentile" lead level is greater than 0.015 mg/l).

2. The copper action level is exceeded if the concentration of copper in more than 10% of tap water samples collected during any monitoring period conducted in accordance with 12 VAC 5-590-370 B 6 a is greater than 1.3 mg/l (i.e., if the "90th percentile" copper level is greater than 1.3 mg/l).

3. The 90th percentile lead and copper levels shall be computed as follows:

a. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

b. The number of samples taken during the monitoring period shall be multiplied by 0.9.

c. The contaminant concentration in the numbered sample yielded by the calculation in subdivision 3 b of this subsection is the 90th percentile contaminant level.

d. For waterworks serving fewer than 100 people that collect five samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

F. Turbidity. The requirements in this subsection apply to filtered waterworks until June 29, 1993. The requirements in this section apply to unfiltered waterworks with surface water sources or groundwater sources under the direct influence of surface water that are required to install filtration equipment until June 29, 1993, or until filtration is installed, whichever is later. When a sample exceeds the PMCL for turbidity a confirmation sample shall be collected for analysis as soon as possible. In cases where a turbidimeter is required at the waterworks, the preferable resampling time is within one hour of the initial sampling. The repeat sample shall be the sample used for the purpose of calculating the monthly average. Compliance for public notification purposes shall be based on the monthly averages of the daily samples. However, public notification is also required if the average of samples taken on two consecutive days exceeds five NTU.

G. All analyses for PMCL and action level compliance determinations shall be consistent with current Environmental Protection Agency Regulations found at 40 CFR Part 141.

**12 VAC 5-590-440. Analytical methods.**

Analytical methods to determine compliance with the requirements of this chapter shall be those specified in the applicable edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation; "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974; and "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water" (Sept 1986), EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268 or in the case of primary maximum contaminant levels and lead and copper action levels, those methods shall be followed by the Division of Consolidated Laboratory Services and consistent with current U.S. Environmental Protection Agency regulations found at 40 CFR Part 141. All laboratories seeking certification to perform drinking water analyses must comply with ~~4 VAC 30-40~~ all appropriate regulations promulgated by the Department of General Services, Division of Consolidated Laboratory Services.

Table 2.2  
Inorganic Chemicals.

Substance	Primary Maximum Contaminant Level (mg/L)
Antimony	0.006
Arsenic (As)	<del>0.05</del> 0.010***

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Asbestos	7 Million Fibers/Liter (longer than 10 um)
Barium (Ba)	2
Beryllium	0.004
Cadium (Cd)	0.005
Chromium (Cr)	0.1
Cyanide (as free Cyanide)	0.2
Fluoride (F)	4.0 #
Mercury (Hg)	0.002
Nickel	0.1
Nitrate (as N)	10 **
Nitrite (as N)	1
Total Nitrate and Nitrite (as N)	10
Selenium (Se)	0.05
Thallium	0.002
Substance	Secondary Maximum Contaminant Level (mg/L)
Chloride (Cl)	250.0
Corrosivity	Noncorrosive, See Appendix B
Fluoride	2.0
Foaming Agents	0.5 *
Iron (Fe)	0.3
Manganese (Mn)	0.05
Sodium (Na)	No Limits Designated
Sulfate (SO <sub>4</sub> )	250.0
Zinc (Zn)	5.0
Substance	Action Level (mg/L)
Lead (Pb)	0.015
Copper (Cu)	1.3

# Note. For artificially fluoridated waterworks the minimum concentration of fluoride should be 0.8 mg/L and the maximum should be 1.0 mg/L. The optimum control limit is 0.9 mg/L. (See Appendix B)

\* Note. Concentration reported in terms of Methylene Blue Active Substances.

\*\* Note. See Appendix B for Exception Regarding Noncommunity Waterworks.

\*\*\* Note. The PMCL for arsenic is 0.010 mg/L for community and nontransient noncommunity waterworks effective January 23, 2006. Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

**EDITOR'S NOTE:** Tables 2.3 through 2.13 are not amended and are intentionally omitted from this publication.

## 12 VAC 5-590-545. Consumer confidence reports.

### A. Purpose and applicability.

1. Each community waterworks owner shall deliver to his customers an annual report that contains information on the quality of the water delivered by the waterworks and characterizes the risks, if any, from exposure to contaminants detected in the drinking water.

2. For the purpose of this section, customers are defined as billing units or service connections to which water is delivered by a community waterworks.

3. For the purpose of this section, a contaminant is detected when the laboratory reports the contaminant level as a measured level and not as nondetected (ND) or less than (<) a certain level. The laboratory's analytical and reporting procedures shall have been in accordance with 12 VAC 5-590-440; laboratory certification requirements of the Commonwealth of Virginia, Department of General Services, Division of Consolidated Laboratory Services; and consistent with current U. S. Environmental Protection Agency regulations found at 40 CFR Part 141.

### B. Effective dates.

1. Each existing community waterworks owner shall deliver his report by July 1 annually.

2. The owner of a new community waterworks shall deliver his first report by July 1 of the year after its first full calendar year in operation and annually thereafter.

3. The owner of a community waterworks that sells water to a consecutive waterworks shall deliver the applicable information necessary to comply with the requirements contained in this section to the consecutive waterworks by April 1 annually, or on a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties.

### C. Content.

1. Each community waterworks owner shall provide his customers an annual report that contains the information on the source of the water delivered as follows:

a. Each report shall identify the source or sources of the water delivered by the community waterworks by providing information on:

- (1) The type of the water (e.g., surface water, ground water); and
- (2) The commonly used name, if any, and location of the body or bodies of water.

b. Where a source water assessment has been completed, the report shall:

- (1) Notify consumers of the availability of the assessment;
- (2) Describe the means to obtain the assessment; and
- (3) Include a brief summary of the waterworks' susceptibility to potential sources of contamination.

c. The waterworks owner should highlight in the report significant sources of contamination in the source water area if such information is readily available.

2. For the purpose of compliance with this section, each report shall include the following definitions:

a. "Maximum contaminant level goal" or "MCLG" ~~means the level of a contaminant in drinking water below which~~

~~there is no known or expected risk to health. MCLGs allow for a margin of safety (See 12 VAC 5-590-10).~~

b. ~~"Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology (See 12 VAC 5-590-10).~~

c. A report for a community water system operating under a variance or an exemption issued by the commissioner under 12 VAC 5-590-140 and 12 VAC 5-590-150 shall include the following definition: "Variances and exemptions" means state or EPA permission not to meet an MCL or a treatment technique under certain conditions.

d. A report that contains data on contaminants that EPA regulates using any of the following terms shall include the applicable definitions:

(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(2) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system must follow.

(3) "Maximum residual disinfectant level goal" or "MRDLG" means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(4) "Maximum residual disinfectant level" or "MRDL" means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

### 3. Information on detected contaminants.

a. This section specifies the requirements for information to be included in each report for the following contaminants:

(1) Contaminants subject to a PMCL, action level, maximum residual disinfectant level, or treatment technique as specified in 12 VAC 5-590-370;

(2) Unregulated contaminants subject to monitoring as specified in 12 VAC 5-590-370; and

(3) Disinfection byproducts or microbial contaminants, except *Cryptosporidium*, for which monitoring is required by Information Collection Rule (40 CFR 141.142 and 141.143 (7-1-97 Edition)), except as provided under subdivision 5 a of this subsection, and which are detected in the finished water.

b. The data relating to these contaminants shall be displayed in one table or in several adjacent tables. Any additional monitoring results that a community waterworks owner chooses to include in the report shall be displayed separately.

c. The data shall be derived from data collected to comply with EPA and state monitoring and analytical requirements during the calendar year preceding the year the report is due, except that:

(1) Where a waterworks owner is allowed to monitor for contaminants specified in subdivision 3 a (1) and (3) of this subsection less often than once a year, the table or tables shall include the date and results of the most recent sampling, and the report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(2) Results of monitoring in compliance with the Information Collection Rule (40 CFR 141.142 and 141.143 (7-1-97 Edition)) need only be included for five years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

d. For detected contaminants subject to a PMCL, action level, or treatment technique as specified in 12 VAC 5-590-370 and listed in Tables 2.1, 2.2 (Primary Maximum Contaminant Levels only), 2.3, 2.4 (Primary Maximum Contaminant Levels only), and 2.5, the table or tables must contain:

(1) The PMCL for that contaminant expressed as a number equal to or greater than 1.0 as provided in Appendix O, with an exception for beta/photon emitters. When the detected level of beta/photon emitters has been reported in the units of pCi/L and does not exceed 50 pCi/L, the report may list the PMCL as 50 pCi/L. In this case, the waterworks owner shall include in the report the following footnote: The PMCL for beta particles is 4 mrem/year. EPA considers 50 pCi/L to be the level of concern for beta particles;

(2) The MCLG for that contaminant expressed in the same units as the PMCL as provided in Appendix O;

(3) If there is no PMCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique and/or action level, as appropriate, specified in subdivision 3 d of this subsection;

(4) For contaminants subject to a PMCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance and the range of detected levels as follows:

(a) When compliance with the PMCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the PMCL.

(b) When compliance with the PMCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range

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of all sampling points expressed in the same units as the PMCL.

(c) When compliance with the PMCL is determined on a systemwide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the PMCL.

(5) For turbidity, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 12 VAC 5-590-420 for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(6) For lead and copper, the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;

(7) For total coliform:

(a) The highest monthly number of positive samples for waterworks collecting fewer than 40 samples per month;

(b) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month;

(8) For fecal coliform, the total number of positive samples;

(9) The likely source or sources of detected contaminants. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the waterworks owner. If the waterworks owner lacks specific information on the likely source, the report shall include one or more of the typical sources for that contaminant listed in Appendix O that are most applicable to the system.

e. If a community waterworks owner distributes water to his customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

(1) The table shall contain a separate column for each service area and the report shall identify each separate distribution system; or

(2) Waterworks owner shall produce a separate report tailored to include data for each service area.

f. The table or tables shall clearly identify any data indicating violations of PMCLs, MRDLs, or treatment techniques and the report shall contain a clear and readily understandable explanation of the violation including:

(1) The length of the violation;

(2) The potential adverse health effects using the relevant language of Appendix O; and

(3) Actions taken by the waterworks owner to address the violation.

g. For detected unregulated contaminants subject to monitoring as specified in 12 VAC 5-590-370 and listed in Tables 2.6 and 2.7, for which monitoring is required, the table or tables shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

4. Information on *Cryptosporidium*, radon, and other contaminants:

a. If the waterworks has performed any monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of the Informational Collection Rule (40 CFR 141.143 (7-1-97 Edition)), which indicates that *Cryptosporidium* may be present in the source water or the finished water, the report shall include:

(1) A summary of the results of the monitoring; and

(2) An explanation of the significance of the results.

b. If the waterworks has performed any monitoring for radon which indicates that radon may be present in the finished water, the report shall include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results.

c. If the waterworks owner has performed additional monitoring that indicates the presence of other contaminants in the finished water, the report should include any results that may indicate a health concern, as determined by the commissioner. Detections above a proposed MCL or health advisory level may indicate possible health concerns. For such contaminants, the report should include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

5. Compliance with other regulations.

a. In addition to the requirements of subdivision 3 f of this subsection the report shall note any violation that occurred during the year covered by the report of a requirement listed below.

(1) Monitoring and reporting of compliance data;

(2) Filtration and disinfection prescribed by 12 VAC 5-590-420. For waterworks owners who have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes which constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches;

(3) Lead and copper control requirements prescribed by 12 VAC 5-590-370. For waterworks owners who fail to take one or more of the prescribed actions, the report shall include the applicable language of Appendix O for lead, copper, or both;

(4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by 12 VAC 5-590-420 G. For waterworks owners who violate the requirements of that section, the report shall include the relevant language from Appendix O;

(5) Recordkeeping of compliance data;

(6) Special monitoring requirements for unregulated contaminants prescribed by 12 VAC 5-590-370 B 4 and for sodium;

(7) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

b. The report shall contain:

(1) A clear and readily understandable explanation of the violation;

(2) Any potential adverse health effects; and

(3) The steps the waterworks owner has taken to correct the violation.

6. Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued by the commissioner under 12 VAC 5-590-140 and 12 VAC 5-590-150, the report shall contain:

a. An explanation of the reasons for the variance or exemption;

b. The date on which the variance or exemption was issued;

c. A brief status report on the steps the waterworks owner is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

d. A notice of any opportunity for public input in the review or renewal of the variance or exemption.

7. Additional information.

a. The report shall contain a brief explanation regarding contaminants, which may reasonably be expected to be found in drinking water including bottled water. This explanation shall include the exact language of subdivisions 8 a (1), (2) and (3) of this subsection or the waterworks owner shall use his own comparable language following approval by the commissioner. The report also shall include the exact language of subdivision 8 a (4) of this subsection.

(1) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up

substances resulting from the presence of animals or from human activity.

(2) Contaminants that may be present in source water include: (i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife; (ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming; (iii) pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses; (iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems; (v) radioactive contaminants, which can be naturally occurring or be the result of oil and gas production and mining activities.

(3) In order to ensure that tap water is safe to drink, EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(4) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

b. The report shall include the telephone number of the waterworks owner, operator, or designee of the community waterworks as a source of additional information concerning the report.

c. In communities with a large proportion of non-English speaking residents, as determined by the commissioner, the report shall contain information in the appropriate language or languages regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

d. The report shall include the following information about opportunities for public participation in decisions that may affect the quality of the water. The waterworks owner should consider including the following additional relevant information:

(1) The time and place of regularly scheduled board meetings of the governing body which has authority over the waterworks.

(2) If regularly scheduled board meetings are not held, the name and telephone number of a waterworks

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representative who has operational or managerial authority over the waterworks.

e. The waterworks owner may include such additional information as he deems necessary for public education consistent with, and not detracting from, the purpose of the report.

## D. Additional health information.

1. All reports shall prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer who are undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

2. *Starting February 22, 2002, a waterworks owner who detects arsenic at levels above ~~25 µg/l~~ 0.005 mg/l, but equal to or below the PMCL of 0.010 mg/l, shall include in his report the following informational statement about arsenic: ~~EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally occurring mineral known to cause cancer in humans at high concentrations. While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.~~*

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

*A waterworks owner who detects arsenic levels above 0.010 mg/l must include the health effects language contained in Appendix O.*

3. A waterworks owner who detects nitrate at levels above 5 mg/l, but below the PMCL, shall include in his report the following informational statement about the impacts of nitrate on children: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

4. A waterworks owner who detects lead above the action level in more than 5.0%, and up to and including 10%, of

homes sampled shall include the following informational statement about the special impact of lead on children: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

5. Community waterworks owners who detect TTHM above 0.080 mg/l, but below the PMCL, as an annual average shall include health effects language prescribed by paragraph 73 of Appendix O.

## E. Report delivery and recordkeeping.

1. Each community waterworks owner shall mail or otherwise directly deliver one copy of the report to each customer.

2. The waterworks owner shall make a good faith effort that shall be tailored to the consumers who are served by the system but are not bill paying customers, such as renters and workers. This good faith effort shall include at least one, and preferably two or more, of the following methods appropriate to the particular waterworks:

- a. Posting the reports on the Internet;
- b. Mailing to postal patrons in metropolitan areas;
- c. Advertising the availability of the report in the news media;
- d. Publication in a local newspaper;
- e. Posting in public places such as libraries, community centers, and public buildings;
- f. Delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;
- g. Delivery to community organizations.
- h. Other methods as approved by the commissioner.

3. No later than July 1 of each year the waterworks owner shall deliver a copy of the report to the appropriate Virginia Department of Health, Environmental Engineering Field Office, followed within three months by a certification that the report has been distributed to customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the commissioner.

4. No later than July 1 of each year the waterworks owner shall deliver the report to any other agency or clearinghouse specified by the commissioner.



5. Each community waterworks owner shall make the report available to the public upon request.
6. The owner of each community waterworks serving 100,000 or more persons shall post the current year's report to a publicly accessible site on the Internet.
7. Each community waterworks owner shall retain copies of the report for no less than three years.

**12 VAC 5-590-820. General.**

Preference shall be given to the best available sources of supply which present minimal risks of contamination from wastewaters and which contain a minimum of impurities that may be hazardous to health. In all cases, sources shall be selected and maintained on a basis which will assure that the water is continuously amenable to available treatment processes. In selecting the source of water to be developed, the designing engineer must prove to the satisfaction of the ~~division commissioner~~ *division commissioner* that the water which is to be delivered to the consumers ~~will meet the current requirements~~ *shall comply with all applicable PMCLs* of the board with respect to bacteriological, physical, chemical and radiological qualities. All water samples for chemical, physical and radiological analyses must be submitted to the Commonwealth of Virginia, Department of General Services, Division of Consolidated Laboratory Services or to a testing laboratory certified by the Division of Consolidated Laboratory Services. All bacteriological analyses must be performed at laboratories in accordance with analysis 12 VAC 5-590-370 A and 12 VAC 5-590-480 B 2.

APPENDIX N. INORGANIC COMPOUNDS AND ORGANIC CHEMICALS

TABLE I  
INORGANIC COMPOUNDS

Contaminant	BAT(s)
<i>Arsenic<sup>d</sup></i>	1, 2, 5, 6, 7, 9, 12 <sup>e</sup>
Antimony	2, 7
Asbestos	2, 3, 8
Barium	5, 6, 7, 9
Beryllium	1, 2, 5, 6, 7
Cadmium	2, 5, 6, 7
Chromium	2, 5, 6 <sup>b</sup> , 7
Cyanide	5, 7, 13
Fluoride	1, 7, 9
Mercury	2 <sup>a</sup> , 4, 6 <sup>a</sup> , 7 <sup>a</sup>
Nickel	5, 6, 7
Nitrate	5, 7, 9
Nitrite	5, 7
Selenium	1, 2 <sup>c</sup> , 6, 7, 9
Thallium	1,5

Key to Best Available Technologies/Treatment Techniques

1. Activated Alumina
2. Coagulation/Filtration (except for waterworks serving less than 500 service connections)
3. Direct or Diatomite Filtration
4. Granular Activated Carbon

5. Ion Exchange
6. Lime Softening (except for waterworks serving less than 500 service connections)
7. Reverse Osmosis
8. Corrosion Control
9. Electrodialysis/Electrodialysis Reversing
10. Chlorine
11. Ultraviolet
12. Oxidation/Filtration
13. Alkaline Chlorination pH ≥ 8.5

NOTES ON BAT DESIGNATIONS

- a. BAT only if influent mercury concentrations are less than or equal to 10 µg/l
- b. BAT for Chromium III only
- c. BAT for Selenium IV only
- d. *BATs for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V.*
- e. *To obtain high removals, iron to arsenic ratio must be at least 20:1.*

TABLE II  
ORGANIC CHEMICALS

Contaminant	BAT(s)
Acrylamide	3
Alachlor	1
Aldicarb	1
Aldicarb sulfoxide	1
Aldicarb sulfone	1
Atrazine	1
Benzene	1, 2
Carbofuran	1
Carbon tetrachloride	1, 2
Chlordane	1
2,4-D	1
Dibromochloropropane (DBCP)	1, 2
o-Dichlorobenzene	1, 2
p-Dichlorobenzene	1, 2
1,2-Dichloroethane	1, 2
1,1-Dichloroethylene	1, 2
cis-1,2-Dichloroethylene	1, 2
trans-1,2-Dichloroethylene	1, 2
1,2-Dichloropropane	1, 2
Epichlorohydrin	3
Ethylene dibromide (EDB)	1, 2
Ethylbenzene	1, 2
Heptachlor	1
Heptachlor epoxide	1
Lindane	1
Methoxychlor	1
Monochlorobenzene	1, 2
PCBs	1

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Pentachlorophenol	1
Styrene	1, 2
2,4,5-TP (Silvex)	1
Tetrachloroethylene	1, 2
1,1,1-Trichloroethane	1, 2
Trichloroethylene	1, 2
Toluene	1, 2
Toxaphene	1
Vinyl chloride	2
Xylenes (total)	1, 2
Benzo(a)pyrene	1
Dalapon	1
Dichloromethane	2
Di(2-ethylhexyl)adipate	1, 2
Di(2-ethylhexyl)phthalate	1
Dinoseb	1
Diquat	1
Endothall	1
Endrin	1
Glyphosate	4
Hexachlorobenzene	1
Hexachloropentadiene	1, 2
Oxamyl (Vydate)	1
Picloram	1
Simazine	1
1,2,4-Trichlorobenzene	1, 2
1,1,2-Trichloroethane	1, 2
2,3,7,8-TCDD (Dioxin)	1

## Key to Best Available Technologies/Treatment Techniques

1. Granular Activated Carbon
2. Packed Tower Aeration
3. Polymer Addition Practices
4. Oxidation (chlorination, with the exception of water having cyanide (as free cyanide) exceeding 0.2 mg/l, or ozonation)

VA.R. Doc. No. R06-291; Filed July 6, 2006, 2:24 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-215, 12 VAC 30-120-720 and 12 VAC 30-120-920).

**Statutory Authority:** §§ 32.1-324 and 32.1-325 of the Code of Virginia.

**Effective Date:** September 6, 2006.

**Agency Contact:** Teja Stokes, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad

Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.

### Summary:

*The 2006 General Assembly required DMAS to increase the personal maintenance allowance from the current level of 100% of the SSI payment for one person to 165% of the SSI payment for one person. This change represents an increase in the amount of income Medicaid will permit persons in home and community-based waivers to retain in order to address their daily needs in the community.*

### 12 VAC 30-120-215. Individual eligibility requirements.

A. Individuals receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.211, 435.217, and 435.230. The income level used for 42 CFR 435.211, 435.217 and 435.230 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based waiver services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

a. For individuals to whom § 1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual under both this waiver and the mental retardation day support waiver, which is equal to 165% of the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a

maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the plan.

b. For individuals to whom § 1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual *under both this waiver and the mental retardation day support waiver*, which is equal to 165% of the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance

premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Medical Assistance Plan.

3. The following four criteria shall apply to all mental retardation waiver services:

a. Individuals qualifying for mental retardation waiver services must have a demonstrated need for the service resulting in significant functional limitations in major life activities. The need for the service must arise from either (i) an individual having a diagnosed condition of mental retardation or (ii) a child younger than six years of age being at developmental risk of significant functional limitations in major life activities;

b. The CSP and services that are delivered must be consistent with the Medicaid definition of each service;

c. Services must be recommended by the case manager based on a current functional assessment using a DMHMRSAS approved assessment instrument and a demonstrated need for each specific service; and

d. Individuals qualifying for mental retardation waiver services must meet the ICF/MR level of care criteria.

B. Assessment and enrollment.

1. To ensure that Virginia's home and community-based waiver programs serve only individuals who would otherwise be placed in an ICF/MR, home and community-based waiver services shall be considered only for individuals who are eligible for admission to an ICF/MR with a diagnosis of mental retardation, or who are under six years of age and at developmental risk. For the case manager to make a recommendation for waiver services, MR Waiver services must be determined to be an appropriate service alternative to delay or avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or other institutional placement.

2. The case manager shall recommend the individual for home and community-based waiver services after completion of a comprehensive assessment of the individual's needs and available supports. This assessment process for home and community-based waiver services by the case manager is mandatory before Medicaid will assume payment responsibility of home and community-based waiver services. The comprehensive assessment includes:

a. Relevant medical information based on a medical examination completed no earlier than 12 months prior to the initiation of waiver services;

b. The case manager's functional assessment that demonstrates a need for each specific service. The functional assessment must be a DMHMRSAS approved assessment completed no earlier than 12 months prior to enrollment;

c. The level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.) completed no more than six months prior to enrollment.

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The case manager determines whether the individual meets the ICF/MR criteria with input from the individual and the individual's family/caregiver, as appropriate, and service and support providers involved in the individual's support in the community; and

d. A psychological evaluation or standardized developmental assessment for children under six years of age that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals.

3. The case manager shall provide the individual and the individual's family/caregiver, as appropriate, with the choice of MR waiver services or ICF/MR placement.

4. The case manager shall send the appropriate forms to DMHMRSAS to enroll the individual in the MR Waiver or, if no slot is available, to place the individual on the waiting list. DMHMRSAS shall only enroll the individual if a slot is available. If no slot is available, the individual's name will be placed on either the urgent or nonurgent statewide waiting list until such time as a slot becomes available. Once notification has been received from DMHMRSAS that the individual has been placed on either the urgent or nonurgent waiting list, the case manager must notify the individual in writing within 10 business days of his placement on either list, and offer appeal rights. The case manager will contact the individual and the individual's family/caregiver, as appropriate, at least annually to provide the choice between institutional placement and waiver services while the individual is on the waiting list.

C. Waiver approval process: authorizing and accessing services.

1. Once the case manager has determined an individual meets the functional criteria for mental retardation (MR) waiver services, has determined that a slot is available, and that the individual has chosen MR waiver services, the case manager shall submit enrollment information to DMHMRSAS to confirm level of care eligibility and the availability of a slot.

2. Once the individual has been enrolled by DMHMRSAS, the case manager will submit a DMAS-122 along with a written confirmation from DMHMRSAS of level of care eligibility, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities.

3. After the case manager has received written notification of Medicaid eligibility by DSS and written confirmation of enrollment from DMHMRSAS, the case manager shall inform the individual and the individual's family/caregiver, as appropriate, so that the CSP can be developed. The individual and the individual's family/caregiver, as appropriate, will meet with the case manager within 30 calendar days to discuss the individual's needs and existing supports, and to develop a CSP that will establish and document the needed services. The case manager shall provide the individual and the individual's family/caregiver, as appropriate, with choice of needed services available under the MR Waiver, alternative settings and providers. A CSP shall be developed for the individual based on the assessment of needs as reflected in the level of care and

functional assessment instruments and the individual's and the individual's family/caregiver's, as appropriate, preferences. The CSP development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered.

4. The individual or case manager shall contact chosen service providers so that services can be initiated within 60 days of receipt of enrollment confirmation from DMHMRSAS. The service providers in conjunction with the individual and the individual's family/caregiver, as appropriate, and case manager will develop ISPs for each service. A copy of these plans will be submitted to the case manager. The case manager will review and ensure the ISP meets the established service criteria for the identified needs prior to submitting to DMHMRSAS for prior authorization. The ISP from each waiver service provider shall be incorporated into the CSP. Only MR Waiver services authorized on the CSP by DMHMRSAS according to DMAS policies may be reimbursed by DMAS.

5. The case manager must submit the results of the comprehensive assessment and a recommendation to the DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based services. DMHMRSAS shall, within 10 working days of receiving all supporting documentation, review and approve, pend for more information, or deny the individual service requests. DMHMRSAS will communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any have been denied. Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMHMRSAS if prior authorization is required.

6. MR Waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services;

b. The individual has a diagnosis of mental retardation as defined by the American Association on Mental Retardation, *Mental Retardation: Definition, Classification, and System of Supports*, 10th Edition, 2002, or is a child under the age of six at developmental risk, and would in the absence of waiver services, require the level of care provided in an ICF/MR the cost of which would be reimbursed under the Plan; and

c. The contents of the individual service plans are consistent with the Medicaid definition of each service.

7. All consumer service plans are subject to approval by DMAS. DMAS is the single state agency authority responsible for the supervision of the administration of the MR Waiver.

8. If services are not initiated by the provider within 60 days, the case manager must submit written information to DMHMRSAS requesting more time to initiate services. A copy of the request must be provided to the individual and the individual's family/caregiver, as appropriate.

DMHMRSAS has the authority to approve the request in 30-day extensions, up to a maximum of four consecutive extensions, or deny the request to retain the waiver slot for that individual. DMHMRSAS shall provide a written response to the case manager indicating denial or approval of the extension. DMHMRSAS shall submit this response within 10 working days of the receipt of the request for extension.

#### D. Reevaluation of service need.

##### 1. The consumer service plan (CSP).

a. The CSP shall be developed annually by the case manager with the individual and the individual's family/caregiver, as appropriate, other service providers, consultants, and other interested parties based on relevant, current assessment data.

b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's services and revisions to the CSP as indicated by the changing needs of the individual. At a minimum, the case manager must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

c. Any modification to the amount or type of services in the CSP must be preauthorized by DMHMRSAS or DMAS.

