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Virginia Register of Regulations

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THE VIRGINIA REGISTER OF REGULATIONS (USPS-001831) is published biweekly, with quarterly cumulative indices published in January, April, July and October, for $168.00 per year by LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204.

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

June 2008 through March 2009

Volume: Issue	Material Submitted By Noon*	Will Be Published On
INDEX 3 Volume 24		**July 2008**
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
FINAL INDEX Volume 24		**October 2008**
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 **(Tuesday)**	December 8, 2008
INDEX 1 Volume 25		**October 2008**
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 **(Tuesday)**	January 5, 2009
25:10	December 30, 2008 **(Tuesday)**	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
INDEX 2 Volume 25		**April 2009**
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009

*Filing deadlines are Wednesdays unless otherwise specified.

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through Virginia Register Volume 24 Issue 10, dated January 21, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
Title 3. Alcoholic Beverages			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
Title 4. Conservation and Natural Resources			
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08
Title 5. Corporations			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
Title 6. Criminal Justice and Corrections			
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
Title 9. Environment			
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	24:18 VA.R. 2540	6/11/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
Title 11. Gaming			
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08

* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
Title 12. Health			
12 VAC 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08

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12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08

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12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670 through 12 VAC 5-481-3780	Repealed	24:18 VA.R. 2689-2715	6/12/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-120-70	Amended	24:13 VA.R. 1791	7/1/08
12 VAC 30-120-90	Amended	24:13 VA.R. 1793	7/1/08
12 VAC 30-120-140	Amended	24:13 VA.R. 1794	7/1/08
12 VAC 30-120-211	Amended	24:13 VA.R. 1797	7/1/08
12 VAC 30-120-213	Amended	24:13 VA.R. 1800	7/1/08
12 VAC 30-120-225	Amended	24:13 VA.R. 1802	7/1/08
12 VAC 30-120-229	Amended	24:13 VA.R. 1804	7/1/08
12 VAC 30-120-237	Amended	24:13 VA.R. 1805	7/1/08
12 VAC 30-120-247	Amended	24:13 VA.R. 1807	7/1/08
12 VAC 30-120-700	Amended	24:13 VA.R. 1808	7/1/08
12 VAC 30-120-710	Amended	24:13 VA.R. 1812	7/1/08
12 VAC 30-120-754	Amended	24:13 VA.R. 1813	7/1/08
12 VAC 30-120-758	Amended	24:13 VA.R. 1815	7/1/08
12 VAC 30-120-762	Amended	24:13 VA.R. 1815	7/1/08

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12 VAC 30-120-770	Amended	24:13 VA.R. 1816	7/1/08
12 VAC 30-120-900	Amended	24:13 VA.R. 1818	7/1/08
12 VAC 30-120-910	Amended	24:13 VA.R. 1820	7/1/08
12 VAC 30-120-920	Amended	24:13 VA.R. 1821	7/1/08
12 VAC 30-120-970	Amended	24:13 VA.R. 1823	7/1/08
12 VAC 30-120-1500	Amended	24:13 VA.R. 1825	7/1/08
12 VAC 30-120-1510	Amended	24:13 VA.R. 1827	7/1/08
12 VAC 30-120-1550	Amended	24:13 VA.R. 1828	7/1/08
12 VAC 30-120-1560	Added	24:13 VA.R. 1830	7/1/08
12 VAC 30-120-2000	Added	24:13 VA.R. 1832	7/1/08
12 VAC 30-120-2010	Added	24:13 VA.R. 1833	7/1/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
Title 13. Housing			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08

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13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
Title 14. Insurance			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
Title 16. Labor and Employment			
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
Title 18. Professional and Occupational Licensing			
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
Title 19. Public Safety			
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
Title 22. Social Services			
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
Title 24. Transportation and Motor Vehicles			
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--

PETITIONS FOR RULEMAKING

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Initial Agency Notice

Title of Regulation: **8VAC20-370. Rules Governing Fees and Charges.**

Statutory Authority: §§22.1-6 and 22.1-16 of the Code of Virginia.

Name of Petitioner: JustChildren.

Nature of Petitioner's Request: The petitioner requests that the Virginia Board of Education review and revise the current Regulations Governing Fees and Charges (8VAC20-370-10) in order to ensure clarity in the implementation of the provisions of this regulation.

Agency's Plan for Disposition of Request: The agency has received the petitioner's request and has announced a 21-day comment period, which will be published in the Register.

Comments may be submitted until July 14, 2008.

Agency Contact: Margaret N. Roberts, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

VA.R. Doc. No. R08-17; Filed May 29, 2008, 1:00 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Agency Decision

Title of Regulation