##### 2. Review of level of care.

a. The case manager shall complete a reassessment annually in coordination with the individual and the individual's family/caregiver, as appropriate, and service providers. The reassessment shall include an update of the level of care and functional assessment instrument and any other appropriate assessment data. If warranted, the case manager shall coordinate a medical examination and a psychological evaluation for the individual. The CSP shall be revised as appropriate.

b. A medical examination must be completed for adults based on need identified by the individual and the individual's family/caregiver, as appropriate, provider, case manager, or DMHMRSAS staff. Medical examinations and screenings for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

c. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation. A psychological evaluation or standardized developmental assessment for children under six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities.

3. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the affected individuals.

4. Case managers will be required to conduct monthly onsite visits for all MR waiver individuals residing in DSS-licensed assisted living facilities or approved adult foster care placements.

5. The case manager must obtain an updated DMAS-122 form from DSS annually, designate a collector of patient pay when applicable and forward a copy of the updated DMAS-122 form to all service providers and the consumer-directed fiscal agent if applicable.

#### **12 VAC 30-120-720. Recipient qualification and eligibility requirements; intake process.**

A. Recipients receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.121 and 435.217. The income level used for 42 CFR 435.121 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible recipients as if the recipient were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the following deductions:

a. For recipients to whom § 1924(d) applies, and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to 165% of the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance.

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However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the Plan.

b. For individuals to whom § 1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to 165% of the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children which shall be equal to the medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the state medical assistance plan.

B. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only recipients who would otherwise be placed in an ICF/MR, home and community-based care services shall be considered only for individuals who are eligible for admission to an ICF/MR, absent a

diagnosis of mental retardation. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in an ICF/MR.

2. The recipient's status as an individual in need of IFDDS home and community-based care services shall be determined by the IFDDS screening team after completion of a thorough assessment of the recipient's needs and available support. Screening of home and community-based care services by the IFDDS screening team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

3. The IFDDS screening team shall gather relevant medical, social, and psychological data and identify all services received by the recipient. For children to transfer to the IFDDS Waiver at age six, case managers shall submit to DMAS the child's most recent Level of Functioning form, the CSP, and a psychological examination completed no more than one year prior to the child's sixth birthday if they are receiving MR Waiver services. Such documentation must demonstrate that no diagnosis of mental retardation exists in order for this transfer to the IFDDS Waiver to be approved.

4. The case manager shall be responsible for notifying DMAS, DMHMRSAS, and DSS, via the DMAS-122, when a child transfers from the MR Waiver to the IFDDS Waiver.

5. Children under six years of age shall not be screened until three months prior to the month of their sixth birthday. Children under six years of age shall not be added to the waiver/wait list until the month in which their sixth birthday occurs.

6. An essential part of the IFDDS screening team's assessment process is determining the level of care required by applying existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).

7. The team shall explore alternative settings and services to provide the care needed by the individual. If placement in an ICF/MR or a combination of other services is determined to be appropriate, the IFDDS screening team shall initiate a referral for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid placement in an ICF/MR or promote exiting from an institutional setting, the IFDDS screening team shall initiate a referral for service to a support coordinator of the recipient's choice.

8. Home and community-based care services shall not be provided to any individual who also resides in a nursing facility, an ICF/MR, a hospital, an adult family home licensed by the DSS, or an assisted living facility licensed by the DSS.

9. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by DMAS. Any Consumer Service Plan for home- and community-based care services must be pre-approved by DMAS prior to Medicaid reimbursement for waiver services.

10. The following five criteria shall apply to all IFDDS Waiver services:

- a. Individuals qualifying for IFDDS Waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. In order to be eligible, a person must be six years of age or older, have a related condition as defined in these regulations and cannot have a diagnosis of mental retardation, and who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan;
- b. The Consumer Service Plan and services that are delivered must be consistent with the Medicaid definition of each service;
- c. Services must be approved by the support coordinator based on a current functional assessment tool approved by DMAS or other DMAS approved assessment and demonstrated need for each specific service;
- d. Individuals qualifying for IFDDS Waiver services must meet the ICF/MR level of care criteria; and
- e. The individual must be eligible for Medicaid as determined by the local office of DSS.

11. The IFDDS screening teams must submit the results of the comprehensive assessment and a recommendation to DMAS staff for final determination of ICF/MR level of care and authorization for community-based care services.

#### C. Screening for the IFDDS Waiver.

1. Individuals requesting IFDDS Waiver services will be screened and will receive services on a first-come, first-served basis in accordance with available funding based on the date the recipients' applications are received. Individuals who meet at least one of the emergency criteria pursuant to 12 VAC 30-120-790 shall be eligible for immediate access to waiver services if funding is available.

2. To be eligible for IFDDS Waiver services, the individual must:

- a. Be determined to be eligible for the ICF/MR level of care;
- b. Be six years of age or older,
- c. Meet the related conditions definition as defined in 42 CFR 435.1009 or be diagnosed with autism; and
- d. Not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR) as contained in 12 VAC 30-120-710.

#### D. Waiver approval process: available funding.

1. In order to ensure cost effectiveness of the IFDDS Waiver, the funding available for the waiver will be allocated between two budget levels. The budget will be the cost of waiver services only and will not include the costs of other Medicaid covered services. Other Medicaid services, however, must be counted toward cost effectiveness of the

IFDDS Waiver. All services available under the waiver are available to both levels.

2. Level one will be for individuals whose comprehensive consumer service plan (CSP) is expected to cost less than \$25,000 per fiscal year. Level two will be for individuals whose CSP is expected to cost equal to or more than \$25,000. There will not be a threshold for budget level two; however, if the actual cost of waiver services exceeds the average annual cost of ICF/MR care for an individual, the recipient's care will be coordinated by DMAS staff.

3. Fifty-five percent of available waiver funds will be allocated to budget level one, and 40% of available waiver funds will be allocated to level two in order to ensure that the waiver will be cost effective. The remaining 5.0% of available waiver funds will be allocated for emergencies as defined in 12 VAC 30-120-790. Recipients who have been placed in budget level one and who subsequently require additional services that would exceed \$25,000 per fiscal year must meet the emergency criteria as defined in 12 VAC 30-120-790 to receive additional funding for services.

#### E. Waiver approval process: accessing services.

1. Once the screening entity has determined that an individual meets the eligibility criteria for IFDDS Waiver services and the individual has chosen this service, the screening entity will provide the individual with a list of available support coordinators. For MR Waiver recipients transferring to the IFDDS Waiver, the case manager must provide the recipient or family/caregiver with a list of support coordinators. The individual or family/caregiver will choose a support coordinator within 10 calendar days of receiving the list of support coordinators and the screening entity/case manager will forward the screening materials, CSP, and all MR Waiver related documentation within 10 calendar days of the coordinator's selection to the selected support coordinator.

2. The support coordinator will contact the recipient within 10 calendar days of receipt of screening materials. The support coordinator and the recipient or recipient's family will meet within 30 calendar days to discuss the recipient's needs, existing supports and to develop a preliminary consumer service plan (CSP) which will identify services needed and will estimate the annual waiver cost of the recipient's CSP. If the recipient's annual waiver cost is expected to exceed the average annual support cost of ICF/MR care for an individual, the recipient's support coordination will be managed by DMAS.

3. Once the CSP has been initially developed, the support coordinator will contact DMAS to receive prior authorization to enroll the recipient in the IFDDS Waiver. DMAS shall, within 14 days of receiving all supporting documentation, either approve for Medicaid coverage or deny for Medicaid coverage the CSP. DMAS shall only authorize waiver services for the recipient if funding is available for the entire CSP. Once this authorization has been received, the support coordinator shall inform the recipient so that the recipient can begin choosing service providers for services listed in the CSP. If DMAS does not have the available funding for this recipient, the recipient will be held on the

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waiting list until such time as funds are available to cover the cost of the CSP.

4. Once the recipient has been authorized for the waiver, the recipient or support coordinator shall contact service providers and initiate services within 60 days. During this time, the consumer, support coordinator, and service providers will meet to complete the CSP. If services are not initiated within 60 days, the support coordinator must submit information to DMAS demonstrating why more time is needed to initiate services. DMAS has authority to approve or deny the request in 30-day extensions. The service providers will develop supporting documentation for each service and will submit a copy of these plans to the support coordinator. The support coordinator will monitor the service providers' supporting documentation to ensure that all providers are working toward the identified goals of recipients. The support coordinator will review and sign off on the supporting documentation and will contact DMAS for prior authorization of services and will notify the service providers when services are approved.

5. The support coordinator will contact the recipient at a minimum on a monthly basis and as needed to coordinate services and maintain the recipient's CSP. DMAS will conduct annual level of care reviews in which the recipient is assessed to ensure he continues to meet waiver criteria. DMAS will review recipients' CSPs and will review the services provided by support coordinators as well as service providers.

## **12 VAC 30-120-920. Individual eligibility requirements.**

A. The Commonwealth has elected to cover low-income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver group under 42 CFR 435.217; and the medically needy groups specified in 42 CFR 435.320, 435.322, 435.324, and 435.330.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and

community-based waiver services by the amount that remains after the following deductions:

a. For individuals to whom § 1924(d) applies (Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B)), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act;

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act; and

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under the state law but not covered under the State Plan.

b. For individuals to whom § 1924(d) of the Social Security Act does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI.



However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family that shall be equal to the medically needy income standard for a family of the same size; and

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Plan.

## B. Assessment and authorization of home and community-based services.

1. To ensure that Virginia's home and community-based waiver programs serve only Medicaid eligible individuals who would otherwise be placed in a nursing facility, home and community-based waiver services shall be considered only for individuals who are eligible for admission to a nursing facility. Home and community-based waiver services shall be the critical service to enable the individual to remain at home and in the community rather than being placed in a nursing facility.

2. The individual's eligibility for home and community-based services shall be determined by the Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. If an individual meets nursing facility criteria, the Preadmission Screening Team shall provide the individual and family/caregiver with the choice of Elderly or Disabled with Consumer Direction Waiver services or nursing facility placement.

3. The Preadmission Screening Team shall explore alternative settings or services to provide the care needed by the individual. When Medicaid-funded home and community-based care services are determined to be the critical services necessary to delay or avoid nursing facility placement, the Preadmission Screening Team shall initiate referrals for services.

4. Medicaid will not pay for any home and community-based care services delivered prior to the individual establishing Medicaid eligibility and prior to the date of the preadmission screening by the Preadmission Screening Team and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96).

5. Before Medicaid will assume payment responsibility of home and community-based services, preauthorization

must be obtained from the designated preauthorization contractor on all services requiring preauthorization. Providers must submit all required information to the designated preauthorization contractor within 10 business days of initiating care or within 10 business days of receiving verification of Medicaid eligibility from the local DSS. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to the designated preauthorization contractor within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the Preadmission Screening Team physician's signature on the DMAS-96 form.

6. Once services for the individual have been authorized by the designated preauthorization contractor, the provider/services facilitator will submit a Patient Information Form (DMAS-122), along with a written confirmation of level of care eligibility from the designated preauthorization contractor, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities. After the provider/services facilitator has received written notification of Medicaid eligibility by DSS and written enrollment from the designated preauthorization contractor, the provider/services facilitator shall inform the individual or family/caregiver so that services may be initiated.

7. The provider/services facilitator with the most billable hours must request an updated DMAS-122 form from the local DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.

8. Home and community-based care services shall not be offered or provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, an assisted living facility licensed by DSS or an Adult Foster Care provider certified by DSS, or a group home licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.

C. Appeals. Recipient appeals shall be considered pursuant to 12 VAC 30-110-10 through 12 VAC 30-110-380. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

VA.R. Doc. No. R06-299; Filed July 19, 2006, 9:57 a.m.



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# Final Regulations

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

Titles of Regulations: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20 [ and 18 VAC 110-20-630 ]; repealing [ ~~18 VAC 110-20-630,~~ ] 18 VAC 110-20-640, 18 VAC 110-20-660 and 18 VAC 110-20-670).

**18 VAC 110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousemen (adding 18 VAC 110-50-10 through 18 VAC 110-50-150).**

Statutory Authority: § 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: September 6, 2006.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or e-mail scottirussell@dhp.virginia.gov.

Summary:

*Since regulations governing the practice of pharmacy have become so extensive and complex, the board has proposed the adoption of a new chapter (18 VAC 110-50) for the regulation of wholesale distributors and manufacturers and the amendment of applicable sections of 18 VAC 110-20 to delete requirements for those entities in the regulations governing the practice of pharmacy.*

*For manufacturers, warehousemen and wholesale distributors, the new chapter includes applicable definitions, fees, and policies for renewal and reinstatement. Requirements are set out for issuance of a license, including inspection of the facility and compliance with applicable laws relating to the business of distributing controlled substances. Safeguards against drug diversion or possession by unauthorized persons are established, along with requirements for storage that protect the safety and efficacy of the drugs.*

*For wholesale distributors, the new regulations set out the information verifying the legitimacy of the business and its owners that must be provided in order to obtain a license to distribute drugs in Virginia. There are also requirements for the minimum qualifications and responsibilities for the person named as the responsible party and minimum requirements for storage, handling and transporting of drugs. To protect the integrity and safety of drugs in the wholesale distribution system, the regulations establish requirements for examination of drug shipments and documents, the handling of damaged or adulterated drugs, policies and procedures for the operation of the business, recordkeeping, and due diligence in regard to the purchase of drugs from another wholesale distributor not licensed in Virginia.*

*For manufacturers, the federal rule entitled The Good Manufacturing Practice for Finished Pharmaceuticals (21 CFR Part 211) is adopted by reference.*

*Changes made since the proposed include adding language affecting medical equipment supplier back into 18 VAC 110-20-630 that was inadvertently repealed and clarifying those requirements to indicate that an application must be submitted and an inspection done prior to a permit being issued.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

#### 18 VAC 110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
<del>6. Nonrestricted manufacturer permit</del>	<del>\$270</del>
<del>7. Restricted manufacturer permit</del>	<del>\$180</del>
<del>8. Wholesale distributor license</del>	<del>\$270</del>
<del>9. Warehouseman permit</del>	<del>\$270</del>
<del>40.</del> 6. Medical equipment supplier permit	\$180
<del>44.</del> 7. Humane society permit	\$20
<del>42.</del> 8. Nonresident pharmacy	\$270
<del>13.</del> Nonresident wholesale distributor	\$270
44. 9. Controlled substances registrations (Between November 2, 2005, and December 31, 2006, the application fee for a controlled substance registration shall be \$50)	\$90
<del>45.</del> 10. Robotic pharmacy system approval	\$150
<del>46.</del> 11. Innovative program approval If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.	\$250
<del>47.</del> 12. Approval of a pharmacy technician training program	\$150
<del>48.</del> 13. Approval of a continuing education program	\$100

D. Annual renewal fees.

1. Pharmacist active license	\$90
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2. Pharmacist inactive license	\$45
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Physician permit to practice pharmacy	\$270
<del>6. Nonrestricted manufacturer permit</del>	<del>\$270</del>
<del>7. Restricted manufacturer permit</del>	<del>\$180</del>
<del>8. Wholesale distributor license</del>	<del>\$270</del>
<del>9. Warehouser permit</del>	<del>\$270</del>
<del>10. 6. Medical equipment supplier permit</del>	<del>\$180</del>
<del>11. 7. Humane society permit</del>	<del>\$20</del>
<del>12. 8. Nonresident pharmacy</del>	<del>\$270</del>
<del>13. Nonresident wholesale distributor</del>	<del>\$270</del>
<del>14. 9. Controlled substances registrations</del>	<del>\$90</del>
<del>15. 10. Innovative program continued approval based on board order not to exceed \$200 per approval period.</del>	

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30
2. Pharmacist inactive license	\$15
3. Pharmacy technician registration	\$10
4. Pharmacy permit	\$90
5. Physician permit to practice pharmacy	\$90
<del>6. Nonrestricted manufacturer permit</del>	<del>\$90</del>
<del>7. Restricted manufacturer permit</del>	<del>\$60</del>
<del>8. Wholesale distributor license</del>	<del>\$90</del>
<del>9. Warehouser permit</del>	<del>\$90</del>
<del>10. 6. Medical equipment supplier permit</del>	<del>\$60</del>
<del>11. 7. Humane society permit</del>	<del>\$5</del>
<del>12. 8. Nonresident pharmacy</del>	<del>\$90</del>
<del>13. Nonresident wholesale distributor</del>	<del>\$90</del>
<del>14. 9. Controlled substances registrations</del>	<del>\$30</del>

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	\$210
2. Pharmacist license after revocation or suspension	\$500
3. Pharmacy technician registration	\$35
4. Pharmacy technician registration after revocation or suspension	\$125
5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:	
a. Pharmacy permit	\$240
b. Physician permit to practice pharmacy	\$240
<del>    c. Nonrestricted manufacturer permit</del>	<del>\$240</del>
<del>    d. Restricted manufacturer permit</del>	<del>\$210</del>
<del>    e. Wholesale distributor license</del>	<del>\$240</del>
<del>    f. Warehouser permit</del>	<del>\$240</del>
<del>    g. c. Medical equipment supplier permit</del>	<del>\$210</del>
<del>    h. d. Humane society permit</del>	<del>\$30</del>
<del>    i. e. Nonresident pharmacy</del>	<del>\$115</del>
<del>    j. Nonresident wholesale distributor</del>	<del>\$115</del>
<del>    k. f. Controlled substances registration</del>	<del>\$180</del>

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	\$50
2. Change of ownership for any facility	\$50
3. Inspection for remodeling or change of location for any facility	\$150
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35

I. For the annual renewal due on or before December 31, 2005, the following fees shall be imposed for a license, permit or registration:

1. Pharmacist active license	\$50
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2. Pharmacist inactive license	\$25
3. Pharmacy technician registration	\$15
4. Pharmacy permit	\$210
5. Physician permit to practice pharmacy	\$210
6. Nonrestricted manufacturer permit	\$210
7. Restricted manufacturer permit	\$140
8. Wholesale distributor license	\$210
9. Warehouser permit	\$210
10. Medical equipment supplier permit	\$140
11. Humane society permit	\$20
12. Nonresident pharmacy	\$210
13. Nonresident wholesale distributor	\$210
14. Controlled substances registrations	\$50

PART XVI.  
MANUFACTURERS, WHOLESAL DISTRIBUTORS,  
WAREHOUSERS, AND MEDICAL EQUIPMENT  
SUPPLIERS.

**18 VAC 110-20-630. Licenses and permits generally.**  
**[ (Repealed.) Issuance of a permit as a medical equipment supplier. ]**

~~A license or permit shall not be issued to any manufacturer, wholesale distributor, warehouser, or medical equipment supplier to operate from a private dwelling, unless a separate business entrance is provided, and the place of business is open for inspection at all times during normal business hours. The applicant shall comply with all other federal, state and local laws and ordinances before any license or permit is issued.~~

~~[ A. Any person or entity desiring to obtain a permit as a medical equipment supplier shall file an application with the board on a form approved by the board. An application shall be filed for a new permit or for acquisition of an existing medical equipment supplier.~~

~~B. A permit holder proposing to change the location of an existing license or permit or make structural changes to an existing location shall file an application for approval of the changes following an inspection conducted by an authorized agent of the board.~~

~~C. A permit shall not be issued to any medical equipment supplier to operate from a private dwelling or residence or to operate without meeting the applicable facility requirements for proper storage and distribution of drugs or devices. Before any license or permit is issued, the applicant shall demonstrate compliance with all federal, state and local laws and ordinances. ]~~

**18 VAC 110-20-640. Safeguards against diversion of drugs. (Repealed.)**

~~The following requirements shall apply to manufacturers, wholesale distributors, or warehouse of prescription drugs:~~

~~1. The holder of the permit shall restrict all areas in which prescription drugs are manufactured, stored, or kept for sale, to only designated and necessary persons.~~

~~2. The holder of the permit shall provide reasonable security measures for all drugs in the restricted area.~~

~~3. The holder of the permit, except for those manufacturers or distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:~~

~~a. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.~~

~~b. The installation shall be hard wired and both the installation and device shall be based on accepted burglar alarm industry standards.~~

~~c. The device shall be maintained in operating order and shall have an auxiliary source of power.~~

~~d. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.~~

~~e. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.~~

~~4. The holder of the permit shall not deliver any drug to a licensed business at which there is no one in attendance at the time of the delivery nor to any person who may not legally possess such drugs.~~

**18 VAC 110-20-660. Good manufacturing practices.**  
**(Repealed.)**

~~A. The Good Manufacturing Practice for Finished Pharmaceuticals regulations set forth in 21 CFR 211 are adopted by reference.~~

~~B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.~~

**18 VAC 110-20-670. Prescription drug marketing act.**  
**(Repealed.)**

~~A. The requirements for wholesale distribution of prescription drugs set forth in the federal Prescription Drug Marketing Act of 1987 (21 USC § 321; 21 CFR 205) are adopted by reference.~~

~~B. Each wholesale distributor of prescription drugs shall comply with minimum requirements for qualifications, personnel, storage, handling, and records as set forth in the federal regulations referred to in subsection A of this section.~~

**NOTICE:** The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Application for Registration as a Pharmacy Intern (rev. 6/04).  
Affidavit of Practical Experience, Pharmacy Intern (rev. 12/02).  
Application for Licensure as a Pharmacist by Examination (rev. 10/02).  
Application to Reactivate Pharmacist License (rev. 10/02).  
Application for Approval of a Continuing Education Program (rev. 11/02).  
Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 11/02).  
Application for License to Dispense Drugs (permitted physician) (rev. 10/02).  
Application for a Pharmacy Permit (rev. 11/02).  
Application for a Nonresident Pharmacy Registration (rev. 10/02).  
Application for a Permit as a Medical Equipment Supplier (rev. 10/02).  
~~Application for a Permit as a Restricted Manufacturer (rev. 10/02).~~  
~~Application for a Permit as a Nonrestricted Manufacturer (rev. 10/02).~~  
~~Application for a Permit as a Warehouseman (rev. 10/02).~~  
~~Application for a License as a Wholesale Distributor (rev. 10/02).~~  
~~Application for a Nonresident Wholesale Distributor Registration (rev. 10/02).~~  
Application for a Controlled Substances Registration Certificate (rev. 3/05).  
Renewal Notice and Application, 0201 Pharmacy (rev. 12/02).  
Renewal Notice and Application, 0202 Pharmacist (rev. 12/02).  
Renewal Notice and Application, 0205 Permitted Physician (rev. 12/02).  
Renewal Notice and Application, 0206 Medical Equipment Supplier (rev. 12/02).  
~~Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).~~  
~~Renewal Notice and Application, 0208 Non-Restricted Manufacturer (rev. 12/02).~~

Renewal Notice and Application, 0209 Humane Society (rev. 12/02).  
Renewal Notice and Application, 0214 Non-Resident Pharmacy (rev. 12/02).  
~~Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).~~  
~~Renewal Notice and Application, 0216 Warehouseman (rev. 12/02).~~  
~~Renewal Notice and Application, 0219 Non-Resident Wholesale Distributor (rev. 12/02).~~  
Renewal Notice and Application, 0220 Business CSR (rev. 12/02).  
Renewal Notice and Application, 0228 Practitioner CSR (rev. 12/02).  
Application to Reinstate a Pharmacist License (rev. 11/02).  
Application for a Permit as a Humane Society (rev. 10/02).  
Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 6/04).  
Closing of a Pharmacy (rev. 3/03).  
Application for Approval of a Robotic Pharmacy System (rev. 11/02).  
Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (rev. 11/02).  
Application for Approval of an Innovative (Pilot) Program (rev. 11/02).  
Application for Registration as a Pharmacy Technician (12/02).  
Application for Approval of a Pharmacy Technician Training Program (12/02).  
Application for Registration for Volunteer Practice (eff. 12/02).  
Sponsor Certification for Volunteer Registration (eff. 1/03).

## CHAPTER 50. [ REGULATIONS GOVERNING ] WHOLESALE DISTRIBUTORS, MANUFACTURERS, AND WAREHOUSERS.

### PART I. GENERAL PROVISIONS.

#### **18 VAC 110-50-10. Definitions.**

*In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:*

[ "Control number" means the unique identifying customer number assigned by the Virginia Department of Motor Vehicles to an individual when issuing a driver's license, learner's permit, or official identification card. This number is displayed on the driver's license or ID card in lieu of the social security number. ]

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"DEA" means the United States Drug Enforcement Administration.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"FDA" means the United States Food and Drug Administration.

"USP-NF" means the United States Pharmacopeia-National Formulary.

~~["Control number" means the unique identifying customer number assigned by the Virginia Department of Motor Vehicles to an individual when issuing a driver's license, learner's permit, or official identification card. This number is displayed on the driver's license or ID card in lieu of the social security number.]~~

## 18 VAC 110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

### B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

### C. Annual renewal fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90
4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

### E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240
e. Nonresident wholesale distributor	\$240
f. Controlled substances registration	\$180

### F. Application for change or inspection fees.

1. Reinspection fee	\$150
2. Inspection fee for change of location, structural changes, or security system changes	\$150
3. Change of ownership fee	\$50
4. Change of responsible party	\$50

G. The fee for a returned check shall be [ ~~\$25~~ \$35 ].

## 18 VAC 110-50-30. Application; location of business; inspection required.

A. Any person or entity desiring to obtain a license as a wholesale distributor, registration as a nonresident wholesale distributor, or permit as a manufacturer or warehouser shall file an application with the board on a form approved by the board. An application shall be filed for a new license, registration, or permit, or for acquisition of an existing wholesale distributor, manufacturer, or warehouser.

B. A licensee or permit holder proposing to change the location of an existing license or permit, or make structural or security system changes to an existing location, shall file an application for approval of the changes following an inspection conducted by an authorized agent of the board.

[ C. A license or permit shall not be issued to any wholesale distributor, manufacturer, or warehouser to operate from a private dwelling or residence or to operate without meeting the applicable facility requirements for proper storage and distribution of drugs or devices. Before any license or permit

is issued, the applicant shall demonstrate compliance with all federal, state and local laws and ordinances.

D. If a wholesale distributor, manufacturer, or warehouse engages in receiving, possessing, storing, using, manufacturing, distributing, or otherwise disposing of any Schedule II-V controlled substances, it shall also obtain a controlled substances registration from the board in accordance with § 54.1-3422 of the Code of Virginia, and shall also be duly registered with DEA and in compliance with all applicable laws and rules for the storage, distribution, shipping, handling, and transporting of controlled substances.]

[~~C.~~ E.] The proposed location, structural changes, or security system changes shall be inspected by an authorized agent of the board prior to issuance of a license.

1. Applications that indicate a requested inspection date, or requests that are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the proposed prescription drug storage area shall comply with 18 VAC 110-50-40 and 18 VAC 110-50-50, and wholesale distributors shall meet the requirements of 18 VAC 110-50-90.

4. If an applicant substantially fails to meet the requirements for issuance of a permit and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18 VAC 110-50-20 prior to a reinspection being conducted.

[~~D.~~ F.] Prescription drugs shall not be stocked within the proposed location or moved to a new location until approval is granted by the inspector or board staff.

### 18 VAC 110-50-40. Safeguards against diversion of drugs.

A. The holder of the license [ or permit ] shall restrict all areas in which prescription drugs are stored or kept for sale to only [~~designated and necessary~~ those] persons [ specifically designated as necessary for the manufacture, receipt, storage, distribution or quality control of the controlled substance inventory, ] and [ shall ] provide reasonable security measures to include appropriate locking devices on all access doors to these areas and adequate lighting both inside and outside the facility to deter unauthorized entry and diversion.

B. The holder of the license or permit, except for those distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The installation shall be hardwired and both the installation and device shall be based on accepted burglar alarm industry standards.

3. The device shall be maintained in operating order and shall have an auxiliary source of power.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to [~~only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business~~ the person named on the application as the responsible party or to persons specifically designated in writing in a policy and procedure manual].

[ 6. The system shall be activated whenever the drug storage areas are closed for business. ]

C. Distribution or delivery of prescription drugs shall be accomplished in a manner to prevent diversion or possession of drugs by unauthorized persons.

1. The holder of the license or permit shall only deliver prescription drugs to a person authorized to possess such drugs at a location where the person is authorized to possess such drugs, and only at a time when someone authorized to possess such drugs is in attendance.

2. The holder of the license or permit shall affirmatively verify that the person to whom prescription drugs are delivered is authorized by law to receive such drugs.

3. Prescription drugs may be transferred to an authorized agent of a person who may lawfully possess prescription drugs [~~on the premises of the holder of the license or permit, provided the transfer occurs on the premises of the wholesale distributor, manufacturer, or warehouse, and~~ provided the identity and authorization of the agent is verified, [~~and provided such delivery and such transfer~~] is only used to meet the immediate needs of a patient or patients.

### 18 VAC 110-50-50. Storage.

A. All prescription drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements of USP-NF.

B. If no specific storage requirements are established for a drug or a device, it may be held at controlled room temperature, as defined in USP-NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.

C. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, or logs shall be utilized to document proper storage of prescription drugs.

D. Packaging of the prescription drugs should be in accordance with USP-NF standards.

E. Schedule II - V controlled substances shall be separated from Schedule VI prescription drugs and stored in a secure

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area in accordance with DEA security requirements and standards.

F. Any facility shall be of adequate size and construction and have the proper equipment necessary for the proper storage of prescription drugs and devices as set forth in this section.

## PART II. WHOLESALE DISTRIBUTORS.

### 18 VAC 110-50-60. Special or limited-use licenses.

The board may issue a limited-use wholesale distributor license to entities that do not engage in the wholesale distribution of prescription drugs except medical gases and may waive certain requirements of regulation based on the limited nature of such distribution.

### 18 VAC 110-50-70. Minimum required information.

~~[ A. Any person or entity wishing to (i) obtain a new license as a wholesale distributor or register as a nonresident wholesale distributor, (ii) engage in the acquisition of an existing wholesale distributor, (iii) change the location or make structural changes to the prescription drug storage space of an existing wholesale distributor, or (iv) make changes to a previously approved security system shall file an application with the board on a form approved by the board.~~

~~B. Forms for new licenses or registration, or any change of ownership~~ A. The application form for a new license or for registration as a nonresident wholesale distributor or any change of ownership ] shall include at least the following information:

1. The name, full business address, and telephone number of the applicant or licensee and name and telephone number of a designated contact person;
2. All trade or business names used by the applicant or licensee ~~[ (including "is doing business as," and "formerly known as") that cannot be identical to the name used by another unrelated wholesale distributor licensed to purchase or sell drugs in Virginia ]~~;
3. The federal employer identification number of the applicant or licensee;
4. The type of ownership and name(s) of the owner of the entity, including:
  - a. If an individual, the name, address, social security number or control number;
  - b. If a partnership, the name, address, and social security number or control number of each partner, and the name of the partnership and federal employer identification number;
  - c. If a corporation:
    - (1) The name and address of the corporation, federal employer identification number, state of incorporation, the name and address of the resident agent of the corporation;
    - (2) The name, address, social security number or control number, and title of each corporate officer and director;

(3) For nonpublicly held corporations, the name and address of each shareholder that owns 10% or more of the outstanding stock of the corporation [ - ; ]

(4) The name, federal employer identification number, and state of incorporation of the parent company.

d. If a sole proprietorship, the full name, address, and social security number or control number of the sole proprietor and the name and federal employer identification number of the business entity;

e. If a limited liability company, the name and address of each member, the name and address of each manager, the name of the limited liability company and federal employer identification number, the name and address of the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized;

5. Name, business address and telephone number, and social security number or control number, and documentation of required qualifications as stated in 18 VAC 110-50-80 of the person who will serve as the responsible party;

6. A list of all states in which the entity is licensed to purchase, possess and distribute prescription drugs, and into which it ships prescription drugs;

7. A list of all disciplinary actions imposed against the entity by state or federal regulatory bodies, including any such actions against the responsible party, principals, owners, directors, or officers over the last seven years;

8. A full description, for nonresident wholesale distributors, including the address, square footage, security and alarm system description, temperature and humidity control, and other relevant information of the facility or warehouse space used for prescription drug storage and distribution; and

9. An attestation providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts. Such attestation shall include the responsible party, principals, owners, directors, or officers.

~~[ C. B. ]~~ An applicant or licensee shall notify the board of any changes to the information required in this section within 30 days of such change.

### 18 VAC 110-50-80. Minimum qualifications, eligibility, and responsible party.

A. The board shall use the following factors in determining the eligibility for ~~[ and renewal of ]~~ licensure of wholesale distributors:

1. The existence of grounds to deny an application as set forth in § 54.1-3435.1 of the Code of Virginia;
2. The applicant's past experience in the manufacture or distribution of drugs or devices;
3. Compliance with the recordkeeping requirements;



4. Prior disciplinary action by a regulatory authority, prior criminal convictions, or ongoing investigations related to the manufacturing, distribution, prescribing, or dispensing of drugs by the responsible party or immediate family members of the responsible party, and owners, directors, or officers; and

5. The responsible party's credentials as set forth in subsection [ ~~G B~~ ] of this section.

~~[ B. The applicant shall provide a national criminal background check of the person named as the responsible party to assist the board in determining whether an applicant has committed criminal acts that would constitute grounds for denial of licensure. The background check will be conducted in compliance with any applicable state laws, at the applicant's expense, and will be sufficient to include all states of residence for the past 10 years or since the person has been an adult, whichever is less.~~

~~G. B. ] Requirements for the person named as the responsible party.~~

1. The responsible party shall be the primary contact person for the board as designated by the wholesale distributor, who shall be responsible for managing the wholesale distribution operations at that location;

2. The responsible party shall have a minimum of two years of verifiable experience in a pharmacy or wholesale distributor licensed in Virginia or another state where the person's responsibilities included, but were not limited to, managing or supervising the recordkeeping, storage, and shipment for drugs or devices;

3. A person may only serve as the responsible party for one wholesale distributor license at any one time;

4. The responsible party shall be employed full time in a managerial position and actively engaged in daily operations of the wholesale distributor;

5. The responsible party shall be present on a full-time basis at the location of the wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, vacation, or other authorized absence; and

6. The responsible party shall be aware of, and knowledgeable about, all policies and procedures pertaining to the operations of the wholesale distributor and all applicable state and federal laws related to wholesale distribution of prescription drugs.

~~[ D. C. ] The person named as the responsible party on the application shall submit the following with the application:~~

1. A passport size and quality photograph taken within 30 days of submission of the application;

2. A resume listing employment, occupations, or offices held for the past seven years including names, addresses, and telephone numbers of the places listed;

[ 3. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any

pending criminal charges within or outside the Commonwealth;

4. A criminal history record check through the Central Criminal Records Exchange; and

~~3. 5. ] A description of any involvement by the person with any business, including any investments, other than the ownership of stock in publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored drugs and devices and any lawsuits, regulatory actions, or criminal convictions related to drug laws or laws concerning wholesale distribution of prescription drugs in which such businesses were named as a party [ ~~; and~~ . ]~~

~~[ 4. Any additional information deemed by the board to be relevant to determining eligibility of a responsible party. ]~~

~~[ E. D. ] Responsibilities of the responsible party.~~

1. Ensuring that any employee engaged in operations is adequately trained in the requirements for the lawful and appropriate wholesale distribution of prescription drugs;

2. ~~[ Ensuring that~~ Requiring ] any employee who has access to prescription drugs [ to attest that he ] has not been convicted of any federal or state drug law or any law relating to the [ ~~wholesale manufacture,~~ ] distribution [ , or dispensing ] of prescription drugs;

3. Maintaining current working knowledge of requirements for wholesale distributors and assuring continued training for employees;

4. Maintaining proper security, storage and shipping conditions for all prescription drugs;

5. Maintaining all required records.

~~[ F. E. ] Each nonresident wholesale distributor shall designate a registered agent in Virginia for service of any notice or other legal document. Any nonresident wholesale distributor that does not so designate a registered agent shall be deemed to have designated the Secretary of the Commonwealth to be its true and lawful agent, upon who may be served all legal process in any action or proceeding against such nonresident wholesale distributor. A copy of any such service of legal documents shall be mailed to the nonresident wholesale distributor by the board by certified mail at the address of record.~~

**18 VAC 110-50-90. Minimum requirements for the storage, handling, transport, and shipment of prescription drugs.**

A. All locations where prescription drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:

1. Be of suitable construction to ensure that all drugs and devices in the facilities are maintained in accordance with the labeling of such drugs and devices or with official USP-NF compendium standards;

2. Be of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;

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3. Have adequate storage areas to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

4. Have a quarantine area for storage of drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed secondary containers that have been opened;

5. Be maintained in a clean and orderly condition; and

6. Be free from infestation of any kind.

B. The facility shall provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information.

C. The facility shall provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting, or diversion of prescription drugs.

### **18 VAC 110-50-100. Examination of drug shipments and accompanying documents.**

A. Upon receipt, each shipping container shall be visually examined for identity to determine if it may contain contaminated, contraband, counterfeit, suspected of being counterfeit, or damaged drugs, or drugs or devices that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting, suspected counterfeiting, or other damage to the contents.

B. Upon receipt of drugs, a wholesale distributor must review records for accuracy, completeness, and the integrity of the drugs considering the total facts and circumstances surrounding the transactions and the wholesale distributors involved.

~~[ C. The drugs found to be unacceptable under subsection A of this section shall be quarantined from the rest of stock until the examination and determination is made that the drugs are safe for distribution.~~

~~⊖ C. ]~~ Each outgoing shipment shall be carefully inspected for identity of the drugs and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

### **18 VAC 110-50-110. Returned, damaged and counterfeit drugs; investigations.**

A. Any drug or device returned to a manufacturer or another wholesale distributor shall be kept under the proper conditions and documentation showing that proper conditions were maintained shall be provided to the manufacturer or wholesale distributor to which the drugs are returned.

B. Any drug or device that, or any drug whose immediate or sealed outer or secondary container or labeling, is outdated, damaged, deteriorated, misbranded, adulterated, counterfeited, suspected of being counterfeited or adulterated, or otherwise deemed unfit for human consumption shall be quarantined and physically separated from other drugs and devices until its appropriate disposition.

C. When a drug or device is adulterated, misbranded, counterfeited or suspected of being counterfeit, or when the immediate or sealed outer or secondary container or labeling of any drug or device is adulterated, misbranded other than misbranding identified by the manufacturer through a recall or withdrawal, counterfeited, or suspected of being counterfeit, the wholesale distributor shall:

1. Provide notice to the board and the manufacturer or wholesale distributor from which such drug or device was acquired within three business days of that determination.

2. Maintain any such drug or device, its containers and labeling, and its accompanying documentation or any evidence of criminal activity until its disposition by the appropriate state and federal government authorities.

D. The wholesale distributor shall fully cooperate with authorities conducting any investigation of counterfeiting or suspected counterfeiting to include the provision of any records related to receipt or distribution of the suspect drug or device.

### **18 VAC 110-50-120. Policies and procedures.**

All wholesale distributors shall establish, maintain, and adhere to written policies and procedures for the proper receipt, security, storage, inventory, and distribution of prescription drugs. Wholesale distributors shall include in their policies and procedures at least the following:

1. A procedure for reporting thefts or losses of prescription drugs to the board and other appropriate authorities;

2. A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this process provided the deviation is temporary and appropriate for the distribution;

3. A procedure for handling recalls and withdrawals of prescription drugs and devices;

4. Procedures for preparing for, protecting against, and handling emergency situations that affect the security and integrity of drugs or the operations of the wholesale distributor;

5. A procedure to ensure that outdated drugs are segregated from other drugs to include the disposition of such drugs;

6. A procedure to ensure initial and ongoing training of all employees;

7. A procedure for ensuring, both initially and on an ongoing basis, that persons with access to prescription drugs have not been convicted of a drug law or any law related to wholesale distribution of prescription drugs; and

8. A procedure for reporting counterfeit or suspected counterfeit prescription drugs or counterfeiting or suspected counterfeiting activities to the board and other appropriate law enforcement or regulatory agencies.

### **18 VAC 110-50-130. Recordkeeping.**

A. All records and documentation required in this subsection shall be maintained and made available for inspection and

photocopying by an authorized agent of the board for a period of three years following the date the record was created or received by the wholesale distributor. A wholesale distributor shall establish and maintain the following:

1. Inventories and records of all transactions regarding the receipt and distribution, or other disposition of all prescription drugs, including the dates of receipt and distribution or other disposition;
2. Records documenting monitoring of environmental conditions to ensure compliance with the storage requirements as required in 18 VAC 110-50-50;
3. Documentation of visual inspection of drugs and accompanying documents required in 18 VAC 110-50-100, including the date of such inspection and the identity of the person conducting the inspection;
4. Documentation of quarantine of any product and steps taken for the proper reporting and disposition of the product shall be maintained, including the handling and disposition of all outdated, damaged, deteriorated, misbranded, or adulterated drugs;
5. An ongoing list of persons or entities from whom it receives prescription drugs and persons or entities to whom it distributes prescription drugs; [ and ]
6. Copies of the mandated report of thefts or unusual losses of Schedule II - V controlled substances in compliance with the requirements of § 54.1-3404 of the Code of Virginia [ ; and. ]

~~[ 7. A copy of any written report to the board of any significant shortages or losses of prescription drugs. ]~~

B. Records shall either (i) be kept at the inspection site or immediately retrievable by computer or other electronic means and made readily available at the time of inspection or (ii) if kept at a central location and not electronically retrievable at the inspection site, be made available for inspection within 48 hours of a request by an authorized agent of the board.

C. All facilities shall have adequate backup systems to protect against the inadvertent loss or deliberate destruction of data.

**18 VAC 110-50-140. Due diligence.**

A. Prior to the initial purchase of prescription drugs from another wholesale distributor not residing and licensed in Virginia, a wholesale distributor shall obtain, and update annually, the following information from the selling wholesale distributor:

1. A copy of the license to wholesale distribute from the resident state;
2. The most recent facility inspection report [ ~~from the resident board or licensing agency~~ , if available ];
3. A list of other names under which the wholesale distributor is doing business, or was formerly known as;
4. A list of [ ~~corporate officers~~ principals, directors, officers, or any shareholder who owns 10% or more of outstanding stock in any nonpublicly held corporation ];

5. A list of all disciplinary actions by state and federal agencies;
6. A description, including the address, dimensions, and other relevant information, of each facility or warehouse used for drug storage and distribution; and
7. A [ ~~statement as to whether and~~ listing of any manufacturers ] for whom the wholesale distributor is an authorized distributor of record.

B. If the selling wholesale distributor's facility has not been inspected by the resident board or the board's agent within three years of the contemplated purchase, the purchasing wholesale distributor may conduct an inspection of the wholesale distributor's facility prior to the first purchase of drugs or devices from another wholesale distributor to ensure compliance with applicable laws and regulations relating to the storage and handling of drugs or devices. A third party may be engaged to conduct the site inspection on behalf of the purchasing wholesale distributor.

C. Prior to the first purchase of drugs from another wholesale distributor not residing in and licensed in Virginia, the purchasing wholesale distributor shall secure a national criminal background check of all of the wholesale distributor's owners, corporate officers, and the person named as the responsible party with the resident board or licensing agency.

PART III.  
MANUFACTURERS.

**18 VAC 110-50-150. Good manufacturing practices.**

A. The Good Manufacturing Practice for Finished Pharmaceuticals regulations set forth in 21 CFR Part 211 are adopted by reference.

B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.

**NOTICE:** The forms used in administering 18 VAC 110-50, Regulations Governing Wholesale Distributors, Manufacturers, and Warehousemen, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for a Permit as a Restricted Manufacturer (rev. 9/05).

Application for a Permit as a Nonrestricted Manufacturer (rev. 9/05).

Application for a Permit as a Warehouseman (rev. 9/05).

Application for a License as a Wholesale Distributor (rev. 9/05).

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*Application for a Nonresident Wholesale Distributor Registration (rev. 9/05).*

*Application for a License as a Wholesale Distributor - Limited Use for Distribution of Medical Gases Only (rev. 9/05).*

*Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).*

*Renewal Notice and Application, 0208 Nonrestricted Manufacturer (rev. 12/02).*

*Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).*

*Renewal Notice and Application, 0216 Warehouser (rev. 12/02).*

*Renewal Notice and Application, 0219 Nonresident Wholesale Distributor (rev. 12/02).*

## DOCUMENTS INCORPORATED BY REFERENCE

*The United States Pharmacopeia and National Formulary, USP29-NF 24, revised June 2006, revisions official August 1, 2006, United States Pharmacopeial Convention, Inc. (<http://www.usp.org/USPNF>)*

VA.R. Doc. No. R04-242; Filed July 18, 2006, 3:32 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

**REGISTRAR'S NOTICE:** The following regulation filed by the Commonwealth Transportation Board is exempt from the Administrative Process Act in accordance with (i) § 2.2-4002 B 11 of the Code of Virginia, which exempts regulations relating to traffic signs, markers, or control devices and (ii) § 2.2-4006 A 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Commonwealth Transportation Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **24 VAC 30-550. Guidelines for the Logo Program (REPEALED).**

**24 VAC 30-551. Integrated Directional Signing Program (IDSP) Participation Criteria (adding 24 VAC 30-551-10 through 24 VAC 30-551-100).**

**24 VAC 30-600. Terms for Installation and Cost of Supplemental Signs Erected by VDOT (REPEALED).**

**Statutory Authority:** §§ 33.1-12 and 33.1-371 of the Code of Virginia.

**Effective Date:** September 6, 2006.

**Agency Contact:** J. Philip R. Hopkins, P.E., Assistant Division Administrator, Traffic Engineering Division, Virginia Department of Transportation, 1401 East Broad Street, 2nd

Floor Annex, Richmond, VA 23219, telephone (804) 786-2918, FAX (804) 225-4978 or e-mail [jphilip.hopkins@vdot.virginia.gov](mailto:jphilip.hopkins@vdot.virginia.gov).

### Summary:

*This regulatory action repeals 24 VAC 30-550, Guidelines for the Logo Program, and 24 VAC 30-600, Terms for Installation and Cost of Supplemental Signs Erected by VDOT, and adopts 24 VAC 30-551, Integrated Directional Signing Program (IDSP) Participation Criteria in order to consolidate the following four specific highway signing programs:*

*1. Specific Travel Services (Logo) Signing Program: guides motorists to specific gas, food, lodging, camping and attraction locations along Virginia's interstates and controlled-access highways;*

*2. Tourist-Oriented Directional Signing (TODS) Program: a newly created program for signs used along roads that do not have limited access, such as most primary and secondary highways, to guide motorists to businesses, services, recreation and other facilities nearby;*

*3. Supplemental Guide Signs Program: guides motorists traveling from outside the immediate area to specific cultural, recreational, historical, governmental, educational, military and other sites of interest; and*

*4. General Motorist Services Signs Program: uses symbols or general terms to let motorists know that services such as hospitals, public phones, gas, food, lodging, or camping are nearby.*

*In addition, the IDSP incorporates special programs signing criteria for Civil War Trails, Birding and Wildlife Trails, Wayfinding Signs, Virginia Waterways Signage, and State Scenic River Signs. Additional criteria and considerations for the integration of the Winery Signage Program are also addressed in the IDSP.*

*The IDSP criteria addresses requirements businesses and other program participants must meet for eligibility, new categories for specific programs, and fee structures that were not previously regulatory actions.*

### CHAPTER 551.

### INTEGRATED DIRECTIONAL SIGNING PROGRAM (IDSP) PARTICIPATION CRITERIA.

#### 24 VAC 30-551-10. Definitions.

*The following words and terms when used in this chapter shall have the following meanings unless the content clearly indicates otherwise:*

*"Bed and breakfast" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one cooked meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided. The facility shall have an on-premises sign describing it as a bed and breakfast and shall clearly describe itself as a bed and breakfast in all marketing materials.*

*“Bumping” means the removal of a business from the Specific Travel Services (Logo) Signing Program or Tourist-Oriented Directional Signing (TODS) Program.*

*“Colleges and universities” means the main campus of an educational institution and shall be interpreted as all that contiguous real estate and improvements owned and operated by the educational institution, housing the administrative, educational and other programs of the institution. An educational institution may have more than one main campus located within the state provided each facility meets the above description and the facilities are not closer than 50 miles to each other. The distance limitation shall not apply to campuses of the Virginia Community College System. Satellite facilities shall be all educational or other facilities associated with the institution located within 25 miles of the limits of the main campus.*

*In general application, a main campus should give visitors the clear impression that they have entered a campus setting. Facilities sharing space in commercial centers, office parks, industrial centers and similar settings shall not be considered main campuses; however, they may constitute satellite facilities if meeting the description in this definition.*

*“Emergency medical facility” means a licensed facility providing continuous emergency medical care to the general public. The facility shall have a licensed medical doctor on duty 24 hours per day, 365 days per year.*

*“Equestrian center” means a facility, marketing itself as an “equestrian center,” dedicated to the public education and recreational enjoyment of horses through a variety of features such as riding lessons, training facilities and clinics.*

*“Farm market” means a year-round or seasonal facility located on an individual farm dedicated to selling fresh, locally produced products. At least 50% of sales must be from Virginia-grown and -produced products.*

*“Farmer’s market” means a year-round or seasonal open air or permanent facility, marketing itself as a “farmer’s market,” where multiple farmers come to sell their products to the consumer.*

*“Full service food” means a restaurant that meets all the requirements for participation in the Specific Travel Services (Logo) Signing Program as a Food Category I facility. The restaurant must also provide (i) indoor seating for at least 100 adults, (ii) sit-down table service with wait staff, (iii) public restroom facilities, and (iv) a full breakfast menu, including coffee, juice, and items from at least two of the following groups: (a) eggs; (b) breakfast meat (e.g., bacon, sausage, ham, steak); and (c) breakfast bread (e.g., toast, bagels, pastry) or cereal, or both. Eggs and breakfast meat shall be prepared on the premises (pre-packaged items will not meet this requirement).*

*“Historic building” means the same as “historic site.”*

*“Historic cemetery” means the same as “historic site.”*

*“Historic site” means a site, facility or structure that is officially listed in the Virginia Landmarks Register, where guided tours are (i) regularly scheduled or (ii) available upon request during the hours of operation.*

*“Hospital” means the same as “emergency medical facility.”*

*“Regional retail facility” means a unified facility where more than 10 retail businesses are located. The facility must (i) print and distribute promotional brochures over 50 miles from its location or regularly advertise in media over 50 miles from its location; (ii) receive 1/3 or more of annual sales from visitors from over 50 miles from its location (as determined by customer survey or credit card tracking, or both; the regional retail facility is responsible for providing supporting data); and (iii) employ a staff person for the promotion, advertising, marketing, or sales to persons over 50 miles from its location. Consideration will be given to recommendations of the Virginia Tourism Corporation relative to the determination of a regional retail facility.*

*“Virginia educational institution” means a for-profit educational institution with its main campus located in Virginia that (i) has for at least five consecutive years awarded academic degrees approved by the State Council of Higher Education; (ii) offers programs in workforce training or job readiness that contribute to Virginia’s economic growth and development; and (iii) has combined annual enrollment of at least 1,000 at its main campus and any branch location situated within a radius of 25 miles from the main campus.*

*“Water-oriented business” means a business that includes canoe liveries, raft liveries, marinas, water parks, wave pools, and other similar businesses providing access to or facilities for waterborne recreational activities.*

*“Wine trail” means a trail that consists of a group of three or more wineries that have declared their intention to be a wine trail and published joint marketing materials. To participate in either the Tourist-Oriented Directional Signing (TODS) Program or Logo Program, each winery on a wine trail must meet the hours of operation and licensing requirements for that program. The driving distance between one winery and the next wine trail facility shall not be greater than 15 miles. To be eligible for participation in the TODS Program, the first and last facilities on a wine trail must be located within 15 miles of the intersection of a noncontrolled access state primary or secondary system highway where the initial TODS panel is to be located. To be eligible for participation in the Logo Program, the facility at one terminus of the wine trail must be located within 15 miles of the interchange. The facility at the other terminus must be eligible for either TODS or Logo signage.*

**24 VAC 30-551-20. General criteria for Specific Travel Services (Logo) Signing Program.**

A. Specific travel services (Logo) signing may be installed on any limited access interstate, primary or secondary facility under the authority of the Virginia Department of Transportation (VDOT).

B. To qualify for specific travel services (Logo) signing, a facility shall be open to the general public and shall:

1. Meet the appropriate criteria/eligibility requirements for the type of facility;
2. Comply with all applicable laws concerning the provision of public accommodations without regard to age, race,

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religion, color, sex, national origin, or accessibility by the physically handicapped;

3. Furnish the necessary panels displaying the name, symbol or trademark of the facility fabricated according to the specifications of VDOT, at no cost to VDOT. (The facility is free to select any fabricator of its choosing for the panels.);

4. Agree to abide by all rules, regulations, policies, procedures and criteria associated with the program, including the bumping policy in 24 VAC 30-551-60; and

5. Agree that in any cases of dispute or other disagreement with the rules, regulations, policies, procedures and criteria or applications of the program, the decision of the State Traffic Engineer shall be final and binding.

C. The following table below summarizes the criteria for this program:

SPECIFIC TRAVEL SERVICES (LOGO) SIGNING PROGRAM Criteria Summary		
Facility	Criteria	
	CATEGORY I	CATEGORY II
GAS <sup>(1)</sup> , (1a)	Three miles max Fuel, oil, tire repair (or info), air, free water Public restroom Drinking water with cups 16 hours per day, seven days per week	All of Category I, except 12 hours per day, seven days per week
FOOD <sup>(1)</sup>	Three miles max State Board of Health permit Indoor seating for 20 adults 12 consecutive hours per day, six days per week (7 a.m.) Menu conspicuously displayed Hours displayed visible to customer prior to entering the business	All of Category I, except six hours per day, six days per week
LODGING	Three miles max State Board of Health permit 10 or more rooms for rent Off-street parking for each room 24 hours per day, seven days per week	All of Category I, except four or more rooms for rent
CAMPING <sup>(2)</sup>	15 miles max State Board of Health permit 10 or more camping units Off-street parking for each unit 24 hours per day, seven days per week	

ATTRACTIONS <sup>(2)</sup>	All criteria referenced in subsection D of this section.	
FULL SERVICE FOOD (Experimental Program – If the experiment proves positive, it is the intent of VDOT to have the full service food program as a permanent part of the IDSP on a statewide basis)	Interchanges: I-64 Exit 124                      I-64 Exit 94 I-81 Exit 118                      I-64 Exit 180 I-81 Exit 150                      I-81 Exit 247 I-81 Exit 264                      I-81 Exit 283 I-95 Exit 92                        I-81 Exit 313 I-95 Exit 126                      I-85 Exit 12 I-95 Exit 143                      I-95 Exit 130  All FOOD CATEGORY I criteria and: Indoor seating for 100 adults Full sit-down table service with wait staff Public restroom facilities  Full breakfast menu – see “full service food” definition in 24 VAC 30-551-10.	

(1) Signage for establishments open 24 hours per day may include indication of continuous operation.

(1a) Effective August 1, 2005, two spaces are reserved for establishments with 24-hour-per-day, seven-days-per-week operations.

(2) At locations where four or more attractions facilities desire to participate in the Logo Program, camping will be limited to a maximum of two spaces. Camping logos existing on September 16, 2004, will be grandfathered, assuming they continue to meet all contractual commitments.

D. In addition to the general criteria for specific travel services (Logo) signing, to qualify for an attraction sign, a facility shall:

1. Not be currently using other supplemental guide signs at the same location as the Logo mainline or trailblazer signing;
2. Have licensing or approval, where required;
3. Provide sanitary public restroom facilities;
4. Be in continuous operation at least eight hours per day, five days per week during the normal operating season for the type of business (except this requirement shall not apply to certain facilities such as arenas, auditoriums, civic centers, stadiums, and flea markets);
5. Be located within 15 miles of the interchange and must provide written directions or have adequate signage to direct motorists back to their original route of travel;
6. Provide adequate parking to accommodate normal traffic volumes for the facility;
7. Be of regional interest to the traveling public and one or more of the following acceptable sites:

LOGO PROGRAM ACCEPTABLE SITES Attractions		
Cultural	Art/craft center Gallery Museum	Historic building Historic site Historic district
Retail Tourism	Agribusiness Brewery Distillery Winery Farm market	Flea market Auction house Regional retail facility Bed and breakfast Farmer's market

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Recreational	Amphitheater	Fairground
	Amusement park	Golf course
	Aquarium	Natural attraction
	Arboretum	Pavilion
	Arena	Race track
	Auditorium	Park - national
	Boat landing	Park - state
	Botanical garden	Park - municipal
	Camp	Park - regional
	Civic center	Park - theme
	Coliseum	Ski resort
	Concert hall	Stadium
	Natural resource agency	Water-oriented business
	Equestrian center	Zoo
	Schools	Colleges and universities (main campus or satellite campus facilities)
Trails	Virginia Department of Game & Inland Fisheries (DGIF) Birding & Wildlife Civil War Virginia Wine Others as approved by VDOT	
Other	Conference center Power plant Research facility	

	Mosque	Other religious sites
Schools	High school	
	Middle school	
	Elementary school	
Winery Signage Program – See 24 VAC 30-551-80		

F. Additional criteria and considerations apply to wineries participating in the Winery Signage Program (24 VAC 30-551-80).

**24 VAC 30-551-30. General criteria for the Tourist-Oriented Directional Signs (TODS) Program.**

A. TODS assemblies may only be installed within public right-of-way maintained by VDOT and will be excluded from any cities and towns of 5,000 or more population and Arlington County and Henrico County. VDOT will not acquire rights-of-way or easements, or otherwise enter into agreements for the purposes of installing TODS assemblies.

B. A facility will be eligible to participate as a TODS – Category I if it is open to the general public; a substantial portion of its products or services are of significant interest to tourists; it derives its major portion of income or visitors during the normal business season from road users not residing in the area of the facility, defined as within 15 miles; the facility falls within one of the acceptable TODS sites; and it meets the following criteria:

1. Is located within 15 miles of the intersection of a nonlimited access state primary system highway where the initial TODS panel is to be located at the nearest primary intersection along the selected route;
2. Has the name of the facility prominently displayed on the premises in such a manner that it is readily visible to motorists from the public highway on which the business is located;
3. Is open a minimum of six hours per day, five days per week during at least a 12-consecutive-week period each year, except this requirement shall not apply to certain facilities such as arenas, auditoriums, civic centers, farmer's markets, farm markets, wineries and flea markets;
4. Is in continuous operation at least six hours per day, five days per week during its normal season or the normal operating season for the type of business;
5. Is licensed and approved by the appropriate state or local agencies, or both, regulating the particular type of business or activity;
6. For camping businesses, meets Specific Travel Services (Logo) Signing Program criteria to be eligible for participation;
7. Complies with all applicable laws concerning the provision of public accommodations without regard to age, race, religion, color, sex, national origin, or accessibility by the physically handicapped;
8. Agrees to abide by all rules, regulations, policies, procedures and criteria associated with the program; and
9. Agrees that in any cases of dispute or other disagreement with the rules, regulations, policies,

E. The following sites are excluded from participation as an attraction on a specific travel services (Logo) sign. The exclusion relates only to qualification under these categories. These facilities may participate if qualifying under another acceptable category:

LOGO PROGRAM EXCLUDED SITES Attractions		
Business/ Commercial	Adult entertainment facility	Office park
	Camping business	Radio station
	Funeral home	Television station
	Industrial park or plant	Tree nursery
	Media facility	Truck terminal
	Movie theater	
Governmental	Local jail	
	Local police/sheriff's office	
	Post office	
Medical	Drug rehabilitation facility	Mental facility
	Extended care facility	Nursing home
	Fraternal home	Retirement home
	Hospital	Sanitarium
	Humane facility	Treatment center
	Infirmery	Veterans facility
Miscellaneous	Animal shelter	
	Mobile home park	
	Subdivision	
	Veterinary facility	
	Cemetery/columbarium	
Religious	Cathedral	Shrine
	Chapel	Synagogue
	Church	Temple

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procedures and criteria or applications of the program, the decision of the State Traffic Engineer shall be final and binding.

C. In addition to the facilities listed as acceptable TODS sites, gas, food and lodging establishments may participate in the TODS Program as a TODS - Category II site provided they meet all of the TODS - Category I criteria with the exception that the following criteria apply:

1. Is located within three miles of the intersection of a nonlimited access state primary or secondary system highway where the initial TODS panel is to be located; and
2. Meets the Specific Travel Services (Logo) Signing Program - Category II criteria for its respective type of facility and agrees to be bumped in accordance with the bumping policy for a Category II facility.

D. The following table lists acceptable sites for TODS:

TODS PROGRAM ACCEPTABLE SITES Category I		
Cultural	Art/craft center Gallery Museum Historic building	Historic cemetery Historic site Historic district
Recreational	Amphitheater Amusement park Aquarium  Arboretum Arena Auditorium Boat landing/marina Botanical garden Campground Camp Civic center Coliseum Concert hall Equestrian center Fairground	Golf course Natural attraction Natural resource agency <sup>(1)</sup> Pavilion Race track Park - national Park - municipal Park - privately owned Park - regional Park - theme Ski resort Stadium Water-oriented business Zoo
Retail Tourism	Agribusiness Antique business Auction house Bed and breakfast Brewery Distillery Farm market	Farmer's market Flea market Nursery/greenhouse Regional retail facility Restaurant <sup>(2)</sup> Winery
Schools	Colleges & universities (main campus or satellite campus facilities)	
Trails	DGIF Birding & Wildlife Civil War Virginia Wine Others as approved by VDOT	
Other	Conference center Power plant Research facility	

(1) VDOT shall waive requirements and conditions of participation in the TODS Program as may be necessary to provide adequate

signage for facilities maintained by the agencies within Virginia's Natural Resources Secretariat. The requirements and conditions that may be waived include, but are not limited to, (i) the required proximity of a facility to an initial sign structure and (ii) the limitation that signage be provided only at the nearest primary highway.

(2) Shall not be a franchise or part of a national chain. Food Category II can be a franchise or part of a national chain.

E. The following sites are excluded from participation in the TODS Program. The exclusion relates only to qualification under these categories. These facilities may participate if qualifying under another acceptable category.

TODS PROGRAM EXCLUDED SITES		
Business/ commercial	Adult entertainment facility Funeral home Industrial park or plant Media facility Movie theater	Office park  Radio station Television station Truck terminal
Governmental	Local jail Local police/sheriff's office Post office	
Medical	Drug rehabilitation facility Extended care facility Fraternal home Hospital Humane facility Infirmary	Mental facility  Nursing home Retirement home Sanitarium Treatment center Veterans facility
Miscellaneous	Animal shelter Cemetery/columbarium Mobile home park	Subdivision Veterinary facility
Religious	Cathedral Chapel Church Mosque	Shrine Synagogue Temple Other religious sites

## 24 VAC 30-551-40. General criteria for the Supplemental Guide Signs Program.

A. The following requirements shall apply to signs in the Supplemental Guide Signs Program:

1. Supplemental guide signs shall be limited to two structures per interchange or intersection per direction with no more than two destinations per sign structure, except as noted in subdivision 2 of this subsection. When there is excessive demand over available space for new supplemental guide signing, VDOT, in consultation with the affected jurisdiction, shall determine which facilities will be listed on the signs.

2. All supplemental guide signs in place as of September 15, 2004, will be "grandfathered" into the program and may be repaired or replaced as necessary, except if the facility closes, relocates, or fails to comply with the criteria under which it originally qualified, the signs will be removed.

3. Additional structures over the two-structure limit may only be installed when the Commonwealth Transportation



Commissioner or his designee determines that such installation is in the public interest.

**B. To qualify for supplemental guide signing, a facility shall:**

1. Be open to the general public on a continuous basis either year-round or during the normal operating season for the type of facility. Closings for the observance of official state holidays are allowed;
2. Comply with all applicable laws concerning the provision of public accommodations without regard to age, race, religion, color, sex, national origin, or accessibility by the physically handicapped;
3. Agree to abide by all rules, regulations, policies, procedures and criteria associated with the program; and
4. Agree that in any cases of dispute or other disagreement with the rules, regulations, policies, procedures and criteria or applications of the program, the decision of the State Traffic Engineer shall be final and binding.

**C. All facilities shall be located within 15 miles of the initial supplemental guide sign.**

**D. Additional criteria and considerations apply to wineries participating in the Winery Signage Program (24 VAC 30-551-80).**

**E. The following table lists acceptable sites for supplemental guide signs:**

SUPPLEMENTAL GUIDE SIGNS PROGRAM Acceptable Sites <sup>(3)</sup>		
Cultural	Historic building <sup>(1), (2)</sup> Historic site <sup>(1), (2)</sup> Historic district <sup>(1), (2)</sup>	
Governmental	Correction facility Courthouse Department of Game and Inland Fisheries facility Department of Motor Vehicles facility Landfill/transfer station Government office	Regional jail Prison Local police/sheriff's office <sup>(1)</sup> State Police facility <sup>(1)</sup> Recycling facility
Military <sup>(1)</sup>	Military facility	
Recreational	Boat landing (public) Natural attraction <sup>(1)</sup> Park – national <sup>(1)</sup>	Park – municipal <sup>(1)</sup> Park – regional <sup>(1)</sup> Park – state <sup>(1)</sup>
Schools	Colleges and universities <sup>(1)</sup> (main campus only) High school Junior high school	Virginia educational institution <sup>(1)</sup> Middle school Elementary school
Miscellaneous <sup>(1)</sup>	Arlington National Cemetery Virginia Veterans Cemetery Special events	Tourist information center Welcome center

(1) Permitted on Interstate and limited access highways.

(2) If supplemental guide signs are installed for a historic district, separate signs for individual historic sites within the historic district shall not be allowed.

(3) VDOT shall waive requirements and conditions of participation in the supplemental signage program as may be necessary to provide adequate signage for facilities maintained by the agencies within Virginia's Natural Resources Secretariat.

**D. The following sites are excluded from being displayed on official supplemental guide signs. The exclusion only relates to qualification under these categories. These facilities may participate if qualifying under another acceptable category.**

SUPPLEMENTAL GUIDE SIGNS PROGRAM Excluded Sites		
Business/Commercial	Adult entertainment facility	Radio station
	Funeral home	Shopping center
	Industrial park or plant	Television station
	Landfill - private	Transfer station - private
	Media facility	Tree nursery
	Movie theater	Truck terminal
	Office park	
Colleges and Universities	Satellite campus and individual on-campus facilities of main campuses on limited access highways	
Governmental	Fairgrounds	
	Local jail	
	Post office	
Medical	Drug rehabilitation facility	Mental healthcare facility
	Extended care facility	Nursing home
	Fraternal home	Retirement home
	Hospital	Sanitarium
	Humane facility	Treatment center
	Infirmary	Veterans facility
Recreational	Arcade	
	Boat landing - private	
	Camp – church, civic, 4-H, Scout, YMCA/YWCA, other	
Religious	Cathedral	Shrine
	Chapel	Synagogue
	Church	Temple
	Mosque	Other religious sites
Miscellaneous	Animal shelter	Subdivision
	Cemetery/columbarium (except those noted as acceptable)	Veterinary facility
	Mobile home park	Museum

**24 VAC 30-551-50. General criteria for the General Motorist Services Signs Program.**

**A. General motorist services signs may be installed along state maintained roadways for gas, food, lodging, camping,**

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and hospital locations that fulfill the needs of the road user and satisfy the following criteria:

GENERAL MOTORIST SERVICES SIGNS PROGRAM Criteria Summary	
GAS <sup>(1)</sup>	Three miles max Fuel, oil, tire repair (or info), air, free water Public restroom Drinking water and cups 16 hours per day, seven days per week
FOOD <sup>(1)</sup>	Three miles max State Board of Health permit Indoor seating for 20 adults 12 hours per day, six days per week (7 a.m.) Menu Hours displayed
LODGING <sup>(1)</sup>	Three miles max State Board of Health permit 10 or more rooms for rent Off-street parking for each room 24 hours per day, seven days per week
CAMPING	15 miles max State Board of Health permit 10 or more camping units
HOSPITAL	Continuous public emergency care Medical doctor on duty 24 hours per day, seven days per week

(1) General motorist services signs will not be installed and may be removed at an interchange or intersection if there is adequate space for the installation of either specific travel services (Logo) signs or tourist-oriented directional signs, as appropriate.

## 24 VAC 30-551-60. Specific Travel Services (Logo) Signing Program and Tourist-Oriented Directional Signing (TODS) Program bumping policy.

A. "Bumping" or the removal of a business from the Virginia Logo or TODS Program for another business of the same service is only allowed within the services of gas, food, or lodging.

B. Bumping shall be governed by the following conditions:

1. A Category I business located within one mile of the interchange or intersection as measured for inclusion in the Logo Program cannot be bumped from the program and will remain in the program as long as it continues to remain fully qualified, provides the necessary service to the motorist, and satisfies the contracted financial obligation to the program.

2. A Category I business located outside of one mile of the interchange or intersection as measured for inclusion in the Logo Program can be bumped from the program at the conclusion of its contract period if a request is made by another business of the same service that satisfies all of the Category I requirements for the service and is located more than 1/2 mile closer to the interchange or intersection as measured for inclusion in the Logo Program.

3. A business meeting only the Category II criteria can be removed from the program if a request for participation is made by another businesses that satisfies all of the Category I requirements for the service. The Category II business will be allowed to satisfy the Category I requirements before being removed from the program if the participating business is located closer to the interchange or intersection or is situated such that the business would not be removed from the program if the business met the Category I qualifications.

4. A Category II business located within one mile of the intersection as measured for inclusion in the Virginia Logo or TODS Program cannot be bumped from the program by another Category II business provided it continues to satisfy the Category II requirements for the service, provides the necessary service to the motorist, and satisfies the contracted financial obligation to the program.

5. A Category II business located outside of one mile of the intersection as measured for inclusion in the Virginia Logo or TODS Program can be bumped from the program at the conclusion of its contract period if a request is made by another business of the same service that satisfies all of the Category II requirements for the service and is located more than 1/2 mile closer to the interchange or intersection as measured for inclusion in the Virginia Logo or TODS Program.

6. Gas Category I. Two spaces will be reserved for facilities open 24 hours per day, seven days per week and that meet the remaining gas Category I requirements. Other gas participants may use these spaces if there are not sufficient 24-hours-per-day, seven-days-per-week operations to fill the spaces. A 24-hours-per-day, seven-days-per-week operation can bump any operation that is not 24 hours per day, seven days per week unless there are already two participants with 24-hours-per-day, seven-days-per-week operations. Participants with 24-hours-per-day, seven-days-per-week operations that use the two reserved spaces are required to identify in their logos that they are open 24 hours per day, seven days per week.

## 24 VAC 30-551-70. Signs for Special Programs.

A. Specific special programs signing may be installed on any limited access, primary or secondary facility under the authority of VDOT. VDOT may issue a land use permit to others to have the signs installed after the approval of the State Traffic Engineer that the sign is included in the special sign program. Limited access facility permits will need the approval of the Chief Engineer.

B. Special programs are subject to the following criteria:

1. Civil War Trails program signs may be installed on interstate, primary and secondary facilities and may be installed as stand-alone structures or attached to existing sign structures. This program is exempt from the IDSP criteria and annual fee requirements. All costs associated with this program, including costs for the fabrication, installation, maintenance, and replacement of these signs, shall be the responsibility of the requesting entity.

2. The Birding and Wildlife Trail programs established by DGIF may be installed on interstate, primary and secondary facilities and may be installed as stand-alone structures or attached to existing sign structures. This program is exempt from the Integrated Directional Signing Program (IDSP) criteria and annual fee requirements. All costs associated with this program, including costs for the fabrication, installation, maintenance, and replacement of these signs, shall be the responsibility of the requesting entity.

3. The following sites are eligible for wayfinding signs:

a. Historic Triangle Wayfinding Group, sponsored by the City of Williamsburg and the Counties of James City and York, may implement a wayfinding system within state maintained rights-of-ways as a pilot program. Continuation of the pilot program shall be subject to regular consultation with VDOT.

b. Loudoun County may implement a wayfinding system within state maintained rights-of-ways as a pilot program. Continuation of the pilot program shall be subject to regular consultation with VDOT.

c. Journey Through Hallowed Ground Wayfinding System.

4. Virginia Waterways Signage Program signs may be installed on interstate, primary and secondary facilities. All costs associated with this program, including costs for the fabrication, maintenance, installation and replacement of these signs, shall be the responsibility of the requesting entity.

5. State scenic river signs may be installed on interstate, primary and secondary facilities. All costs associated with this program, including costs for the fabrication, maintenance, installation and replacement of these signs, shall be the responsibility of the requesting entity.

## **24 VAC 30-551-80. General criteria for integration of the Winery Signage Program.**

A. The following criteria apply to all existing Winery Signage Program signs:

1. All existing supplemental guide signage for wineries (in place as of September 15, 2004) will remain in place.

2. To retain an existing supplemental guide sign, a winery must continue to meet the existing winery program hours of operation requirements (open six hours per day, five days per week, at least nine consecutive months per year).

3. When an existing supplemental guide sign is damaged, or for any other reason needs to be replaced, the replacement sign may be a supplemental guide sign or a TODS sign. The fee to install the supplemental guide sign will be the standard installation fee. The requesting entity will thereafter be required to pay the standard annual fee for supplemental guide signs or TODS signage, whichever is applicable.

4. In the event an existing supplemental guide sign for a winery needs to be replaced and there is insufficient space on the appropriate TODS structure for an additional TODS panel, or the sign is in an area where TODS signs are not

permitted, a replacement supplemental guide sign may be installed. In this event, the requesting entity will be required to pay all costs related to the replacement sign and thereafter be required to pay the annual fee for supplemental guide signs.

5. Until September 15, 2007, there will be no annual fee for existing supplemental guide signage. Wineries with supplemental guide signage will be required to pay all maintenance costs due to damage during this period.

6. Effective September 16, 2007, an annual fee equal to approximately 1/3 of the standard TODS annual fee will be charged for existing winery supplemental guide signage. Wineries will not be charged any maintenance costs for existing supplemental guide signage after this date.

7. Effective September 16, 2010, supplemental guide signage for wineries will be charged an annual fee equal to the standard fee for TODS signage.

B. The following criteria apply to all new Winery Signage Program signs:

1. All new winery signs installed on nonlimited access highways after September 15, 2004, will be standard TODS signs. Entities requesting such signs will be required to pay the standard fees for participation in the TODS Program.

2. In order to be eligible for TODS signage, wineries will be required to meet the standard TODS hours of operation requirements (six hours per day, five days per week for at least 12 consecutive weeks each year).

3. Wineries will be eligible for Logo signage (attractions category) on limited access highways. To be eligible for Logo signage, a winery will be required to meet the standard hours of operation requirements (open eight hours per day, five days per week) and to pay the standard annual fee for the Logo Program.

4. Wineries will have the option to display the "grape cluster" logo (in color) on TODS or Logo signs, upon request.

## **24 VAC 30-551-90. Sign participant selection process.**

A. With the assistance of interested parties, VDOT shall develop selection processes and bumping procedures for supplemental guide signage and Logo attractions category signage that incorporate local governments and other entities, as appropriate.

B. Prior to the development of the sign participant selection process, a first come – first served, process will be utilized. These participants will be limited to a one-year contract, which will provide that they may be bumped depending on the specific selection process and bumping procedures that are developed.

## **24 VAC 30-551-100. Integrated Directional Signing Program (IDSP) participation fees.**

A. Annual participation fees for the Logo Program are as follows:

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SPECIFIC TRAVEL SERVICES (LOGO) SIGNING PROGRAM Annual Participation Fees		
Signing	Average Daily Traffic	
	High Volume <sup>(1), (2)</sup>	Regular
Main line	\$1,000	\$800
Trailblazer <sup>(3)</sup>	\$150	\$150
Switchout (per occurrence) <sup>(4)</sup>	\$90	\$90

(1) High volume – 40,000 average daily traffic (ADT) or more in both directions on any leg of the interchange.

(2) A nonprofit entity may elect to pay the “regular” rates and be classified as a Category II.

(3) A Logo trailblazer sign on a TODS panel will be charged the Logo trailblazer fee.

(4) Defined as replacing a Logo panel due to a design change.

**B. Participation fees for the Tourist-Oriented Directional Signing (TODS) Program are as follows:**

1. A one-time application fee of \$100.
2. Annual participation fees as shown in the following table:

TOURIST-ORIENTED DIRECTIONAL SIGNING (TODS) PROGRAM <sup>(1)</sup> Annual Fees	
Signing	Annual Fee
Main panel	\$450
Trailblazer	\$100
Close <sup>(2)</sup>	\$50

(1) Annual fees are not assessed for agencies in the Natural Resources Secretariat.

(2) Defined as covering a panel due to seasonal closing or other temporary closure.

**C. Participation fees for the Supplemental Guide Signs Program are as follows:**

1. Fees for participating commercial entities are as follows:

SUPPLEMENTAL GUIDE SIGNS PROGRAM <sup>(1)</sup> Fees for Commercial Entities			
Signing	Annual Fee	Application/Site Preparation Fees <sup>(3)</sup>	
		New	Maintenance/Replacement
Major sign <sup>(2)</sup>	\$700	\$250	\$100
Minor sign	\$250	\$250	\$100

(1) The following are exempt from annual fees; however, they will be charged for new construction, maintenance, and replacement:

- (a) Federal, state, and local governments; and
- (b) Nonprofit organizations.

All entities are subject to application/site preparation fees per installation for new signs, maintenance or replacement of signs.

(2) Defined as 12 square feet or larger.

(3) Commercial entities participating in supplemental guide signing will be responsible for maintenance, replacement, or new construction.

2. Fees for participating wineries are as follows:

SUPPLEMENTAL GUIDE SIGNS PROGRAM Fees for Wineries <sup>(1)</sup>		
Signing per set – Main and trailblazers	2007 <sup>(2)</sup>	2010 <sup>(2)</sup>
		\$175

(1) In 2004, participating wineries paid for maintenance and replacement.

(2) Participating wineries will pay no charge for maintenance.

**D. There are no fees for participation in the General Motorist Services Signs Program.**

VA.R. Doc. Nos. R06-300 and R06-301; Filed July 19, 2006, 11:02 a.m.



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# FAST-TRACK REGULATIONS

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

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### FORENSIC SCIENCE BOARD

**Title of Regulation:** 6 VAC 40-10. Public Participation Guidelines (adding 6 VAC 40-10-10 through 6 VAC 40-10-90).

**Statutory Authority:** §§ 2.2-4007 and 9.1-1110 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on October 10, 2006.  
(See Calendar of Events section for additional information)

**Effective Date:** October 25, 2006.

**Agency Contact:** Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or e-mail [katya.herndon@dfs.virginia.gov](mailto:katya.herndon@dfs.virginia.gov).

**Basis:** Pursuant to § 2.2-4007 D of the Code of Virginia, every executive branch agency is required to adopt public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The department, which formerly existed as a division within the Department of Criminal Justice Services, became an agency effective July 1, 2005. Accordingly, the department must promulgate its own public participation guidelines. Pursuant to § 9.1-1110 of the Code of Virginia, the department's policy board, the Forensic Science Board, has the power and duty to adopt department regulations.

**Purpose:** This regulation was developed in order to facilitate participation by the public in the formation of regulations that are being promulgated to carry out the legislative mandates of the department. Every agency must adopt such regulations pursuant to § 2.2-4007 D of the Code of Virginia. This regulation promotes the welfare of citizens by facilitating public participation in the development of department regulations.

**Substance:** The proposed regulation promulgates public participation guidelines including definitions, purpose, notification lists, documents to be sent to persons on the lists, petition for rulemaking, notice of intended regulatory action, notice of 60-day comment period, notice of meeting, and ad hoc advisory committees.

**Issues:** The primary advantage of this regulation is that it provides the public with guidelines on how to participate in the regulatory development process of the department. There are no disadvantages to the agency, the public, or the Commonwealth.

**Rationale for Using Fast-Track Process:** The department does not expect any objections to this regulation as it is merely designed to encourage the public to participate in the regulation development process by informing them how to do so.

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

**Summary of the proposed regulation.** The General Assembly requires in § 2.2-4007 D of the Code of Virginia, that all agencies adopt public participation guidelines in order to facilitate the involvement of citizens in the formulation and development of regulations.

In order to comply with this mandate, the Forensic Science Board proposes to promulgate Public Participation Guidelines.

**Result of analysis.** The benefits likely exceed the costs for this proposed regulatory change.

**Estimated economic impact.** As the Forensic Science Board (board) is a relatively new board within a relatively new department, it has no current regulation pertaining to public participation or any other regulatory subject matter. This proposed regulation will set the framework within which any interested individuals or groups may seek to affect future regulatory action.

The proposed regulation will require that the Department of Forensic Science (DFS) maintain a list of individuals and groups who are to be notified of any future regulatory action. This list will comprise individuals or groups who have requested inclusion as well as individuals or groups who DFS believes would benefit from notification. The proposed regulation enumerates the actions that will trigger list notification. Also set out in the proposed regulation are the documents and information that must accompany a petition for rulemaking; any individual will be allowed to submit such a petition to the board. The proposed regulation will require the board to make provisions to receive public comment during the regulatory process; comments will be accepted electronically and by fax or mail.

This proposed regulation is likely to have a positive, albeit probably small, economic impact on the citizens of Virginia. Citizens who are able to participate in the formation of the administrative rules they must live by are far more likely to affect change to (often costly) proposed regulations than those that are denied the opportunity to participate.

**Businesses and entities affected.** The DFS anticipates that those most likely to comment on future regulatory action are those that actually use DFS's services. This community comprises law-enforcement agencies and Commonwealth's Attorneys. Other affected parties, such as defense attorneys, criminal defendants and other citizens might also choose to participate in the regulatory process, as well. There are approximately 375 law-enforcement agencies and 125 Commonwealth's Attorneys offices statewide.

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# Fast-Track Regulations

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Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the use and value of private property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small businesses: costs and other effects. The proposed regulation will likely have no effect on the cost structure of any small businesses in the Commonwealth.

Small businesses: alternative method that minimizes adverse impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Forensic Science concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

## Summary:

*This new regulation promulgates public participation guidelines to facilitate participation by the public in the formation of regulations to carry out the legislative mandates of the Department of Forensic Science as required by § 2.2-4007 D of the Code of Virginia.*

## CHAPTER 10. PUBLIC PARTICIPATION GUIDELINES.

### **6 VAC 40-10-10. Definitions.**

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

*"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.*

*"Board" means the Forensic Science Board.*

*"Department" means the Department of Forensic Science.*

*"Notification lists" means lists used by the department to notify persons pursuant to these guidelines.*

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

### **6 VAC 40-10-20. Purpose.**

*The purpose of this chapter is to facilitate participation by the public in the formulation of regulations that are written to carry out the department's legislative mandates. These guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia.*

### **6 VAC 40-10-30. Notification lists.**

*A. The department shall maintain a list of persons who have requested to be notified of the formation and promulgation of regulations. The department may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.*

*B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the department. In addition, the board or department may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.*

*C. The department shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular mail is returned as undeliverable or electronic mail is returned as undeliverable over more than one day, such persons shall be deleted from the list.*

### **6 VAC 40-10-40. Documents to be sent to persons on the lists.**

*A. Persons on the notification lists, as described in 6 VAC 40-10-30, shall be mailed or have electronically transmitted to them the following documents related to the promulgation of regulations:*

- 1. Notice of Intended Regulatory Action (NOIRA).*
- 2. Notice of the 30-day comment period after the NOIRA and instructions as to how to obtain a copy of the regulation and any supporting documents if available.*

3. Notice of the 60-day comment period following the publication of the proposed regulation in the Virginia Register.

4. Notice of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents.

B. Failure of a person to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia.

### **6 VAC 40-10-50. Petition for rulemaking.**

A. Any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. Any petition received shall appear on the agenda for the next regular meeting of the board. The board shall consider and respond to the petition in accordance with § 2.2-4007 of the Code of Virginia.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

### **6 VAC 40-10-60. Notice of Intended Regulatory Action.**

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and provide a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from (i) the Governor or (ii) 25 or more persons, such a hearing shall be held.

### **6 VAC 40-10-70. Notice of the 60-day comment period.**

A. The notice of comment period (NOCP) shall indicate that copies of the proposed regulation are available electronically or from the department and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, Internet, facsimile or electronic means. With the exception of comment received at

a scheduled public hearing, oral comment may not be accepted.

### **6 VAC 40-10-80. Notice of meeting.**

At any meeting of the board at which the adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the Internet and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

### **6 VAC 40-10-90. Ad hoc advisory committees.**

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations.

B. An advisory committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the NOIRA; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia.

C. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.
2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R06-293; Filed July 14, 2006, 2:47 p.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD OF DENTISTRY**

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-100).**

Statutory Authority: §§ 54.1-2400 and 54.1-2709 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on October 6, 2006.

(See Calendar of Events section for additional information)

Effective Date: October 23, 2006.

Agency Contact: Sandra Reen, Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.

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# Fast-Track Regulations

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**Basis:** Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system. The board is authorized to set qualifications for licensure in regulations in § 54.1-2709 of the Code of Virginia.

**Purpose:** The board has determined that it is necessary to amend regulations to address two situations recently encountered in the processing of applications. First, there is a need to receive the National Practitioner Data Bank (NPDB) report as well as the report from Healthcare Integrity and Protection Data Bank (HIPDB) because only the NPDB report contains the malpractice history of a dentist, which is necessary to assess whether there may be grounds for denial of the applicant's request for licensure. When a self-report is requested by a health practitioner from HIPDB (currently required for submission with an application), the applicant also receives the NPDB report. Most applicants routinely submit both, but some decline to submit the NPDB report because it is not specified in regulation or because there is damaging information about malpractice paid claims. To determine whether an applicant can be expected to practice with skill and safety in Virginia, the board believes both reports are essential.

Second, the issuance of temporary licenses to persons displaced by Katrina has highlighted a problem with current requirements for transcripts or other documentation. If a dental school has closed or all documents are lost in a disaster, the applicant would be unable to fulfill the current application requirements and thereby be barred from licensure in Virginia. The board believes it is in the best interests of the health and safety of patients to permit qualified practitioners to be licensed, thus increasing the access to and supply of dental care. For example, when the Office of the Registrar at LSU Health Sciences Center at New Orleans could not produce a transcript for a student who graduated prior to 1999, they were able to verify that the applicant had received a Doctor of Dental Surgery in 1991. With the amended regulation, the board would be able to act affirmatively on an application based on that verification.

**Substance:** The proposed action will allow the board to accept other evidence of qualification for licensure from an applicant if a transcript or other documentation cannot be produced by a third-party entity from which it is required. The proposal will also require an applicant to submit a current report from the NPDB, which is produced along with the report that is currently required from the HIPDB.

**Issues:** There are no disadvantages to the public of this amendment. Consumers of dental services will be better protected by having complete information on an applicant's history of criminal convictions, disciplinary actions and malpractice payments. Consumers are also better served by allowing the board to license those applicants who are qualified but who may not be able to produce certain documentation that is unavailable from a third-party source.

There are no disadvantages to the agency or the Commonwealth; a clearly stated regulation should enable staff and the board to process and act on applications more equitably.

**Rationale for Using Fast-Track Process:** The board believes these changes should be implemented as soon as possible in order to make an accurate assessment of an applicant's qualification for licensure and in the best interest of public health and safety. While the executive order for temporary licensure of Katrina-displaced applicants has allowed for deviation from application requirements, the temporary licenses will expire in one year. That situation has caused the board to focus on a potential problem for other applicants seeking licensure in Virginia, so amending the rule through a fast-track process is the preferred method of addressing the need for changes.

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

Summary of the proposed amendments to regulation. The Board of Dentistry (board) proposes to (i) require all license and permit applicants to include a current report from the National Practitioner Data Bank as part of their application, and (ii) accept at its discretion other evidence of qualification for licensure when a transcript or other documentation required for licensure cannot be produced by the entity from which it is required.

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

Estimated economic impact. NPDB report. Under the current regulations all applications for any license or permit issued by the board must include, among other items, a current report from the U.S. Department of Health and Human Services' (HSS) Healthcare Integrity and Protection Data Bank (HIPDB). HSS describes the HIPDB as "primarily a flagging system that may serve to alert users that a comprehensive review of a practitioner's, provider's, or supplier's past actions may be prudent. The HIPDB is intended to augment, not replace, traditional forms of review and investigation, serving as an important supplement to a careful review of a practitioner's, provider's, or supplier's past actions."<sup>1</sup>

The board proposes to also require that applications include a current report from HSS' National Practitioner Data Bank (NPDB). Unlike the HIPDB, the NPDB report contains malpractice history.<sup>2</sup> When a health practitioner requests a self-report from HSS, the federal agency sends the NPDB report as well as the HIPDB report.<sup>3</sup> According to the Virginia Department of Health Professions (department), most applicants routinely submit both, but some decline to submit the NPDB report because it is not specified in regulation or because there is damaging information about malpractice paid claims. Since the health practitioner also receives the NPDB report when she receives the HIPDB report, the proposed requirement that applications include a current NPDB report will produce no cost for qualified applicants other than perhaps a small increase in postage. The board's receiving malpractice history via the NPDB report is significantly beneficial for the public since the board can make significantly better informed decisions in determining whether applicants

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<sup>1</sup> Source: <http://www.npdb-hipdb.com/hipdb.html>, accessed on February 14, 2006.

<sup>2</sup> Source: Virginia Department of Health Professions

<sup>3</sup> Ibid



can be expected to practice competently and ethically. Thus the proposal to require that applications include a current NPDB report should produce a net benefit.

Alternative evidence of qualification. The board also proposes to add the following language to these regulations: "If a transcript or other documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure." According to the department,

The issuance of temporary licenses to persons displaced by Katrina has highlighted a problem with current requirements for transcripts or other documentation. If a dental school has closed or all documents are lost in a disaster, the applicant would be unable to fulfill the current application requirements and thereby be barred from licensure in Virginia. The board believes it is in the best interests of the health and safety of patients to permit qualified practitioners to be licensed, thus increasing the access to and supply of dental care. For example, when the Office of the Registrar at LSU Health Sciences Center at New Orleans could not produce a transcript for a student who graduated prior to 1999, they were able to verify that the applicant had received a Doctor of Dental Surgery in 1991. With the amended regulation, the board would be able to act affirmatively on an application based on that verification.

This proposal should also produce a net benefit. It should help enable qualified applicants to obtain licensure who otherwise might be prevented from doing so for reasons unrelated to their competence or ethics. As stated by the board and department, this can potentially increase the access to and supply of quality dental care.

Businesses and entities affected. The proposed regulations affect individuals applying to obtain licensure or a permit to practice dentistry or dental hygiene in the Commonwealth, dental patients, and the dental practices and universities that hire dentists and dental hygienists. Between December 1, 2004, and December 1, 2005, 238 hygienists and 265 dentists obtained licensure in Virginia.<sup>4</sup>

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. A small number of dentists and dental hygienists may obtain licensure and practice in Virginia who otherwise would not have due to the proposal to accept other evidence of qualification for licensure. The proposal to require the NPDB report may result in the board denying a small number of license applications that otherwise would have been approved due to the additional information on malpractice. Together, the two proposals are unlikely to result in a large change in the number of individuals employed as dentists or dental hygienists in the Commonwealth.

Effects on the use and value of private property. As described above, a small numbers of individuals may be able to practice dentistry or dental hygiene in Virginia due to the proposal to accept other evidence of qualification for licensure. Also as described above, a small number of

different individuals may be denied the opportunity to practice dentistry or dental hygiene due to the proposal to require the NPDB report.

Small businesses: costs and other effects. All dental practices likely qualify as small businesses. The proposed regulatory changes do not produce significant costs for competent and ethical dentists and dental hygienists.

Small businesses: alternative method that minimizes adverse impact. The proposed regulatory changes do not produce an adverse impact for competent and ethical dentists and dental hygienists or the public.

Legal mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, relating to changes in the application requirements.

#### Summary:

*The proposed amendments allow the board to accept other evidence of qualification for licensure from an applicant if a transcript or other documentation cannot be produced by a third-party entity from which it is required. The proposed amendments also require an applicant to submit a current report from the National Practitioner Data Bank, which is produced along with the report that is currently required from the Healthcare Integrity and Protection Data Bank.*

#### **18 VAC 60-20-100. Other application requirements.**

A. All applications for any license or permit issued by the board shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental

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<sup>4</sup> Ibid

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# Fast-Track Regulations

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hygiene degree or certificate, or post-doctoral degree or certificate;

2. An original grade card issued by the Joint Commission on National Dental Examinations; and

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB).

*B. If a transcript or other documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.*

VA.R. Doc. No. R06-297; Filed July 18, 2006, 3:31 p.m.

## BOARD OF PHARMACY

**Title of Regulation:** 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-70).

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

**Public Hearing Date:** N/A -- Public comments may be submitted until October 7, 2006.

(See Calendar of Events section for additional information)

**Effective Date:** October 23, 2006.

**Agency Contact:** Elizabeth Scott Russell, RPh, Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or e-mail scotti.russell@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system.

The specific statutory authority for the Board of Pharmacy to establish qualifications for applicants for licensure, including tests of written and oral communication in English is found in § 54.1-3312 of the Code of Virginia.

**Purpose:** The proposed regulatory action is necessary to avoid confusion and problems for applicants who will be testing for English proficiency through the Educational Testing Service. Since TOEFL and TSE are being phased out and replaced by TOEFL iBT, the board's regulation must be amended to accept the combined test. Without an amendment accepting the new TOEFL iBT, the board may not be able to license graduates of foreign schools of pharmacy after June of 2006 when the current tests will no longer be available. To exclude that group of applicants could reduce the supply of pharmacists in Virginia, thereby reducing the availability of pharmacy services and negatively impacting the health and safety of citizens seeking to have drug histories reviewed, prescriptions filled and drug counseling provided.

**Substance:** The proposed amendment provides an alternative to the current requirement for tests of English as a written and spoken language as four-part Internet-based Test of English as a Foreign Language or TOEFL iBT.

**Issues:** There are no disadvantages to the public. The advantage of the tests of written and spoken English is to ensure that licensed pharmacists can adequately communicate with the public and with prescribers. Otherwise, there are significant risks for drug interactions, errors in filling and mistakes in dosing and instructions to patients. Similar drug names can contribute to medical errors, so pharmacists need to be able to clearly understand the orders of a prescriber, whether in writing or given orally.

The primary advantage to the agency is to have a clearly stated regulation that is consistent with the tests currently being offered for graduates of foreign schools of pharmacy. There are no disadvantages.

**Rationale for Using Fast-Track Process:** The law requires the board to test graduates of foreign schools of pharmacy in "written and oral communication ability tests of the English language." Since the tests approved by the NABP and the board, currently TOEFL and TSE, are being replaced, it is necessary to update the regulations in keeping with the changes being made. Over the next few months, the testing service is phasing in the Internet-based TOEFL to replace TOEFL and TSE, so the action to recognize the new combined test is a technical but necessary amendment.

**Department of Planning and Budget's Economic Impact Analysis:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

**Summary of the proposed regulation.** The Board of Pharmacy (board) proposes to allow graduates of foreign schools of pharmacy to take an Internet-based examination called TOEFL iBT in lieu of the Test of English as a Foreign Language and Test of Spoken English examinations.

**Estimated economic impact.** The current regulations require that applicants for licensure who were trained in foreign schools of pharmacy complete and receive scores acceptable to the board on the Educational Testing Service's (ETS) Test of English as a Foreign Language (TOEFL) and Test of Spoken English (TSE). In cooperation with the National Association of Boards of Pharmacy (NABP), ETS has revised and combined TOEFL and TSE into a four-part Internet-based examination, called TOEFL iBT. While ETS will continue to offer TOEFL and TSE upon request until June of 2006, on and after September 24, 2005, the TOEFL iBT is the examination that will routinely be given to graduates of foreign schools of pharmacy. To pass the TOEFL iBT, a graduate will need to achieve a passing score on each of the four parts that test writing, speaking, listening and reading. A failure on one part

will necessitate retaking that part, but not the entire examination.

In the future, the board will continue to receive applications from persons who have been practicing in some states who previously passed the TOEFL and TSE examinations, so it must retain those examinations in regulation. However, the board proposes to add acceptable scores on the TOEFL iBT as an alternative to acceptable scores on the TOEFL and TSE examinations for licensure applicants who are graduates of foreign schools of pharmacy. Since the TOEFL and TSE exams will no longer be available after June 2006, the proposed amendment is very beneficial for the Commonwealth. Without the amendments, graduates of foreign schools of pharmacy would not be able to satisfy the listed requirements for licensure.

Further, if a graduate of a foreign school of pharmacy takes the TOEFL iBT instead of TOEFL and TSE, she will save \$125. According to the Department of Health Professions (department), the fees for TOEFL iBT, TOEFL and TSE, are \$140, \$140 and \$125, respectively. Thus, the proposed amendment will enable graduates of foreign schools of pharmacy to save \$125 in examination fees.

**Businesses and entities affected.** The proposed amendments affect graduates of foreign schools of pharmacy who apply for licensure in Virginia.

**Localities particularly affected.** The proposed regulations affect localities throughout the Commonwealth.

**Projected impact on employment.** The proposed amendments will not likely significantly affect employment levels.

**Effects on the use and value of private property.** The proposed amendments will save affected individuals \$125. Their net worth will increase commensurately.

**Small businesses: costs and other effects.** The proposed amendments do not add to costs for small businesses.

**Small businesses: alternative method that minimizes adverse impact.** The proposed amendments do not add to costs for small businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget (DPB) for amendments to 18 VAC 110-20, related to acceptance of the Internet version of the examinations to test English proficiency (TOEFL iBT).

Summary:

*The proposed amendments allow graduates of foreign schools of pharmacy to take an Internet-based examination called TOEFL iBT in lieu of the Test of English as a Foreign Language and Test of Spoken English examinations*

**18 VAC 110-20-70. Requirements for foreign-trained applicants.**

A. Applicants for licensure who were trained in foreign schools of pharmacy shall meet the following additional requirements prior to being allowed to take the examinations required by 18 VAC 110-20-60:

1. Obtain verification from the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy (NABP) that the applicant is a graduate of a foreign school of pharmacy.

2. Complete and receive a score acceptable to the board on the Foreign Pharmacy Graduate Equivalency Examination (FPGEE).

3. Complete and receive a score acceptable to the board on the Test of English as a Foreign Language (TOEFL) *or on the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing.*

4. Complete the Test of Spoken English (TSE) *or the TOEFL iBT* as given by the Educational Testing Service with a score acceptable to the board.

5. Fulfill the requirements for practical experience as prescribed in 18 VAC 110-20-30 A, B and E and 18 VAC 110-20-40 A, B, D, E and F.

B. Applicants for licensure who were trained in foreign schools of pharmacy shall also complete and achieve passing scores on the examinations as prescribed in 18 VAC 110-20-60.

VA.R. Doc. No. R06-296; Filed July 18, 2006, 3:30 p.m.

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

### Bureau of Insurance

July 7, 2006

Administrative Letter 2006-12

To: All Property and Casualty Insurance Companies Licensed in Virginia and Rate Service Organizations Licensed in Virginia

Re: Amendments to § 38.2-231 of the Code of Virginia; Withdrawal of Administrative Letter 2005-11

During the 2006 Session of the Virginia General Assembly, House Bill 1001 was enacted which amended § 38.2-231 of the Code of Virginia. Because of these changes, the Bureau is withdrawing Administrative Letter 2005-11. Effective July 1, 2006, House Bill 1001 made the following changes to § 38.2-231:

- Subsections C and L of § 38.2-231 have been amended to require that a notice be given whenever the insurer has initiated a change that results in the renewal premium being increased greater than 25% of the expiring policy's premium. This applies to all policies renewing on or after July 1, 2006. Prior to this change, any premium increase over 25% (including those generated by the insured) required a notice.
- Subsection M of § 38.2-231 defines an insurer-initiated increase in premium as an increase in premium other than one resulting from changes in (i) coverage requested by the insured; (ii) policy limits requested by the insured; (iii) the insured's operation or location that result in a change in the classification of the risk; or (iv) the rating exposures including, but not limited to, increases in payroll, receipts, square footage, number of automobiles insured, or number of employees.
- Some examples of an insurer-initiated increase would be an increase in the filed rates; changes in experience or schedule rating resulting in an increase in premium; and for claims-made policies, annual premium increases until the risk reaches a mature claims-made status.

To determine whether a notice is required, the insurer must first compare the renewal premium to the premium charged by the insurer at the effective date of the expiring policy. If the renewal premium has increased more than 25%, the insurer then must determine if its actions have generated a premium increase greater than 25%. The insurer is only required to send notice when its actions have caused the premium to increase more than 25%.

- The law states that the notice must either contain the specific reason for the increase or advise the insured that the specific reason for the increase and the amount of the increase may be obtained from the agent or the insurer.
- Subsection D of § 38.2-231 was amended to clarify the procedures that an insurer must follow when proper notice of an increase in premium or reduction in coverage

was not given. If proper notice was not given, the policy remains in effect for 45 days after written notice is mailed or delivered to the insured, unless the insured obtains replacement coverage or elects to cancel sooner. In either case, coverage under the prior policy ceases on the effective date of the replacement coverage or the elected date of cancellation. If the insured fails to accept or rejects the changed policy, coverage for any period that extends beyond the expiration date will be under the prior policy's rates, terms, and conditions as applied against the renewal policy's limits, rating exposures, and coverages.

- Subsection E of § 38.2-231 was amended to state that the notice is not required if:

(a) the insurer delivers or mails to the named insured a renewal policy or a renewal offer not less than 45 days prior to the effective date or, in the case of medical malpractice insurance, not less than 90 days prior to the effective date of the policy;

(b) the policy is issued to a large commercial risk as defined in subsection C of

§ 38.2-1903.1 (except that policies of medical malpractice insurance are not exempt from the notice requirement); or

(c) the policy is retrospectively rated, where the premium is adjusted at the end of the policy period to reflect the insured's actual loss experience.

#### Most Frequently Asked Questions Regarding the Provisions of § 38.2-231 That Were Not Changed in House Bill 1001

##### 1. What lines of business are subject to this section?

Section 38.2-231 applies to all policies of insurance as defined in §§ 38.2-117 and 38.2-118 that insure a business entity, or policies of insurance that include in part insurance as defined in §§ 38.2-117 or 38.2-118 insuring a business entity. Section 38.2-231 also applies to policies of insurance as defined in § 38.2-124 insuring a business entity and to policies of insurance as defined in subsection B of § 38.2-111 insuring a business entity.

Such policies include, but are not limited to, commercial automobile liability, commercial package policies (that include liability coverage), commercial general liability, professional liability, commercial umbrella, directors' and officers' liability, errors and omissions, employment related practices liability, pollution liability, gap insurance, and tuition refund policies. (Please note that even if a type of insurance is exempt from rate filing requirements, the premium notice requirements still apply.)

The Bureau of Insurance no longer considers § 38.2-231 to apply to personal lines policies that have business exposures endorsed on them. For example, homeowners and private passenger automobile policies that cover some business exposure of the insured are governed by the termination provisions set forth in §§ 38.2-2114 and 38.2-2212, respectively.

##### 2. Are any policies that provide coverage for the classes of insurance defined in §§ 38.2-111, 38.2-117, 38.2-118, or

38.2-124 that cover a business entity exempt from § 38.2-231?

Yes. For example, the definition of a "policy of motor vehicle insurance" in subsection H of § 38.2-231 excludes policies issued through the Virginia Automobile Insurance Plan. Please refer to this subsection for additional exemptions.

3. What evidence of mailing does the insurer need to retain if the notices are mailed using the U.S. Postal Bulk Mailing procedure?

If the notices are mailed using the U.S. Postal Bulk Mailing procedure, the company is required to comply with § 38.2-231 F 1 (c), and the company must retain the following:

- a. A copy of the notice;
- b. The completed U.S. Postal Bulk Mailing Form which indicates the date of the mailing and the number of items mailed;
- c. The mailing list showing the name and address stated in the policy, or the last known address to whom the notices were mailed; and
- d. A signed statement by the insurer that the written receipt from the Postal Service corresponds to the mailing list retained by the insurer.

4. When an insurer moves an insured from one company within the group to another, is the insurer required to provide notice to the insured?

Yes. If the renewal offer is not issued by the expiring insurer, a non-renewal notice is required even when coverage is being offered by another insurer within the same group of companies.

5. Subsection A of § 38.2-231 requires the insurer to provide a specific reason when terminating coverage. What is considered a specific reason?

The insurer is required to provide a specific reason that is clear enough for the insured to understand why the policy is being cancelled or non-renewed. The following examples are not considered specific reasons: "loss history," "driving records," "claims," "prohibited risk," "underwriting reason," "loss history unacceptable," "engineering report," "inspection report," or "loss ratio exceeds acceptable margin."

If you have any questions regarding this administrative letter, please contact Carol Howard, Supervisor of the Property & Casualty Consumer Services Section, at (804) 371-9394 ext. 4692.

/s/ Alfred W. Gross  
Commissioner of Insurance

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AT RICHMOND, JULY 11, 2006

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUA-1998-00020

Ex Parte: In the matter of adopting rules governing the filing of applications for approval pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER OF DISMISSAL

On July 21, 1998, the State Corporation Commission ("Commission") established this rulemaking proceeding to consider adopting rules governing applications filed pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Affiliate Rules").<sup>1</sup> After notice was given to interested persons and the public, comments and requests for hearing were filed, and on June 20, 2000, an Order Setting Hearing was issued.<sup>2</sup>

Following the pre-filing of testimony by all parties and Commission Staff ("Staff"), a hearing was convened on October 2, 2000. The Commission received testimony by which the parties addressed a general objection to formalizing requirements for the filing of affiliate applications.<sup>3</sup> Following the hearing, briefs were filed by all participants to the hearing.

The Commission, on its own motion, now takes judicial notice of two matters that persuade us that the Affiliate Rules are not necessary at this time for the Commission's regulation of affiliated interests under Chapter 4 of Title 56 of the Code. The Commission takes judicial notice of Staff's establishment of updated guidelines for filing applications under Chapter 4 of Title 56 of the Code of Virginia.<sup>4</sup> The Commission also takes judicial notice of the issuance on December 8, 2005, by the Federal Energy Regulatory Commission ("FERC") of FERC's Final Rule (18 CFR Parts 365 and 366) amending FERC's regulations to implement the repeal of the Public Utility Holding Company Act of 1935 and the enactment of the Public Utility Holding Company Act of 2005 ("Order No. 665").<sup>5</sup>

The Commission finds that the applications filed under Chapter 4 of Title 56 of the Code of Virginia (since Staff's updating of its guidelines) generally respond to the information elicited in the Staff's guidelines. This has permitted the Commission to fully review each application in a timely manner. The Commission is also persuaded that FERC's Order 665 will assist this Commission in obtaining access to the books and records of holding companies and affiliates within holding company systems that are subject to our jurisdiction. Accordingly, the Commission does not believe

<sup>1</sup> The proposed Affiliate Rules are found in Attachment A to the Commission's Order of July 21, 1998.

<sup>2</sup> The commenters are listed in the Order Setting Hearing. Supplemental comments were also received pursuant to Order issued September 25, 2000.

<sup>3</sup> Other concerns over the Affiliate Rules raised in the hearing included exemptions from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia, asymmetrical pricing, reporting requirements, competition and market considerations, general allocation factor limitations, "incidental and related to" restrictions, and the audit of unregulated affiliates' books and records.

<sup>4</sup> The guidelines may be found on the Commission's website under the Division of Public Utility Accounting at <http://www.scc.virginia.gov/division/pua/filech4ch5.htm>.

<sup>5</sup> FERC Docket No. RM05-32-000, Order No. 665, 113 FERC ¶ 61, 248, issued December 8, 2005. In compliance with the Energy Policy Act of 2005, P.L. No. 109-58, 119 Stat. 594 (2005), Order No. 665 became effective February 8, 2006.

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## General Notices/Errata

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the Affiliate Rules are necessary at this time, and we will not review the extensive record developed in this rulemaking proceeding.

NOW THE COMMISSION is of the opinion and finds that this case should be dismissed and that the Affiliate Rules should be withdrawn from further consideration at this time.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed and the papers placed in the files for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Restore Water Quality in Occupacia Creek

Announcement of an effort to restore water quality in Occupacia Creek in Essex County, Virginia.

Public meeting: Essex Public Library, 117 North Church Lane, Tappahannock, Virginia on August 16, 2006 from 7 p.m. to 9 p.m. In case of inclement weather, check the DEQ website for a rescheduled date.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the start of a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the waters of Occupacia Creek and its tributaries in Essex County. This stream is impaired for failure to meet the Primary Contact (Recreational) designated use because of bacterial standard violations.

The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, August 16, 2006, to September 15, 2006. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Chris French, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or e-mail [rcfrench@deq.virginia.gov](mailto:rcfrench@deq.virginia.gov).

### DEPARTMENT OF HEALTH

#### Notice Inviting Public Comment on the State WIC Plan

The Virginia Department of Health (VDH) invites the public to comment on the development of a plan to administer the Special Supplemental Nutrition Program for Women, Infants and Children (the WIC program) in Virginia.

Pursuant to 7 CFR 246.4, the responsible agency in each state that administers a WIC program must submit annually to the United States Department of Agriculture a state agency plan for each fiscal year as a prerequisite to receiving federal funds. The Virginia Department of Health administers the Virginia WIC Program and must submit such a plan by August 15, 2006.

The development of the Virginia State Agency Plan is underway and the public is invited to comment on its development and to view the plan during regular workdays from 8:30 a.m. until 4:30 p.m. in the offices of VDH, Division of WIC and Community Nutrition Services, 109 Governor Street, 9th floor, Richmond, Virginia 23219.

Questions regarding development and implementation of the plan may be directed to Ron J. Clark, Operations Liaison, Department of Health, Division of WIC and Community Nutrition Services, 109 Governor Street, 9th floor, Richmond, VA 23219, e-mail [ron.clark@vdh.virginia.gov](mailto:ron.clark@vdh.virginia.gov) or telephone (804) 864-7800.

### STATE LOTTERY DEPARTMENT

#### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 6, 2006. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Retailer Incentive Program Rules:

[Director's Order Number Thirty-Seven \(06\)](#)

Virginia Lottery Retailer Incentive Program; "Cash Spectacular" (effective 7/13/06-10/5/06)

Final Rules for Game Operation:

Director's Order Number Thirty-Eight (06)

Virginia's Instant Game Lottery 743; "Little Green Men Doubler" (effective 6/29/06)

Director's Order Number Thirty-Nine (06)

Virginia's Instant Game Lottery 747; "The Cash Zone" (effective 6/29/06)

Director's Order Number Forty (06)

Virginia's Instant Game Lottery 749; "Casino Cash" (effective 6/29/06)

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Director's Order Number Forty-One (06)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B (15) and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on July 14, 2006:

Game 280	Fun 1's
Game 289	Money Jar
Game 290	Dash for Cash
Game 294	Hit \$50!
Game 329	Blackout Bingo
Game 609	\$500,000 Payout
Game 658	21 Blackjack
Game 663	Super Cashword
Game 664	In the Money
Game 675	Fantastic 4's
Game 680	The Apprentice
Game 681	\$150,000 Cash Galore
Game 683	Million Dollar Madness
Game 684	World Poker Tour 100,000 Texas Hold'em
Game 689	6 Times the Money
Game 690	Gold Card
Game 691	Pet Talk
Game 692	Fortune 5's
Game 697	Cold Hard Cash
Game 698	Super Size Cash
Game 700	Big Cash Double Play
Game 702	Hit \$500!
Game 703	Hit \$5,000!
Game 704	Hit \$50,000!

The last day for lottery retailers to return for credit unsold tickets from any of these games will be August 18, 2006. The last day to redeem winning tickets for any of these games will be January 10, 2007, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of January 10, 2007, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia

Lottery regional office. A copy may be requested by mail by writing to: Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Donna M. VanCleave  
Interim Executive Director  
June 29, 2006

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

### Forms for Filing Material for Publication in the Virginia Register of Regulations

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://register.state.va.us>.

#### FORMS:

NOTICE of INTENDED REGULATORY ACTION-RR01  
NOTICE of COMMENT PERIOD-RR02  
PROPOSED (Transmittal Sheet)-RR03  
FINAL (Transmittal Sheet)-RR04  
EMERGENCY (Transmittal Sheet)-RR05  
NOTICE of MEETING-RR06  
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS-RR08  
RESPONSE TO PETITION FOR RULEMAKING-RR13  
FAST-TRACK RULEMAKING ACTION-RR14

## ERRATA

### STATE CORPORATION COMMISSION

**Title of Regulation:** 14 VAC 5-30. Rules Governing Life Insurance and Annuity Replacements (14 VAC 5-30-20 and 14 VAC 5-30-80).

Publication: 22:21 VA.R. 2760-2772 June 26, 2006.

Correction to proposed regulation:

14 VAC 5-30-20, page 2762, column 1, definition of "marketing communication," subdivision 2, line 3 after "policy or" insert " *contract*"

14 VAC 5-30-80 A, page 2766, line 3, strike "such"

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## General Notices/Errata

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Title of Regulation: **14 VAC 5-260. Rules Governing Insurance Holding Companies.**

Publication: 22:22 VA.R. 3140 July 10, 2006.

Correction to forms list:

Form A, line 2, after "Control" insert "of"

Form F, line 2, change "38.2-1330 C" to "38.2-1330.1"



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# CALENDAR OF EVENTS

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## Symbol Key

- † Indicates entries since last publication of the *Virginia Register*  
♿ Location accessible to persons with disabilities  
☎ Teletype (TTY)/Voice Designation

### NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.vipnet.org](http://www.vipnet.org) or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY

**September 8, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Accountancy intends to amend regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to decrease the administration fee charged to Virginia candidates who take the computer-based CPA examination, or "CBT," for the first time from \$160 to \$120, and to repeal entirely the fee charged to Virginia candidates who retake the CBT. The net effect of this is to provide direct savings to Virginia candidates.

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or e-mail [boa@boa.virginia.gov](mailto:boa@boa.virginia.gov).

### VIRGINIA AGRICULTURAL COUNCIL

† **August 28, 2006 - 9 a.m.** -- Open Meeting  
Courtyard by Marriott, 1890 Evelyn Byrd Avenue, Harrisonburg, Virginia.♿

The annual meeting to discuss issues related to research and education projects that are conducted to assist the agricultural industry in the production of agricultural commodities through the Virginia Agricultural Council. The board's summer meeting will be a two-day event, August 28 (board meeting and tour) and August 29 (board tour). The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Donald B. Ayers at

least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Donald Ayers, Executive Director, Virginia Agricultural Council, P.O. Box 1163, Richmond, VA 23218, telephone (804) 779-3742, FAX (804) 779-2581, (800) 828-1120/TTY☎, e-mail [don.ayers@vdacs.virginia.gov](mailto:don.ayers@vdacs.virginia.gov).

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

**August 24, 2006 - 2 p.m.** -- Open Meeting  
Holiday Inn of Harrisonburg, 1400 East Market Street, Harrisonburg, Virginia.♿

A meeting to discuss issues related to Virginia agriculture and consumer services. The board's summer meeting will be a two-day event, August 24 (board meeting) and August 25 (board tour). The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy Seward at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

**Contact:** Roy E. Seward, Board Secretary, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail [roy.seward@vdacs.virginia.gov](mailto:roy.seward@vdacs.virginia.gov).

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**August 29, 2006 - 9 a.m.** -- Public Hearing  
Department of Agriculture and Consumer Services, 102 Governor Street, Room 220, Board Room, Richmond, Virginia.

**September 11, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to repeal regulations entitled

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# Calendar of Events

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**2 VAC 5-580, Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores, and adopt regulations entitled 2 VAC 5-585, Retail Food Establishment Regulations.** The purpose of the proposed action is to adopt the Retail Food Establishment Regulations that by law will replace the existing Rules and Regulations Pertaining to Sanitary and Operating Requirements in Retail Food Stores upon the effective date of the new regulations.


Statutory Authority: § 3.1-398 of the Code of Virginia.

**Contact:** Richard D. Saunders, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, 102 Governor St., Suite 349, Richmond, VA 23219, telephone (804) 786-8899, FAX (804) 371-7792 or e-mail doug.saunders@vdacs.virginia.gov.


## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**August 11, 2006 - 9 a.m.** -- Open Meeting  
Virginia Farm Bureau Federation, 12580 West Creek Parkway, Richmond, Virginia. 

A meeting of the Beekeeping Study Workgroup to hear presentations resulting from a survey of beekeepers and farmers to identify issues of concern affecting the beekeeping industry. The workgroup is assisting the Department of Agriculture and Consumer Services in the completion of a study of the plight of Virginia's beekeepers pursuant to Senate Joint Resolution No. 38 of the 2006 session of the Virginia General Assembly. Recommendations for remedies to problems identified by the study will be provided to the Commissioner of the Department of Agriculture and Consumer Services. The workgroup will entertain public comment at the conclusion of the morning session for a period not to exceed 30 minutes. Any person desiring to attend the meeting, and requiring special accommodation in order to participate in the meeting should contact Keith R. Tignor at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Keith R. Tignor, State Apiarist, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., Lower Level, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793, toll-free (800) 552-9963, (800) 828-1120/TTY , e-mail keith.tignor@vdacs.virginia.gov.

### Virginia Horse Industry Board


**September 22, 2006 - 10 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, 2nd Floor Meeting Room, Charlottesville, Virginia. 

A meeting to (i) review the financial status of the board with regard to the fiscal year that just closed, (ii) discuss marketing projects for the new fiscal year, and (iii) hear from several guest speakers. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any

accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., Room 318, 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail andrea.heid@vdacs.virginia.gov.


### Virginia Marine Products Board

**† September 26, 2006 - 6 p.m.** -- Open Meeting  
Ann's Restaurant, Route 17, Glenss, Virginia. 

A meeting to (i) hear the reading and approval of minutes of previous board meeting; and (ii) hear a report on finance, trade shows, industry tours, and cooperative programs with the Virginia Department of Agriculture and Consumer Services. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA, telephone (757) 874-3474, FAX (757) 886-0671, e-mail shirley.estes@vdacs.virginia.gov.


### Virginia Soybean Board

**August 16, 2006 - 3 p.m.** -- Open Meeting  
1961 Princess Anne Lane, Virginia Beach, Virginia. 

A meeting to (i) discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 2006; (ii) approve the minutes of the March 9, 2006, meeting; and (iii) receive reports from the chairman, United Soybean Board representatives, and from other committees. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 102 Governor St., 3rd Floor, Room 319, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phil.hickman@vdacs.virginia.gov.

### Virginia Wine Board

**† August 18, 2006 - 11 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. 

A meeting to (i) approve the minutes of the last meeting held on June 20, 2006, (ii) review the board's financial statement, and (iii) discuss old business arising from the last meeting and any new business to come before the

board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact David Robishaw at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** David Robishaw, Secretary, Virginia Wine Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156, e-mail david.robishaw@vdacs.virginia.gov.

## STATE AIR POLLUTION CONTROL BOARD

**August 24, 2006 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, Richmond, Virginia.


**September 8, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-140, Regulation for Emissions Trading (Rev. E05)**. The purpose of the proposed action is to establish requirements to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions in order to eliminate their significant contribution to nonattainment or interference with maintenance of the national ambient air quality standards in downwind states and to protect Virginia's air quality and its natural resources.


Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia.

**Contact:** Mary E. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail memajor@deq.virginia.gov.


## ALCOHOLIC BEVERAGE CONTROL BOARD

**August 7, 2006 - 9 a.m.** -- Open Meeting  
**August 21, 2006 - 9 a.m.** -- Open Meeting  
**September 5, 2006 - 9 a.m.** -- Open Meeting  
**September 18, 2006 - 9 a.m.** -- Open Meeting  
**October 2, 2006 - 9 a.m.** -- Open Meeting  
**October 16, 2006 - 9 a.m.** -- Open Meeting  
**† November 6, 2006 - 9 a.m.** -- Open Meeting  
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

An executive staff meeting to receive and discuss reports and activities from staff members and to discuss other matters not yet determined.


**Contact:** W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , e-mail curtis.coleburn@abc.virginia.gov.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

**August 9, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting of the Land Surveyors Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

**August 10, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Interior Designers Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

**September 7, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting of the full board to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

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## Calendar of Events

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† **October 25, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 


A meeting of the Architects Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

† **October 31, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Professional Engineers Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

† **November 2, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 


A meeting of the Landscape Architects Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).


### ART AND ARCHITECTURAL REVIEW BOARD

**September 1, 2006 - 10 a.m.** -- Open Meeting  
**October 6, 2006 - 10 a.m.** -- Open Meeting  
† **November 3, 2006 - 10 a.m.** -- Open Meeting  
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at [www.dgs.virginia.gov](http://www.dgs.virginia.gov). Request form #DGS-30-905 or submittal instructions #DGS-30-906. The deadline for submitting project datasheets and other required information is two weeks prior to the meeting date.


**Contact:** Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0359, (804) 786-6152/TTY , or e-mail [rford@comarchs.com](mailto:rford@comarchs.com).

### VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

**August 16, 2006 - 9 a.m.** -- Open Meeting  
† **November 1, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. A portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

† **August 16, 2006 - 11 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 


An informal fact-finding conference.

**Contact:** David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [asbestos@dpor.state.va.us](mailto:asbestos@dpor.state.va.us).

† **August 17, 2006 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal fact-finding conference for LRD.


**Contact:** David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [asbestos@dpor.virginia.gov](mailto:asbestos@dpor.virginia.gov).

## AUCTIONEERS BOARD


† **August 16, 2006 - 11 a.m.** -- Open Meeting

ABC Office, 1103 South Military Highway, Chesapeake, Virginia.


An informal fact-finding conference.

**Contact:** Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov).

**October 5, 2006 - 10 a.m.** -- Open Meeting


Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** Marian H. Brooks, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov).

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**August 17, 2006 - 9:30 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting to discuss matters as it relates to the practice of audiology and speech-language pathology.


**Contact:** Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail [elizabeth.young@dhp.virginia.gov](mailto:elizabeth.young@dhp.virginia.gov).

## VIRGINIA AVIATION BOARD

† **August 23, 2006 - 1:30 p.m.** -- Open Meeting

† **August 24, 2006 - 9 a.m.** -- Open Meeting

† **August 25, 2006 - 9 a.m.** -- Open Meeting

Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia. 


The 33rd Virginia Annual Aviation Conference.

**Contact:** Carolyn Toth, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3626, FAX (804) 236-3635, e-mail [carolyn.toth@doav.virginia.gov](mailto:carolyn.toth@doav.virginia.gov).


## BOARD FOR BARBERS AND COSMETOLOGY

**August 7, 2006 - 9 a.m.** -- Open Meeting

† **November 6, 2006 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


A general business meeting to include consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).


## DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

### Rehabilitation Council for the Blind

† **September 16, 2006 - 10 a.m.** -- Open Meeting

Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the commonwealth. Public comment will be entertained at the end of the meeting.


**Contact:** Susan D. Payne, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail [susan.payne@dbvi.virginia.gov](mailto:susan.payne@dbvi.virginia.gov).

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# Calendar of Events


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## BOARD FOR BRANCH PILOTS


† **November 1, 2006 - 8:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. 

A meeting of the Examination Administrators to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.


**Contact:** Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov).

† **November 1, 2006 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. 


A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov).


## CEMETERY BOARD

**October 17, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to discuss board business.

**Contact:** Christine Martine, Executive Director, Cemetery Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov).

## CHARITABLE GAMING BOARD

**September 12, 2006 - 10 a.m.** -- Open Meeting  
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. 

A regular board meeting.

**Contact:** Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail [clyde.cristman@dcg.virginia.gov](mailto:clyde.cristman@dcg.virginia.gov).

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**August 15, 2006 - 10 a.m.** -- Open Meeting  
† **October 31, 2006 - 10 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

A regular meeting of the Northern Area Review Committee to review local programs.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

**August 15, 2006 - 2 p.m.** -- Open Meeting  
† **October 31, 2006 - 2 p.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

A regular meeting of the Southern Area Review Committee to review local programs.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).


NOTE: CHANGE IN MEETING DATE

**September 26, 2006 - 10 a.m.** -- Open Meeting  
Location to be announced.

A regular meeting to review local programs.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).


## STATE CHILD FATALITY REVIEW TEAM

**September 12, 2006 - 10 a.m.** -- Open Meeting  
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. 

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

**Contact:** Rae Hunter-Havens, Coordinator, State Child Fatality Review, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail [rae.hunter-havens@vdh.virginia.gov](mailto:rae.hunter-havens@vdh.virginia.gov).

## COMPENSATION BOARD

**August 16, 2006 - 11 a.m.** -- Open Meeting  
102 Governor Street, Lower Level, Room LL22, Richmond, Virginia. 

A monthly board meeting.

**Contact:** Cindy P. Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 225-3308, FAX (804) 371-0235, e-mail [cindy.waddell@scb.virginia.gov](mailto:cindy.waddell@scb.virginia.gov).

## DEPARTMENT OF CONSERVATION AND RECREATION

† **August 8, 2006 - 9:30 a.m.** -- Open Meeting  
Location to be determined.

A Technical Advisory Subcommittee meeting to assist the department in considering revisions to Part III (Local Programs) of the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

**August 9, 2006 - 10 a.m.** -- Open Meeting  
Location to be announced.

A regular business meeting of the Virginia Land Conservation Foundation Board of Trustees for discussion of new grant round.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

**August 10, 2006 - Noon** -- Open Meeting

**September 14, 2006 - Noon** -- Open Meeting

**October 12, 2006 - Noon** -- Open Meeting

Richmond City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James Scenic River Advisory Committee to discuss river issues.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

† **August 16, 2006 - 9:30 a.m.** -- Open Meeting  
Location to be determined.

A Technical Advisory Subcommittee meeting to assist the department in considering revisions to Part II (Stormwater Management Program Technical Criteria) of the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

† **August 21, 2006 - 9 a.m.** -- Open Meeting

† **October 3, 2006 - 9 a.m.** -- Open Meeting

Location to be determined.

A Technical Advisory Committee meeting to assist the department in considering revisions to the Virginia Soil and Water Conservation Boards Virginia Stormwater Management Program (VSMP) Permit Regulations.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

† **August 29, 2006 - 9:30 a.m.** -- Open Meeting

Location to be determined.

A Technical Advisory Subcommittee meeting to assist the department in considering revisions to Part XIII (Statewide Fees) of the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

**August 31, 2006 - 10 a.m.** -- Open Meeting

Department of Forestry, 900 Natural Resources Drive, Board Room, Charlottesville, Virginia.

A meeting of the Virginia Outdoors Plan Technical Advisory Committee (VOPTAC) to provide information and comments on development of the 2007 Virginia Outdoors Plan.

**Contact:** John R. Davy, Division Director, Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-1119, FAX (804) 371-7899, e-mail [john.davy@dcr.virginia.gov](mailto:john.davy@dcr.virginia.gov).

† **September 6, 2006 - 9 a.m.** -- Open Meeting

† **October 11, 2006 - 9 a.m.** -- Open Meeting

Location to be determined.

A Technical Advisory Committee meeting to assist the department in considering revisions to the Virginia Soil and Water Conservation Board's Impounding Structure (Dam Safety) Regulations.

**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

## Virginia Soil and Water Conservation Board

**September 21, 2006 - 9:30 a.m.** -- Open Meeting

Location to be announced.

A regular board meeting.


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# Calendar of Events


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**Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

## BOARD FOR CONTRACTORS


**August 8, 2006 - 9 a.m.** -- Open Meeting  
† **August 10, 2006 - 9 a.m.** -- Open Meeting  
† **August 15, 2006 - 9 a.m.** -- Open Meeting  
† **August 17, 2006 - 9 a.m.** -- Open Meeting  
† **August 22, 2006 - 1:30 p.m.** -- Open Meeting  
**September 15, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 

An informal fact-finding conference.


**Contact:** Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

**August 22, 2006 - 9 a.m.** -- Open Meeting  
**September 26, 2006 - 9 a.m.** -- Open Meeting  
**October 24, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 


A regular meeting to address policy and procedural issues and review and render decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

NOTE: CHANGE IN MEETING TIME

**August 22, 2006 - 1 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulations,  
3600 West Broad Street, Conference Room 4 West,  
Richmond, Virginia. 

A quarterly meeting of the Board for Contractors Committee to follow the regular board meeting.

**Contact:** Kevin Hoefl, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.


## BOARD OF CORRECTIONS

**September 8, 2006** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Corrections intends to amend regulations entitled **6 VAC 15-20, Regulations Governing Certification and Inspection**. The purpose of the proposed action is to amend existing certification and inspection standards to update definitions and terminology; redirect authority to set and adjust audit schedules, determine compliance decisions and grant extension; standardize submission of variance requests for local and state correctional facilities; and reduce the time limit for a completed audit to be forwarded to the board.

Statutory Authority: § 53.1-5 of the Code of Virginia.

**Contact:** Donna Lawrence, Manager, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3499, FAX (804) 674-3587 or e-mail donna.lawrence@vadoc.virginia.gov.

**September 19, 2006 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. 


A meeting of the Liaison Committee to discuss correctional matters of interest to the board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

**September 19, 2006 - 1 p.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Board Room, Richmond, Virginia. 


A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

**September 20, 2006 - 9:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Room 3054, Richmond, Virginia. 

A meeting of the Administration Committee to discuss administrative matters to be considered by the board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.


**September 20, 2006 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. 

A regular meeting of the full board to review and discuss all matters considered by board committees that require presentation to and action by the board.



**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail [barbara.woodhouse@vadoc.virginia.gov](mailto:barbara.woodhouse@vadoc.virginia.gov).

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES

**September 13, 2006 - 1 p.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 


**September 11, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Criminal Justice Services intends to amend regulations entitled **6 VAC 20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Institutional Services.** The purpose of the proposed action is to amend the rules, last updated in 1992, to make the standards more compatible with the most efficient way to conduct training. The purpose of the changes is to facilitate training while maintaining the quality of training. The goal is to make training and reporting requirements easier for certified academies to accomplish.

Statutory Authority: § 9.1-102 of the Code of Virginia.

**Contact:** John Byrd, Assistant Section Chief, Department of Criminal Justice Services, 202 N. 9th St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 786-0410 or e-mail [john.byrd@dcjs.virginia.gov](mailto:john.byrd@dcjs.virginia.gov).

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**September 13, 2006 - 1 p.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

**September 11, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Criminal Justice Services intends to amend regulations entitled **6 VAC 20-50. Rules Relating to Compulsory Minimum Training Standards Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers.** The purpose of the proposed action is to amend the regulations to ensure that training and certification of jailors, courtroom and courthouse security officers and process service officers is based on timely data provided by the 2001-2002 job task analysis.

Statutory Authority: § 9.1-102 of the Code of Virginia.

**Contact:** Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 202 North 9th Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or e-mail [judith.kirkendall@dcjs.virginia.gov](mailto:judith.kirkendall@dcjs.virginia.gov).

## BOARD OF DENTISTRY


**August 18, 2006 - 9 a.m.** -- Open Meeting

**September 8, 2006 - 9 a.m.** -- Open Meeting


**September 29, 2006 - 9 a.m.** -- Open Meeting

**October 13, 2006 - 9 a.m.** -- Open Meeting


**† October 27, 2006 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Special Conference Committee to hold informal conferences. There will not be a public comment period.

**Contact:** Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail [cheri.emma-leigh@dhp.virginia.gov](mailto:cheri.emma-leigh@dhp.virginia.gov).


**September 14, 2006 - 9 a.m.** -- Open Meeting

Roanoke Hotel and Convention Center, Roanoke, Virginia. 

Formal hearings. There will not be a public comment period.

**Contact:** Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail [cheri.emma-leigh@dhp.virginia.gov](mailto:cheri.emma-leigh@dhp.virginia.gov).

**September 15, 2006 - 9 a.m.** -- Open Meeting

Roanoke Hotel and Convention Center, Roanoke, Virginia. 

A meeting to discuss board business. There will be a 15-minute public comment period at the beginning of the meeting.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

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**† October 6, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled **18 VAC 60-20, Board of Dentistry Regulations.** The purpose of the proposed action is to allow the board to accept other evidence of qualification for licensure from an applicant if a transcript of other documentation cannot be produced by a third-party entity from which it is required. It will also require an applicant to submit a current report from the National Practitioner Data Bank, which is produced along with the report that is currently required from the Healthcare Integrity and Protection Data Bank.

Statutory Authority: §§ 54.1-2400 and 54.1-2709 of the Code of Virginia.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

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# Calendar of Events


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## DESIGN BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD


**August 17, 2006 - 11 a.m.** -- Open Meeting

**September 21, 2006 - 11 a.m.** -- Open Meeting

**October 19, 2006 - 11 a.m.** -- Open Meeting


Department of General Services, 202 North Ninth Street, Room 412, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use the design build or construction management type contracts. Contact the Division of Engineering and Buildings to confirm this meeting. Board rules and regulations can be obtained on-line at [www.dgs.virginia.gov](http://www.dgs.virginia.gov) under DGS Forms, Form #DGS-30-904.

**Contact:** Rhonda M. Bishton, Administrative Assistant, Division of Engineering and Buildings, Department of General Services, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail [rhonda.bishton@dgs.virginia.gov](mailto:rhonda.bishton@dgs.virginia.gov).

## VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

† **August 16, 2006 - 2 p.m.** -- Open Meeting

Virginia Economic Development Partnership, 901 East Byrd Street, West Tower, 19th Floor, Board Room, Richmond, Virginia. 

A meeting of the Finance Committee to discuss financial matters pertaining to the Virginia Economic Development Partnership.

**Contact:** Kimberly M. Ellett, Senior Executive Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218, telephone (804) 545-5610, FAX (804) 545-5611, e-mail [kellett@yesvirginia.org](mailto:kellett@yesvirginia.org).

## BOARD OF EDUCATION

**August 25, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to amend regulations entitled **8 VAC 20-520, Regulations Governing Reduction of State Aid When Length of School Term Below 180 School Days**. The 2004 Virginia General Assembly passed three bills that amended § 22.1-98 of the Code of Virginia and made the changes effective from passage of the bills. The bills were HB 1256 (Van Landingham), SB 452 (Whipple), and HB 575 (Hamilton). HB 1256 and SB 452 clarify the schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations. HB 575 permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency. HB 575 and SB 452 have emergency


enactment clauses and are effective upon passage. HB 1256 and SB 452 require the Board of Education to promulgate regulations to implement the provisions to be effective within 280 days of enactment. Therefore, the amendments are required by changes to the Code of Virginia.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

**September 27, 2006 - 9 a.m.** -- Open Meeting

† **October 25, 2006 - 9 a.m.** -- Open Meeting


James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last minute changes in time or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

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**September 27, 2006 - 11 a.m.** -- Public Hearing

James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


**September 11, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to adopt regulations entitled **8 VAC 20-700, Regulations for Conducting Division-Level Academic Reviews**. The purpose of the proposed action is to require division-level academic review in school divisions where findings of school-level academic reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the Standards of Quality. The Board of Education promulgated emergency regulations as a result of this requirement that expired February 15, 2006. The proposed regulations, which will replace the emergency regulations, do not deviate substantially from the provisions of the emergency regulations.

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

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**September 27, 2006 - 11 a.m.** -- Public Hearing  
James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


**September 11, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to adopt regulations entitled **8 VAC 20-710, Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions**. The purpose of the proposed action is to comply with an amendment to § 22.1-25 of the Code of Virginia by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. Section 22.1-25 of the Code of Virginia stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.


Statutory Authority: § 22.1-25 of the Code of Virginia.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).


## STATE BOARD OF ELECTIONS

**† August 8, 2006 - 10:30 a.m.** -- Open Meeting  
State Board of Elections, 9th Street Office Bldg., 8th Floor, Mines, Minerals and Energy Conference Room, Richmond, Virginia. 

A meeting regarding (i) the City of Virginia Beach's request for permission to test Diebold Express Poll 4000 in the November 7, 2006, general and special elections, (ii) VERIS standard correspondence, (iii) approval of new and updated campaign finance documents, (iv) consideration of dormant political committees, and (v) E-Pollbook Demo.


**Contact:** Vanessa Archie, Administrative Assistant, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 864-8901, FAX (804) 371-0194, toll-free (800) 552-9745, (800) 260-3466/TTY , e-mail [vanessa.archie@sbe.virginia.gov](mailto:vanessa.archie@sbe.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**August 10, 2006 - 7 p.m.** -- Open Meeting  
Buckingham Agricultural Center, Highway 60, Buckingham Courthouse, Auditorium, Buckingham, Virginia. 


The first public meeting on the development of a bacteria TMDL for impaired stream segments in Buckingham and Albemarle counties. The public notice appears in the Virginia Register of Regulations on July 24, 2006. The public comment period begins on August 10, 2006, and ends on September 11, 2006.

**Contact:** Kelly Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-6242, FAX (434) 582-5125, e-mail [kjwills@deq.virginia.gov](mailto:kjwills@deq.virginia.gov).

**† August 16, 2006 - 7 p.m.** -- Open Meeting  
Essex Public Library, 117 North Church Lane, Tappahannock, Virginia. 


A public meeting on the development of a bacteria TMDL for Occupacia Creek in Essex County. The public comment period begins on August 16, 2006, and ends on September 15, 2006. The public notice appears in the Virginia Register of Regulations on August 7, 2006.

**Contact:** Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail [rcfrench@deq.virginia.gov](mailto:rcfrench@deq.virginia.gov).

**August 16, 2006 - 7 p.m.** -- Public Hearing  
Louisa County Middle School, 1009 Davis Highway, Mineral, Virginia. 

A public hearing on the department's review of a federally licensed activity to determine whether it is consistent with the Virginia Coastal Resources Management Program, as approved under the federal Coastal Zone Management Act. The federal activity is the submittal by Dominion Virginia Power Company of an early site permit application for future construction of two new reactor units. An open house information session will begin at 6 p.m. The public comment period has been extended to September 8, 2006. A general notice has been posted to the townhall relative to the meeting.

**Contact:** Ellie Irons, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4325, FAX (804) 698-4319, e-mail [elirons@deq.virginia.gov](mailto:elirons@deq.virginia.gov).

**† August 23, 2006 - 7 p.m.** -- Public Hearing  
Chesterfield Central Library, 9501 Lori Road, Chesterfield, Virginia. 

A public hearing to receive comment on a proposed modification to the permit for the Qualla Road Construction, Demolition and Debris Landfill located in Chesterfield County. The permit modification will allow the installation of an alternate final cover system for the landfill. The facility stopped receiving waste in December 2004. Postclosure care and monitoring activities will continue for at least 10 years.


**Contact:** John P. Godfrey, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone

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# Calendar of Events

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(804) 527-5028, FAX (804) 527-5106, e-mail  
jpgodfrey@deq.virginia.gov.

**September 19, 2006 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street,  
Richmond, Virginia. 

A regular meeting of the Ground Water Protection Steering  
Committee.

**Contact:** Mary Ann Massie, Department of Environmental  
Quality, P.O. Box 10009, Richmond, VA 23240, telephone  
(804) 698-4042, e-mail mamassie@deq.virginia.gov.

## VIRGINIA FIRE SERVICES BOARD


**† August 11, 2006 - 10 a.m.** -- Open Meeting  
Hampton Convention Center, Hampton, Virginia.  (Interpreter  
for the deaf provided upon request)

The following committees will meet:

- 10 a.m. - Fire Education and Training
- 1 p.m. - Fire Prevention and Control
- 2:30 p.m. - Administration, Policy and Finance

The VFSB members will be attending multiple functions  
related to the VSFA Convention, at which point no public  
business will be discussed.


**Contact:** Nausheen Khan, VFSB Clerk and Research  
Assistant, Virginia Fire Services Board, 1005 Technology Park  
Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail  
nausheen.khan@vdfp.virginia.gov.

**† August 12, 2006 - 9 a.m.** -- Open Meeting  
Hampton Convention Center, Hampton, Virginia.  (Interpreter  
for the deaf provided upon request)

The VFSB Members will be attending multiple functions  
related to the VSFA Convention, at which point no public  
business will be discussed.

**Contact:** Nausheen Khan, VFSB Clerk and Research  
Assistant, Virginia Fire Services Board, 1005 Technology Park  
Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail  
nausheen.khan@vdfp.virginia.gov.

## FORENSIC SCIENCE BOARD

**August 9, 2006 - 10 a.m.** -- Open Meeting  
Department of Forensic Science, 700 North Fifth Street,  
Central Laboratory, Classroom 1, Richmond, Virginia. 

A regular meeting.

**Contact:** Meghan E. Kish, Board Secretary, Department of  
Forensic Science, 700 N. 5th St., Richmond, VA 23219,  
telephone (804) 786-1006, e-mail  
meghan.kish@dfs.virginia.gov.

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**† October 10, 2006** - Public comments may be submitted until  
5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the  
Code of Virginia that the Department of Forensic Science  
intends to adopt regulations entitled **6 VAC 40-10, Public  
Participation Guidelines**. The purpose of the proposed  
action is to facilitate participation by the public in the  
formation of regulations that are being promulgated to carry  
out the legislative mandates of the Department of Forensic  
Science as required by § 2.2-4007 D of the Code of  
Virginia.

Statutory Authority: §§ 2.2-4007 and 9.1-1110 of the Code of  
Virginia.

**Contact:** Katya N. Herndon, Regulatory Coordinator,  
Department of Forensic Science, 700 N. 5th St., Richmond,  
VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or  
e-mail katya.herndon@dfs.virginia.gov.


## DEPARTMENT OF FORENSIC SCIENCE

**August 8, 2006 - 9 a.m.** -- Open Meeting  
Department of Forensic Science, 700 North Fifth Street,  
Central Laboratory, Classroom 1, Richmond, Virginia. 


A regular meeting of the Scientific Advisory Committee.

**Contact:** Meghan E. Kish, Board Secretary, Department of  
Forensic Science, 700 N. 5th St., Richmond, VA 23219,  
telephone (804) 786-1006, e-mail  
meghan.kish@dfs.virginia.gov.

## BOARD FOR GEOLOGY

**October 18, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 

A general business meeting including consideration of  
regulatory issues as may be presented on the agenda. The  
meeting is open to the public; however, a portion of the  
board's business may be discussed in closed session.  
Public comment will be heard at the beginning of the  
meeting. Person desiring to participate in the meeting and  
requiring special accommodations or interpretive services  
should contact the department at least 10 days prior to the  
meeting so that suitable arrangements can be made. The  
department fully complies with the Americans with  
Disabilities Act.

**Contact:** David E. Dick, Regulatory Programs Coordinator,  
Department of Professional and Occupational Regulation,  
3600 W. Broad St., Richmond, VA 23230, telephone (804)  
367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-  
mail geology@dpor.virginia.gov.

## DEPARTMENT OF HEALTH

**August 11, 2006 - 9 a.m.** -- Open Meeting

**September 9, 2006 - 9 a.m.** -- Open Meeting

**September 14, 2006 - 9 a.m.** -- Open Meeting

109 Governor Street, 5th Floor Conference Room, Richmond, Virginia. Will also be scheduled in remote locations via video conference.

A meeting of the Authorized Onsite Soil Evaluator Regulations Advisory Committee to make recommendations to the commissioner regarding AOSE/PE policies, procedures and programs.

**Contact:** Dwayne Roadcap, Program Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7462, FAX (804) 864-7476, e-mail dwayne.roadcap@vdh.virginia.gov.

**August 11, 2006 - 10 a.m.** -- Open Meeting


**September 22, 2006 - 10 a.m.** -- Open Meeting

Department of Health, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.


A meeting of the Sewage Handling and Disposal Regulations Advisory Committee to make recommendations to the commissioner regarding sewage handling and disposal policies, procedures and programs of the department.

**Contact:** Donald Alexander, Division Director, DOSWS, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7452, FAX (804) 864-7476, e-mail donald.alexander@vdh.virginia.gov.

**August 23, 2006 - 1 p.m.** -- Open Meeting

Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia. 

**September 13, 2006 - 1 p.m.** -- Open Meeting

Medical Society of Virginia, 2924 Emerywood Parkway, Suite 300, Richmond, Virginia. 

A meeting of the SMFP Advisory Committee to address issues concerning the proposed State Medical Facilities Plan.

**Contact:** Carrie Eddy, Senior Policy Analyst, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 232330, telephone (804) 367-2157, FAX (804) 367-2149, e-mail carrie.eddy@vdh.virginia.gov.


**September 8, 2006 - 10 a.m.** -- Open Meeting

Children's Hospital, 2924 Brook Road, Richmond, Virginia. 

A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the Department of Health in the implementation of the Virginia Early Hearing Detection and Intervention Program. The advisory committee meets four times a year.

**Contact:** Pat T. Dewey, Program Manager, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7713, FAX (804) 864-7721, toll-free (866) 493-1090, e-mail pat.dewey@vdh.virginia.gov.


**September 27, 2006 - 1:30 p.m.** -- Open Meeting

Madison Building, 109 Governor Street, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A meeting of the Newborn Screen Regulations Advisory Group to allow and invite public participation in the development of proposed regulations.

**Contact:** Nancy Ford, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7721, e-mail nancy.ford@vdh.virginia.gov.

**October 3, 2006 - 10 a.m.** -- Open Meeting


Division of Consolidated Laboratory Services, 600 North 5th Street, Training Room T-23, Richmond, Virginia. 

A meeting of the Genetics Advisory Committee to advise the Department of Health on coordinating access to clinical genetics services across the Commonwealth and assuring the provision of genetic awareness and quality services and education for consumers and providers taking into consideration issues of confidentiality, privacy and consent.

**Contact:** Nancy Ford, Director, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7691, e-mail nancy.ford@vdh.virginia.gov.

## Sewage Handling and Disposal Appeal Review Board

**August 9, 2006 - 10 a.m.** -- Open meeting


General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 

A meeting to hear the appeals of health department denials of septic tank permits.


**Contact:** Susan C. Sherertz, Secretary to the Board, Department of Health, 109 Governor St., Richmond, VA, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

## BOARD OF HEALTH PROFESSIONS

**† August 29, 2006 - 2 p.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 4, Richmond, Virginia. 

A meeting of the Practitioner Self-Referral Committee to review staff draft recommendations for advisory opinions and make final recommendations to the full board on September 19, 2006. This is a public meeting; however, public comment will not be received.


**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7691, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.

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# Calendar of Events

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## BOARD FOR HEARING AID SPECIALISTS

**August 18, 2006 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

An informal fact-finding conference.

**Contact:** William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail [hearingaidspec@dpor.virginia.gov](mailto:hearingaidspec@dpor.virginia.gov).


## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **September 12, 2006 - 12:30 p.m.** -- Open Meeting  
101 North 14th Street, Richmond, Virginia.

Committee meetings begin at 8:30 a.m. Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu). A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, 101 N 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail [leeannrung@schev.edu](mailto:leeannrung@schev.edu).

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **September 13, 2006 - 9 a.m.** -- Public Hearing  
Department of Housing and Community Development, 501 North Second Street, 1st Floor Board Room, Richmond, Virginia. 

**October 6, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to repeal regulations entitled **13 VAC 5-111, Enterprise Zone Regulations**, and adopt regulations entitled **13 VAC 5-112, Enterprise Zone Grant Program Regulations**. The purpose of the proposed action is to establish the processes and procedures for the new Real Property Investment Grants and the new Job Creation Grants and to establish new enterprise zone administration processes and procedures.

Statutory Authority: § 59.1-540 of the Code of Virginia.

**Contact:** Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St. Richmond, VA 23219-1321,

telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , e-mail [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).


## VIRGINIA COUNCIL ON HUMAN RESOURCES

**September 21, 2006 - 9:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, PDS 4, Richmond, Virginia.

A quarterly meeting.

**Contact:** Charles Reed, Associate Director, Department of Human Resource Management, James Monroe Bldg., 101 N. 14th St., 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-2505, e-mail [charles.reed@dhrm.virginia.gov](mailto:charles.reed@dhrm.virginia.gov).

## VIRGINIA COUNCIL ON INDIANS


**August 15, 2006 - 6 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Room 7 West, Richmond, Virginia. 

A business meeting.

**Contact:** Deanna Beacham, Council on Indians, P.O. Box 1475, Richmond, VA 23218, telephone (804) 225-2084, e-mail [vci@governor.virginia.gov](mailto:vci@governor.virginia.gov).

## VIRGINIA INFORMATION TECHNOLOGIES AGENCY


### Wireless E-911 Services Board

**September 13, 2006 - 10 a.m.** -- Open Meeting  
Richmond Plaza Building, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia. 


A regular board meeting.


**Contact:** Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 411 E. Franklin St., 5th Floor, Suite 500, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail [steve.marzolf@vita.virginia.gov](mailto:steve.marzolf@vita.virginia.gov).

## JAMESTOWN-YORKTOWN FOUNDATION

† **August 9, 2006 - 11:30 a.m.** -- Open Meeting  
Two James Center, 1021 East Cary Street, Williams Mullen Capitol Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A joint meeting of the Executive and Finance Committees. No public comment period is planned.

**Contact:** Laura W. Bailey, Executive Assistant to the Boards, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, toll-free (888) 693-4682, (757) 253-5110/TTY , e-mail [laura.bailey@jyf.virginia.gov](mailto:laura.bailey@jyf.virginia.gov).

**September 6, 2006 - 2 p.m.** -- Open Meeting  
Richmond, Virginia. (call for specific location)  (Interpreter for the deaf provided upon request)

A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee.

**Contact:** Judith Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 West Francis Street, Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, e-mail [judith.leonard@jyf.virginia.gov](mailto:judith.leonard@jyf.virginia.gov).

**October 19, 2006 - Noon** -- Open Meeting  
Richmond, Virginia. (call for specific location)  (Interpreter for the deaf provided upon request)

A regular meeting of the Jamestown 2007 Steering Committee.

**Contact:** Judith Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 West Francis Street, Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, e-mail [judith.leonard@jyf.virginia.gov](mailto:judith.leonard@jyf.virginia.gov).

## STATE BOARD OF JUVENILE JUSTICE


**September 13, 2006 - 9 a.m.** -- Open Meeting  
Virginia Wilderness Institute, Grundy, Virginia.

Meeting details will be provided closer to the meeting date.

**Contact:** Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773.

## DEPARTMENT OF LABOR AND INDUSTRY


### Virginia Apprenticeship Council

**September 21, 2006 - 10 a.m.** -- Open Meeting  
Confederate Hills Recreation Building, 302 Lee Avenue, Highland Springs, Virginia. 


A regular business meeting.

**Contact:** Beverley Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail [bgd@doli.state.va.us](mailto:bgd@doli.state.va.us).


## LIBRARY BOARD

**September 18, 2006 - 10:30 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

A meeting to discuss matters pertaining to the Library of Virginia and the Library Board.

**Contact:** Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3525, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail [jtaylor@lva.lib.va.us](mailto:jtaylor@lva.lib.va.us).


## COMMISSION ON LOCAL GOVERNMENT

† **September 12, 2006 - 10 a.m.** -- Open Meeting  
† **September 22, 2006 - 10 a.m.** -- Open meeting  
The Jackson Center, 501 North 2nd Street, Richmond, Virginia. 

A regular business meeting.

**Contact:** Ted McCormack, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, e-mail [ted.mccormack@dhcd.virginia.gov](mailto:ted.mccormack@dhcd.virginia.gov).


## BOARD OF LONG-TERM CARE ADMINISTRATORS

**September 12, 2006 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

**September 22, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Long-Term Care Administrators intends to amend regulations entitled **18 VAC 95-30, Regulations Governing the Practice of Assisted Living Facility Administrators**. The purpose of the proposed action is to set the fees and requirements for licensure as assisted living facility administrators.

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


Public comments may be submitted until September 22, 2006, to Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

NOTE: CHANGE IN MEETING DATE

† **October 30, 2006 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to discuss general business matters. There will be a 15-minute public comment period at the beginning of the meeting.

**Contact:** Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

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# Calendar of Events

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## MARINE RESOURCES COMMISSION

**August 22, 2006 - 9:30 a.m.** -- Open Meeting  
**September 26, 2006 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue,  
4th Floor, Newport News, Virginia. (Interpreter for the deaf  
provided upon request)

A monthly commission meeting.

**Contact:** Jane McCroskey, Commission Secretary, Marine  
Resources Commission, 2600 Washington Ave., 3rd Floor,  
Newport News, VA 23607, telephone (757) 247-2215, FAX  
(757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY  
, e-mail jane.mccroskey@mrc.virginia.gov.

## BOARD OF MEDICAL ASSISTANCE SERVICES

**September 12, 2006 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad  
Street, 13th Floor Conference Room, Richmond, Virginia.

A quarterly meeting.

**Contact:** Nancy Malczewski, Board Liaison, Department of  
Medical Assistance Services, 600 E. Broad St., Suite 1300,  
Richmond, VA 23219, telephone (804) 786-8096, FAX (804)  
371-4981, (800) 343-0634/TTY, e-mail  
nancy.malczewski@dmas.virginia.gov.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**August 16, 2006 - 1 p.m.** -- Open Meeting  
**October 18, 2006 - 1 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad  
Street, 13th Floor, Board Room, Richmond, Virginia.

A meeting of the Medicaid Transportation Advisory  
Committee to discuss Medicaid transportation issues with  
the committee and the community.

**Contact:** Bob Knox, Transportation Supervisor, Department  
of Medical Assistance Services, 600 E. Broad St., Suite 1300,  
Richmond, VA 23219, telephone (804) 371-8854, FAX (804)  
786-6035, (800) 343-0634/TTY, e-mail  
robert.knox@dmas.virginia.gov.

**August 17, 2006 - 2 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad  
Street, 13th Floor, Board Room, Richmond, Virginia.

A meeting of the Drug Utilization Review Board to discuss  
Medicaid pharmacy issues related to this committee.

**Contact:** Rachel Cain, Pharmacist, Department of Medical  
Assistance Services, 600 E. Broad St., Suite 1300, Richmond,  
VA 23219, telephone (804) 225-2873, FAX (804) 786-5799,  
(800) 343-0634/TTY, e-mail  
rachel.cain@dmas.virginia.gov.

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**September 22, 2006** - Public comments may be submitted  
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the  
Code of Virginia that the Department of Medical Assistance  
Services intends to amend regulations entitled **12 VAC 30-  
50, Amount, Duration and Scope of Medical and  
Remedial Care Services**, and **12 VAC 30-120, Waivered  
Services**. The purpose of the proposed action is to (i)  
provide clarity and guidance to providers and other  
stakeholders; (ii) conform to the IFDDS waiver renewal  
application as approved by CMS in February of 2004; (iii)  
comply with Department of Mental Health, Mental  
Retardation and Substance Abuse Services (DMHMRSAS)  
and Department of Social Services (DSS) provider licensing  
standards; (iv) follow recommendations made by the office  
of the Attorney General; and (v) support individual choice.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of  
Virginia.

**Contact:** Teja Stokes, Project Manager, Department of  
Medical Assistance Services, 600 E. Broad St., Suite 1300,  
Richmond, VA 23219, telephone (804) 786-0527, FAX (804)  
786-1680 or e-mail teja.stokes@dmas.virginia.gov.

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**September 22, 2006** - Public comments may be submitted  
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the  
Code of Virginia that the Department of Medical Assistance  
Services intends to amend regulations entitled **12 VAC 30-  
90, Methods and Standards for Establishing Payment  
Rates for Long-Term Care**. The purpose of the proposed  
action is to place a ceiling on specialized care ancillary  
service reimbursement to nursing facilities providing  
services to Medicaid.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of  
Virginia.

**Contact:** Diane Hankins, Provider Reimbursement,  
Department of Medical Assistance Services, 600 E. Broad St.,  
Suite 1300, Richmond, VA 23219, telephone (804) 786-5379,  
FAX (804) 786-1680 or e-mail  
diane.hankins@dmas.virginia.gov.

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**September 22, 2006** - Public comments may be submitted  
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the  
Code of Virginia that the Department of Medical Assistance  
Services intends to amend regulations entitled **12 VAC 30-  
120, Waivered Services**. The purpose of the proposed  
action is to develop new regulations containing the policy  
and procedures for the Day Support Waiver in consultation  
with members of the General Assembly and in collaboration  
with DMHMRSAS and the MR Waiver Advisory Committee.  
This waiver covers only those individuals who have a




diagnosis of mental retardation. Day support services include training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

**Contact:** Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail [teja.stokes@dmas.virginia.gov](mailto:teja.stokes@dmas.virginia.gov).


† **October 23, 2006 - 9 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia. 


A meeting of the Pharmacy and Therapeutics Committee to review PDL Phase I and new drugs in PDL Phase II.


**Contact:** Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, (800) 343-0634/TTY , e-mail [katina.goodwyn@dmas.virginia.gov](mailto:katina.goodwyn@dmas.virginia.gov).


## BOARD OF MEDICINE

**August 9, 2006 - 8:45 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.


**August 15, 2006 - 9 a.m.** -- Open Meeting  
† **September 19, 2006 - 9 a.m.** -- Open Meeting  
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. 


† **August 20, 2006 - 9 a.m.** -- Open Meeting  
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. 

† **August 24, 2006 - 9:30 a.m.** -- Open Meeting  
Holiday Inn, 3315 Ordway Drive, Roanoke, Virginia. 


† **September 7, 2006 - 9:30 a.m.** -- Open Meeting  
Courtyard Marriott, 3301 Ordway Drive, Roanoke, Virginia. 

A special conference committee will convene informal conferences to inquire into allegations that certain practitioners of medicine or other healing arts may have violated certain laws and regulations governing the practice of medicine. Further, the committee may review cases with board staff for case disposition, including consideration of consent orders for settlement. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.


**Contact:** Renee S. Dixon, Discipline Case Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail [renee.dixon@dhp.virginia.gov](mailto:renee.dixon@dhp.virginia.gov).

**August 11, 2006 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A meeting of the Executive Committee to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.


**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

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**August 11, 2006 - 8:15 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to clarify the requirements for reporting malpractice claims on the physician profile.

Statutory Authority: §§ 54.1-2400 and 54.1-2910.1 of the Code of Virginia.

Public comments may be submitted until September 22, 2006, to William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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**August 11, 2006 - 8:15 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled **18 VAC 85-130, Regulations Governing the Practice of Licensed Midwives**. The purpose of the proposed action is to replace emergency regulations for the licensure of and practice of licensed midwives.

Statutory Authority: §§ 54.1-2400, 54.1-2957.8, and 54.1-2957.9 of the Code of Virginia.

Public comments may be submitted until September 22, 2006, to William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX

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# Calendar of Events

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(804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**September 22, 2006 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room, Richmond, Virginia.📍

A meeting of the Legislative Committee to consider regulatory matters as presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**September 22, 2006 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.📍

A meeting of the Ad Hoc Committee on Continuing Competency to discuss the available data on this topic and consider directions for the board in the future. Public comment will be received on agenda items at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**October 19, 2006 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.📍

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Acupuncture

**October 4, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulations of acupuncture. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Athletic Training

**October 5, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulations of athletic training. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Midwifery

**October 6, 2006 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulations of midwifery. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Occupational Therapy

**October 3, 2006 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulations of occupational therapy. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).


## Advisory Board on Physician Assistants

**October 5, 2006 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍


A meeting to consider issues related to the regulations of physician assistants. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).


## Advisory Board on Radiologic Technology

**October 4, 2006 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of radiologic technologists and radiologic technologist-limited. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Respiratory Care

**October 3, 2006 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of respiratory care. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).


## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

**August 22, 2006 - 10 a.m.** -- Public Hearing  
Jefferson Building, 1220 Bank Street, 8th Floor Conference  
Room, Richmond, Virginia.  (Interpreter for the deaf provided  
upon request)

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2007. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 10th floor and at each community services board office. Comments may be made at the hearing or in writing by no later than August 22, 2006, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact William T. Ferris, LCSW. Copies of the oral presentations should be filed at the time of the hearing.

**Contact:** William T. Ferris, LCSW, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Mental Health, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY 

## STATE MILK COMMISSION


**September 13, 2006 - 10:45 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, Room  
2054, Charlottesville, Virginia. 

A regular meeting to consider industry issues, distributor licensing, base transfers and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify Edward C. Wilson at least five working days prior to the meeting date so that suitable arrangements can be made.


**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 102 Governor St., Room 205, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail [edward.wilson@vdacs.virginia.gov](mailto:edward.wilson@vdacs.virginia.gov).

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Board of Coal Mining Examiners

† **August 17, 2006 - 9:30 a.m.** -- Open Meeting  
Department of Mines, Minerals and Energy, 3405 Mountain  
Empire Road, Room 219, Big Stone Gap, Virginia.   
(Interpreter for the deaf provided upon request)

A meeting to review and act upon the status of mine foreman certifications of those miners referred for disciplinary reasons to the board. Also, necessary updating of certification examination procedures and other administrative procedures of the board will be reviewed and discussed. No public comment has been requested; however, the board will receive comments from interested parties related to the work of the board. Special accommodations for the disabled will be made available at the public meeting upon request. Anyone needing accommodations should contact the DMME Division of Mines at 276-523-8236 or call the VA Relay Center TTY/TDD 1-800-828-1120 at least seven days prior to the meeting.

**Contact:** Patty Varner, Administrative Program Specialist, Department of Mines, Minerals and Energy, Division of Mines, 3405 Mountain Empire Rd., Big Stone Gap, VA 24219, telephone (276) 523-8236, FAX (276) 523-8239, (800) 828-1120/TTY , e-mail [patty.varner@dmme.virginia.gov](mailto:patty.varner@dmme.virginia.gov).

## DEPARTMENT OF MOTOR VEHICLES

† **August 30, 2006 - 11 a.m.** -- Public Hearing  
Washington County Public Library, 205 Oak Hill Street,  
Abingdon, Virginia.

† **August 31, 2006 - 11 a.m.** -- Public Hearing  
Roanoke County Administration Center, 5204 Bernard Drive,  
Roanoke, Virginia.

† **September 12, 2006 - 11 a.m.** -- Public Hearing  
Virginia Beach Library, Central, 4100 Virginia Beach  
Boulevard, Virginia Beach, Virginia.

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# Calendar of Events

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† **September 14, 2006 - 11 a.m.** -- Public Hearing  
DMV Headquarters Building, 2300 West Broad Street,  
Richmond, Virginia.

† **September 19, 2006 - 11 a.m.** -- Public Hearing  
VDOT Staunton District Office, 3536 North Valley Pike,  
Harrisonburg, Virginia.

† **September 21, 2006 - 11 a.m.** -- Public Hearing  
West Springfield Government Center, 6140 Rolling Road,  
Springfield, Virginia.

**October 6, 2006** - Public comments may be submitted until  
this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled **24 VAC 20-120, Commercial Driver Training School Regulations**, and adopt regulations entitled **24 VAC 20-121, Virginia Driver Training School Regulations**. The purpose of the proposed action is to ensure that graduates of commercial vehicle and passenger vehicle driver training schools licensed by DMV are adequately prepared to safely and independently operate motor vehicles on the public roadways. The overall goals to are to (i) strengthen DMV training school standards and develop additional standards to ensure that the instruction provided is uniform and meets all established requirements; (ii) strengthen DMV's oversight process to ensure that reviews of training documentation are consistent, evaluation of school curriculums are expanded, and school audits are more comprehensive and less burdensome on driver training course providers; and (iii) implement additional changes intended to ensure that consistently high quality instruction is provided across the driver training school system and that the learning environment for younger students is safe, secure and peer-oriented.

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

**Contact:** Marc Copeland, Senior Policy Analyst, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, toll-free 1-866-368-5463 or e-mail marc.copeland@dmv.virginia.gov.

## Motorcycle Advisory Council

**August 8, 2006 - 10 a.m.** -- Open Meeting  
Location to be announced.

A meeting to continue the development and implementation of the council and to follow up on initiatives.

**Contact:** Audrey Odum, Management Analyst, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-8140, FAX (804) 367-6631, (800) 272-9268/TTY ☎, e-mail audrey.odum@dmv.virginia.gov.

## VIRGINIA MUSEUM OF FINE ARTS

† **September 12, 2006 - 8 a.m.** -- Open Meeting  
† **October 3, 2006 - 8 a.m.** -- Open Meeting  
† **November 7, 2006 - 8 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, The Pauley Center, 200 North Boulevard, Dining Room, Richmond, Virginia. ♿

A meeting for staff to update the Executive Committee. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

† **September 20, 2006 - 9 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, The Pauley Center, 200 North Boulevard, Parlor, Richmond, Virginia. ♿

A meeting for staff to update the Expansion Committee in closed session. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, toll-free (800) 943-8632, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

† **September 20, 2006 - 11:15 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 200 North Boulevard, Library, Richmond, Virginia. ♿

The following committees will meet for staff updates:  
11:15 a.m. - Art Acquisitions - Library  
1 p.m. - Artistic Oversight - CEO Parlor  
3:30 p.m. - Government Affairs - Pauley Center 2

Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

† **September 21, 2006 - 9 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, Pauley Center, 2, 200 North Boulevard, Richmond, Virginia. ♿

A meeting of the Fiscal Oversight Committee for staff to update the committee. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

† **September 21, 2006 - Noon** -- Open Meeting  
Virginia Museum of Fine Arts, 200 North Boulevard, CEO Parlor, Richmond, Virginia. ♿

A meeting for staff to update the board. Part of the meeting will be held in closed session. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond,

VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

## FOUNDATION FOR VIRGINIA'S NATURAL RESOURCES

† **October 11, 2006 - 10 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A business meeting of the Board of Trustees.

**Contact:** Brenda Taylor, Administrative Staff Specialist, Foundation for Virginia's Natural Resources, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, e-mail [brenda.taylor@dof.virginia.gov](mailto:brenda.taylor@dof.virginia.gov).

## BOARD OF NURSING

**September 18, 2006 - 9 a.m.** -- Open Meeting  
**September 20, 2006 - 9 a.m.** -- Open Meeting  
**September 21, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

**Contact:** Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [nursebd@dhp.virginia.gov](mailto:nursebd@dhp.virginia.gov).

**September 19, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A meeting to conduct general business including receipt of committee reports and consideration of regulatory action and discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

**Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

† **September 19, 2006 - 11:30 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A public hearing to receive comment on proposed amendments to regulations for certified nurse aides.

**Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

## JOINT BOARDS OF NURSING AND MEDICINE

**August 23, 2006 - 9 a.m.** -- Open Meeting  
**October 18, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regular meeting.

**Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

## BOARD FOR OPTICIANS

**August 18, 2006 - 9:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail [opticians@dpor.virginia.gov](mailto:opticians@dpor.virginia.gov).

## VIRGINIA OUTDOORS FOUNDATION

**September 20, 2006 - 1 p.m.** -- Open Meeting  
**September 21, 2006 - 9 a.m.** -- Open Meeting  
Location to be announced; Charlottesville, Virginia area.

A meeting for policy and easement consideration. Public comment will be received.

**Contact:** Trisha Cleary, Administrative Assistant, Department of Conservation and Recreation, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2147, FAX (804) 371-4810, e-mail [tcleary@vofonline.org](mailto:tcleary@vofonline.org).

## BOARD OF PHARMACY

**August 25, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action will eliminate the requirement of an alarm system for alternative sites for delivery of dispensed prescriptions provided the prescriptions are held in a locked

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# Calendar of Events

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room or device with access limited to the practitioner or responsible party listed on an application for controlled substance registration or his designee.

Statutory Authority: Chapters 33 and 34 of Title 54.1 of the Code of Virginia.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or e-mail [elizabeth.russell@dhp.virginia.gov](mailto:elizabeth.russell@dhp.virginia.gov).


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† **October 7, 2006** - Public comments may be submitted until 5 p.m. on this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to add the Internet-based TOEFL examination in lieu of the current TOEFL and TSE as an alternative for graduates in foreign schools of pharmacies.

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


**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or e-mail [scottirussell@dhp.virginia.gov](mailto:scottirussell@dhp.virginia.gov).

**September 27, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 


A meeting to consider such regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail [scottirussell@dhp.virginia.gov](mailto:scottirussell@dhp.virginia.gov).


## BOARD OF PHYSICAL THERAPY

**August 18, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 


A regular meeting to discuss general business matters as it relates to the practice of physical therapy.

**Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail [elizabeth.young@dhp.virginia.gov](mailto:elizabeth.young@dhp.virginia.gov).


## POLYGRAPH EXAMINERS ADVISORY BOARD

**September 21, 2006 - 10 a.m.** -- Open Meeting  
† **October 26, 2006 - 11 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY , e-mail [kevin.hoeft@dpor.virginia.gov](mailto:kevin.hoeft@dpor.virginia.gov).


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† **September 21, 2006 - 10 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

**October 6, 2006** - Public comment may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Professional and Occupational Regulation intends to amend regulations entitled **18 VAC 120-30, Regulations Governing Polygraph Examiners**. The purpose of the proposed action is to amend current regulations to reflect statutory changes, industry changes, and changes suggested by licensees and the public.


Statutory Authority: § 54.1-1802 of the Code of Virginia.

**Contact:** Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY , e-mail [kevin.hoeft@dpor.virginia.gov](mailto:kevin.hoeft@dpor.virginia.gov).


## BOARD OF PSYCHOLOGY

**October 10, 2006 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting to include reports from standing committees and any regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

## VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

**September 28, 2006 - 10 a.m.** -- Open Meeting  
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 


A quarterly meeting.

**Contact:** Janet Dingle Brown, Esq., Public Guardianship Coordinator and Legal Services Developer, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail janet.brown@vda.virginia.gov.


## REAL ESTATE APPRAISER BOARD

**August 29, 2006 - 10 a.m.** -- Open Meeting  
† **November 7, 2006 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. 


A meeting to discuss board business.


**Contact:** Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reappraisers@dpor.virginia.gov.

## REAL ESTATE BOARD


† **August 17, 2006 - 9 a.m.** -- Open Meeting  
† **August 18, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 


Informal fact-finding conferences.

**Contact:** Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.

**September 13, 2006 - 3 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Education Committee.


**Contact:** Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.

**September 14, 2006 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting of the Fair Housing Committee.

**Contact:** Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone

(804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.


**September 14, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to discuss board business.


**Contact:** Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reappraisers@dpor.virginia.gov.

## DEPARTMENT OF REHABILITATIVE SERVICES

### Statewide Rehabilitation Council

**August 14, 2006 - 11:30 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, Virginia. 

A quarterly meeting. Public comment will be received at approximately 11:45 a.m.

**Contact:** Barbara Tyson, Staff Support, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7010, FAX (804) 662-7644, toll-free (800) 552-5019, (800) 464-9950/TTY , e-mail barbara.tyson@drs.virginia.gov.

## VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

**September 19, 2006 - 1 p.m.** -- Open Meeting  
University of Virginia Research Park, Charlottesville, Virginia.

A quarterly meeting.

**Contact:** Nancy Vorona, VP Research Investment, Virginia Research and Technology Advisory Commission, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, FAX (703) 464-1720, e-mail nvorona@cit.org.

## VIRGINIA RESOURCES AUTHORITY

**August 8, 2006 - 9 a.m.** -- Open Meeting  
Virginia Resources Authority, 707 East Main Street, 2nd Floor, Conference Room, Richmond, Virginia.

A meeting to conduct business of the Board of Directors. The meeting is open to the public; however, a portion of the board's business may be conducted in a closed meeting. A period for public comment will be held prior to adjournment of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the authority at least 10 days prior to the meeting so that suitable arrangements can be made. The authority fully complies with the Americans with Disabilities Act.

**Contact:** Amy Boratyn, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond,


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# Calendar of Events

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VA, telephone (804) 644-3100, FAX (804) 644-3109, e-mail aboratyn@virginiareources.org.


## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **August 16, 2006 - Noon** -- Open Meeting  
Department of Business Assistance, 707 East Main Street, 3rd Floor Board Room, Richmond, Virginia. 


A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. The meeting time is subject to change depending upon the board's agenda.


**Contact:** Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, toll-free (866) 248-8814, e-mail scott.parsons@dba.virginia.gov.

## STATE BOARD OF SOCIAL SERVICES


**August 16, 2006 - 9 a.m.** -- Open Meeting  
Alexandria Department of Social Services, 2525 Mount Vernon Avenue, Alexandria, Virginia. 

A regular meeting and also a meeting of the Poverty Committee following recess of the regular board meeting.


**Contact:** Pat Rengnerth, Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.

**August 17, 2006 - 9 a.m.** -- Open Meeting  
Alexandria Department of Social Services, 2525 Mount Vernon Avenue, Alexandria, Virginia. 


A regular meeting.

**Contact:** Pat Rengnerth, Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.


## DEPARTMENT OF SOCIAL SERVICES


**August 16, 2006 - 9 a.m.** -- Open Meeting  
Alexandria Department of Social Services, 2525 Mount Vernon Avenue, Alexandria, Virginia. 


A regular meeting and also a meeting of the Poverty Committee meeting following recess of the regular board meeting.

**Contact:** Pat Rengnerth, Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.

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† **September 7, 2006 - 6 p.m.** -- Public Hearing  
Fredericksburg Christian School, 9400 Thornton Rolling Road, Fredericksburg, Virginia. 


† **September 11, 2006 - 6 p.m.** -- Public Hearing  
Williamsburg Library Theatre, 515 Scotland Street, Williamsburg, Virginia. 

† **September 13, 2006 - 6 p.m.** -- Public Hearing  
Hidden Valley High School, 5000 Titan Trail, Roanoke, Virginia. 


**October 6, 2006** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled **22 VAC 40-71, Standards and Regulations for Licensed Assisted Living Facilities**. The purpose of the proposed action is to promulgate a comprehensive revision of the assisted living facility standards and replace an emergency regulation. The proposed action includes additional requirements for care and services to residents; staff qualifications, training and responsibilities; management of the facility, physical plant features; coordination with mental health systems; disclosure of information; and emergency preparedness.


Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

**Contact:** Judith McGreal, Program Development Consultant, Department of Social Services, 7 N. 8th St. Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, (800) 828-1120/TTY , e-mail judith.mcgreal@dss.virginia.gov.

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† **September 7, 2006 - 6 p.m.** -- Public Hearing  
Fredericksburg Christian School, 9400 Thornton Rolling Road, Fredericksburg, Virginia. 

† **September 11, 2006 - 6 p.m.** -- Public Hearing  
Williamsburg Library Theatre, 515 Scotland Street, Williamsburg, Virginia. 

† **September 13, 2006 - 6 p.m.** -- Public Hearing  
Hidden Valley High School, 5000 Titan Trail, Roanoke, Virginia. 

**October 6, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled **22 VAC 40-72, Standards for Licensed Assisted Living Facilities**. The purpose of the proposed action is to promulgate a comprehensive revision of the assisted living facility standards and replace an emergency regulation. The proposed action includes additional requirements for care and services to residents; staff qualifications, training and responsibilities; management of the facility, physical plant



features; coordination with mental health systems; disclosure of information; and emergency preparedness.

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

**Contact:** Judith McGreal, Program Development Consultant, Department of Social Services, 7 N. 8th St. Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, (800) 828-1120/TTY ☎, e-mail [judith.mcgreal@dss.virginia.gov](mailto:judith.mcgreal@dss.virginia.gov).

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† **September 7, 2006 - 6 p.m.** -- Public Hearing  
Fredericksburg Christian School, 9400 Thornton Rolling Road,  
Fredericksburg, Virginia. 📍

† **September 11, 2006 - 6 p.m.** -- Public Hearing  
Williamsburg Library Theatre, 515 Scotland Street,  
Williamsburg, Virginia. 📍

† **September 13, 2006 - 6 p.m.** -- Public Hearing  
Hidden Valley High School, 5000 Titan Trail, Roanoke,  
Virginia. 📍

**October 6, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled **22 VAC 40-80, General Procedures and Information for Licensure**. The purpose of the proposed action is to conform the regulation with legislative changes to the provisions for terms of license, administrative sanctions, and hearings procedures.

Public comment can also be submitted at the Department of Social Services website at <http://www.dss.state.va.us>. Persons wishing to speak at public hearings may begin registering at 5:30 p.m.

Statutory Authority: §§ 63.2-217 and 63.2-1732, 63.2-1733 and 63.2-1734 of the Code of Virginia.

**Contact:** Kathryn Thomas, Program Development Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, (800) 828-1120/TTY ☎, e-mail [kathryn.thomas@dss.virginia.gov](mailto:kathryn.thomas@dss.virginia.gov).

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**September 8, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled **22 VAC 40-330, Collection of Overpayments in the Refugee Other Assistance Program**. The purpose of the proposed action is to repeal the regulation as the regulation applies to a program that no longer exists under federal law.

Statutory Authority: § 63.2-217 of the Code of Virginia.

**Contact:** Penelope Boyd, Policy Coordinator, Virginia Refugee Resettlement Program, Department of Social

Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7127 or e-mail [penny.boyd@dss.virginia.gov](mailto:penny.boyd@dss.virginia.gov).

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**September 8, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled **22 VAC 40-340, Protective Payments in the Refugee Other Assistance Program**. The purpose of the proposed action is to repeal the regulation as the regulation applies to a program that no longer exists under federal law.

Statutory Authority: § 63.2-217 of the Code of Virginia.

**Contact:** Penelope Boyd, Policy Coordinator, Virginia Refugee Resettlement Program, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7127 or e-mail [penny.boyd@dss.virginia.gov](mailto:penny.boyd@dss.virginia.gov).

## BOARD OF SOCIAL WORK

**October 13, 2006 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
Fifth Floor, Richmond, Virginia. 📍

A regular business meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

## BOARD FOR SOIL SCIENTISTS AND WETLAND PROFESSIONALS

† **October 11, 2006 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 📍

A meeting of the Soil Scientists and Wetland Delineators Board to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [soilscientist@dpor.virginia.gov](mailto:soilscientist@dpor.virginia.gov).


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# Calendar of Events

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## DEPARTMENT OF TAXATION


### State Land Evaluation Advisory Council

**September 11, 2006 - 11 a.m.** -- Open Meeting  
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. 


A meeting to adopt suggested ranges of value for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

**Contact:** H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, e-mail keith.mawyer@tax.virginia.gov.


## VIRGINIA TOURISM AUTHORITY

**† August 10, 2006 - 9 a.m.** -- Open Meeting  
Alexandria Hilton, Old Town, 1767 King Street, Alexandria, Virginia. 

A meeting to discuss electronic marketing and budget issues.

**Contact:** Winston Evans, Executive Assistant, Virginia Tourism Authority, 901 E. Byrd St., Richmond, VA 23219, telephone (804) 545-5510, FAX (804) 545-5501, (800) 828-1120/TTY , e-mail wevans@virginia.org.

## TREASURY BOARD


**August 16, 2006 - 9 a.m.** -- Open Meeting  
**September 20, 2006 - 9 a.m.** -- Open Meeting  
**October 18, 2006 - 9 a.m.** -- Open Meeting  
101 North 14th Street, 3rd Floor, Richmond, Virginia. 

A regular meeting.

**Contact:** J. Braxton Powell, Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23218, telephone (225) 225-2142, FAX (225) 225-3187, e-mail braxton.powell@trs.virginia.gov.

## DEPARTMENT OF VETERANS SERVICES

### Board of Veterans Services

**† September 18, 2006 - 11:30 a.m.** -- Open Meeting  
Virginia War Memorial, 621 South Belvidere, Richmond, Virginia. 


Public comment limited to three minutes per speaker.


**Contact:** Rhonda Earman, Special Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0286, e-mail rhonda.earman@dvs.virginia.gov.

## BOARD OF VETERINARY MEDICINE


**† August 9, 2006 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Legislative/Regulatory Committee to conduct periodic regulatory review.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.


**† August 9, 2006 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A regular board meeting to discuss the Sanctions Reference Study update, receive a report from the Legislative/Regulatory Committee, conduct a formal hearing, and conduct general board business.


**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.

**† August 10, 2006 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

Informal conferences (disciplinary hearings). These are public meetings, but public comment will not be received.

**Contact:** Terri H. Behr, Administrative Specialist, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail terri.behr@dhp.virginia.gov


## VIRGINIA WASTE MANAGEMENT BOARD

**† August 22, 2006 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 


A meeting of the advisory committee assisting the department in the development of proposed amendments (Amendment No. 5) to the Solid Waste Management Regulations (9 VAC 20-80).

**Contact:** Allen Brockman, Virginia Waste Management Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4468, FAX (804) 698-4327, e-mail arbrockman@deq.virginia.gov.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**September 13, 2006 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov).


## INDEPENDENT

### VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

**August 17, 2006 - 10 a.m.** -- Open Meeting  
Location to be determined.  (Interpreter for the deaf provided upon request)


A meeting of the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council. Public comment is welcome and will be received at the beginning of the meeting. For those needing interpreter services or other accommodations, please contact Lisa Shehi no later than August 3, 2006.

**Contact:** Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov).


**September 13, 2006 - 10 a.m.** -- Open Meeting  
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Disabilities Advisory Council. This meeting is open to the public. Public comment is welcomed by the council and will be received beginning at 10 a.m. Public comment will also be accepted by telephone. For more information on participating in this conference call or to provide public comment via telephone, or arrange for interpreter services or accommodations call or e-mail Lisa Shehi.


**Contact:** Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804)

662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov).


### Board for Protection and Advocacy

**September 26, 2006 - 9 a.m.** -- Open Meeting  
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the Governing Board. Public comment is welcomed by the board and will be received beginning at 9 a.m. on July 20, 2006. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, call Lisa Shehi at 1-800-552-3962 (Voice/TTY) or e-mail [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov) no later than July 6, 2006. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. If interpreter services or other accommodations are required, please contact Ms. Shehi, no later than July 6, 2006.

**Contact:** Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov).

### VIRGINIA RETIREMENT SYSTEM

**September 12, 2006 - 9 a.m.** -- Open Meeting  
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. 


A regular meeting of the Optional Retirement Plan for Higher Education Committee. No public comment will be received at the meeting.


**Contact:** Patty Atkins-Smith, Legislative Liaison and Policy Analyst, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3123, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail [psmith@varetire.org](mailto:psmith@varetire.org).

**September 13, 2006 - 1:30 p.m.** -- Open Meeting  
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia.

Meetings of the following committees:

- 1:30 p.m. - Benefits and Actuarial
- 3 p.m. - Audit and Compliance

**Contact:** LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail [lking@varetire.org](mailto:lking@varetire.org).

**September 14, 2006 - 9 a.m.** -- Open Meeting  
Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. 

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

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# Calendar of Events

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**Contact:** Linda Ritchey, Executive Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6673, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lritchey@varetire.org.

**September 14, 2006 - 1 p.m.** -- Open Meeting

**October 12, 2006 - 1 p.m.** -- Open Meeting

Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

**Contact:** LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

**October 11, 2006 - 1:30 p.m.** -- Open Meeting

Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. ♿

A meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

**Contact:** LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

## LEGISLATIVE

### JOINT COMMISSION ON ADMINISTRATIVE RULES

**August 9, 2006 - 10 a.m.** -- Open Meeting

**October 4, 2006 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, contact Elizabeth Palen, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

**Contact:** Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

### HOUSE APPROPRIATIONS

† **August 28, 2006 - 9:30 a.m.** -- Open Meeting

† **September 18, 2006 - 9:30 a.m.** -- Open Meeting

† **October 16, 2006 - 9:30 a.m.** -- Open Meeting

† **November 13, 2006 - TBA** - Open Meeting

† **November 14, 2006 - TBA** - Open Meeting

General Assembly Building, 9th and Broad Streets, 9th Floor, Richmond, Virginia. ♿

A regular meeting.

**Contact:** Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

### VIRGINIA CODE COMMISSION

**August 23, 2006 - 10 a.m.** -- Open Meeting

**October 18, 2006 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

**September 20, 2006 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, 6th Floor, Senate Leadership Room, Richmond, Virginia. ♿

A regularly scheduled meeting.

**Contact:** Jane D. Chaffin, Registrar of Regulations, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-359, FAX (804) 692-0624, e-mail jchaffin@leg.state.va.us.

### VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

† **August 9, 2006 - 10 a.m.** -- Open Meeting

General Assembly Building, General Assembly Building, 9th and Broad Streets, 2nd Floor, Richmond, Virginia. ♿

This will be the first meeting of the Electronic Meetings Subcommittee in 2006.

**Contact:** Maria J. K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-8705, toll-free (866) 448-4100, e-mail foiaacouncil@leg.state.va.us.

† **August 9, 2006 - 1 p.m.** -- Open Meeting

General Assembly Building, General Assembly Building, 9th and Broad Streets, 2nd Floor, Richmond, Virginia. ♿

This will be the first meeting of the PPEA/PPTA Subcommittee in 2006.

**Contact:** Maria J. K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-8705, toll-free (866) 448-4100, e-mail foiaacouncil@leg.state.va.us.

**JOINT SUBCOMMITTEE STUDYING LONG-TERM FUNDING FOR THE PURCHASE OF DEVELOPMENT RIGHTS TO PRESERVE OPEN-SPACE AND FARMLANDS**

† **August 23, 2006 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ☎

A regular meeting. For questions regarding the meeting agenda contact Mark Vucci, Division of Legislative Services, (804) 786-3591.

**Contact:** Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

**JOINT COMMISSION ON TECHNOLOGY AND SCIENCE**

† **August 9, 2006 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Leadership Conference Room, 6th Floor, Richmond, Virginia. ☎

A meeting of JCOTS Advisory Committee on Electronic Balloting.

**Contact:** Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

† **September 19, 2006 - 10:30 a.m.** -- Open Meeting  
Insurance Institute for Highway Safety, Vehicle Research Center, 988 Dairy Road, Ruckersville, Virginia.

A meeting of JCOTS Advisory Committee on Traffic Safety and Technology.

**Contact:** Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail pcushing@leg.state.va.us.

**VIRGINIA COMMISSION ON YOUTH**

† **August 24, 2006 - 11 a.m.** -- Public Hearing  
Roanoke City Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to receive public comment on the establishment of an office of the Children's Services Ombudsman in Virginia. To access the hearing notice, visit the commission's website, email mjackson@leg.state.va.us, or call 804-371-2481.

**Contact:** Marilyn Jackson, Policy Analyst, Virginia Commission on Youth, General Assembly Building, 910 Capitol St., 517B, Richmond, VA 23219, telephone (804) 371-2481, e-mail mjackson@leg.state.va.us.

**CHRONOLOGICAL LIST**

**OPEN MEETINGS**

**August 7**

Alcoholic Beverage Control Board  
Barbers and Cosmetology, Board for

**August 8**

† Conservation and Recreation, Department of  
Contractors, Board for  
† Elections, State Board of  
Forensic Science, Department of  
Motor Vehicles, Department of  
- Motorcycle Advisory Council  
Resources Authority, Virginia

**August 9**

Administrative Rules, Joint Commission on  
Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Conservation and Recreation, Department of  
Forensic Science Board  
† Freedom of Information Advisory Council, Virginia  
Health, Department of  
- Sewage Handling and Disposal Appeal Review Board  
† Jamestown-Yorktown Foundation  
Medicine, Board of  
† Technology and Science, Joint Commission on  
† Veterinary Medicine, Board of

**August 10**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Conservation and Recreation, Department of  
† Contractors, Board for  
Environmental Quality, Department of  
† Tourism Authority, Virginia  
† Veterinary Medicine, Board of

**August 11**

Agriculture and Consumer Services, Department of  
† Fire Services Board, Virginia  
Health, Department of  
Medicine, Board of

**August 12**

† Fire Services Board, Virginia

**August 14**

Rehabilitative Services, Department of

**August 15**

Chesapeake Bay Local Assistance Board  
† Contractors, Board for  
Indians, Virginia Council on  
Medicine, Board of

**August 16**

Agriculture and Consumer Services, Department of  
- Virginia Soybean Board  
Asbestos, Lead, and Home Inspectors, Virginia Board for  
† Auctioneers Board  
Compensation Board  
† Conservation and Recreation, Department of  
† Economic Development Partnership, Virginia  
† Environmental Quality, Department of  
Medical Assistance Services, Department of

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# Calendar of Events

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- † Small Business Financing Authority, Virginia  
Social Services, State Board of  
Treasury Board
- August 17**  
† Asbestos, Lead, and Home Inspectors, Virginia Board for  
Audiology and Speech-Language Pathology, Board of  
† Contractors, Board for  
Design-Build/Construction Management Review Board  
Medical Assistance Services, Department of  
† Mines, Minerals and Energy, Department of  
- Board of Coal Mining Examiners  
Protection and Advocacy, Virginia Office for  
† Real Estate Board  
Social Services, State Board of
- August 18**  
† Agriculture and Consumer Services, Department of  
- Virginia Wine Board  
Dentistry, Board of  
Hearing Aid Specialists, Board for  
Opticians, Board for  
Physical Therapy, Board of  
† Real Estate Board
- August 20**  
† Medicine, Board of
- August 21**  
Alcoholic Beverage Control Board  
† Conservation and Recreation, Department of
- August 22**  
† Contractors, Board for  
Marine Resources Commission  
† Waste Management Board, Virginia
- August 23**  
† Aviation Board, Virginia  
Code Commission, Virginia  
Health, Department of  
† Long-Term Funding for the Purchase of Development  
Rights to Preserve Open-Space and Farmlands, Joint  
Subcommittee Studying  
Nursing and Medicine, Joint Boards of
- August 24**  
Agriculture and Consumer Services, Board of  
† Aviation Board, Virginia  
† Medicine, Board of  
† Youth, Virginia Commission on
- August 25**  
† Aviation Board, Virginia
- August 28**  
† Agricultural Council, Virginia  
† Appropriations, House
- August 29**  
† Conservation and Recreation, Department of  
† Health Professions, Board of  
Real Estate Appraiser Board
- August 31**  
Conservation and Recreation, Department of
- September 1**  
Art and Architectural Review Board
- September 5**  
Alcoholic Beverage Control Board
- September 6**  
† Conservation and Recreation, Department of  
Jamestown-Yorktown Foundation
- September 7**  
Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Medicine, Board of
- September 8**  
Dentistry, Board of  
Health, Department of
- September 9**  
Health, Department of
- September 11**  
Taxation, Department of  
- State Land Evaluation Advisory Council
- September 12**  
Charitable Gaming Board  
Child Fatality Review Team, State  
† Higher Education for Virginia, State Council of  
† Local Government, Commission on  
Medical Assistance Services, Board of  
† Museum of Fine Arts, Virginia  
Retirement System, Virginia
- September 13**  
Health, Department of  
Information Technologies Agency, Virginia  
- E911 Wireless Service Board  
Juvenile Justice, State Board of  
Milk Commission, State  
Protection and Advocacy, Virginia Office for  
- Disabilities Advisory Council  
Real Estate Board  
Retirement System, Virginia  
Waterworks and Wastewater Works Operators, Board for
- September 14**  
Conservation and Recreation, Department of  
Dentistry, Board of  
Health, Department of  
Real Estate Board  
Retirement System, Virginia
- September 15**  
Contractors, Board for  
Dentistry, Board of
- September 16**  
† Blind and Vision Impaired, Department for the
- September 18**  
Alcoholic Beverage Control Board  
† Appropriations, House  
Library Board  
Nursing, Board of  
† Veterans Services, Department of  
- Board of Veterans Services
- September 19**  
Corrections, Board of  
Environmental Quality, Department of  
† Medicine, Board of  
Nursing, Board of  
Research and Technology Advisory Commission, Virginia  
† Technology and Science, Joint Commission on
- September 20**  
Code Commission, Virginia  
Corrections, Board of  
† Museum of Fine Arts, Virginia  
Nursing, Board of

Outdoors Foundation, Virginia  
Treasury Board

**September 21**

Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
Design-Build/Construction Management Review Board  
Human Resources, Virginia Council on  
Labor and Industry, Department of  
- Virginia Apprenticeship Council  
† Museum of Fine Arts, Virginia  
Nursing, Board of  
Outdoors Foundation, Virginia  
Polygraph Examiners Advisory Board

**September 22**

Agriculture and Consumer Services, Department of  
- Virginia Horse Industry Board  
Health, Department of  
† Local Government, Commission on  
Medicine, Board of

**September 26**

† Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
Chesapeake Bay Local Assistance Board  
Contractors, Board for  
Marine Resources Commission  
Protection and Advocacy, Virginia Office for  
- Board for Protection and Advocacy

**September 27**

Education, Board of  
Health, Department of  
Pharmacy, Board of

**September 28**

Public Guardian and Conservator Advisory Board, Virginia

**September 29**

Dentistry, Board of

**October 2**

Alcoholic Beverage Control Board

**October 3**

† Conservation and Recreation, Department of  
Health, Department of  
Medicine, Board of  
- Advisory Board on Occupational Therapy  
- Advisory Board on Respiratory Care  
† Museum of Fine Arts, Virginia

**October 4**

Administrative Rules, Joint Commission on  
Medicine, Board of  
- Advisory Board on Acupuncture  
- Advisory Board on Radiologic Technology

**October 5**

Auctioneers Board  
Medicine, Board of  
- Advisory Board on Athletic Training  
- Advisory Board on Physician Assistants

**October 6**

Art and Architectural Review Board  
Medicine, Board of  
- Advisory Board on Midwifery

**October 10**

Psychology, Board of

**October 11**

† Conservation and Recreation, Department of

† Natural Resources, Foundation for Virginia's  
Retirement System, Virginia  
Soil Scientists and Wetland Professionals, Board for  
Professional

**October 12**

Conservation and Recreation, Department of  
Retirement System, Virginia

**October 13**

Dentistry, Board of  
Social Work, Board of

**October 16**

Alcoholic Beverage Control Board  
† Appropriations, House

**October 17**

Cemetery Board

**October 18**

Code Commission, Virginia  
Geology, Board for  
Medical Assistance Services, Department of  
Nursing, Board of  
- Joint Boards of Nursing and Medicine  
Treasury Board

**October 19**

Design-Build/Construction Management Review Board  
Jamestown-Yorktown Steering Committee  
Medicine, Board of

**October 23**

† Medical Assistance Services, Department of

**October 24**

Contractors, Board for

**October 25**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Education, Board of

**October 26**

† Polygraph Examiners Advisory Board

**October 27**

† Dentistry, Board of

**October 30**

† Long-Term Care Administrators, Board for

**October 31**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Chesapeake Bay Local Assistance Board

**November 1**

† Asbestos, Lead, and Home Inspectors, Board for  
† Branch Pilots, Board for

**November 2**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for

**November 3**

† Art and Architectural Review Board

**November 6**

† Alcoholic Beverage Control Board  
† Barbers and Cosmetology, Board for

**November 7**

† Museum of Fine Arts, Virginia  
† Real Estate Appraiser Board

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# Calendar of Events

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**November 13**

† Appropriations, House

**November 14**

† Appropriations, House

## PUBLIC HEARINGS

**August 11**

Medicine, Board of

**August 16**

† Environmental Quality, Department of

**August 22**

Mental Health, Mental Retardation and Substance Abuse Services, Department of

**August 23**

† Environmental Quality, Department of

**August 24**

Air Pollution Control Board, State

**August 29**

Agriculture and Consumer Services, Board of

**August 30**

† Motor Vehicles, Department of

**August 31**

† Motor Vehicles, Department of

**September 7**

† Social Services, State Board of

**September 11**

† Social Services, State Board of

**September 12**

Long-Term Care Administrators, Board of

† Motor Vehicles, Department of

**September 13**

Criminal Justice Services, Department of

† Housing and Community Development, Department of

† Social Services, State Board of

**September 14**

† Motor Vehicles, Department of

**September 19**

† Motor Vehicles, Department of

† Nursing, Board of

**September 21**

† Motor Vehicles, Department of

† Polygraph Examiners Advisory Board

**September 27**

Education, Board of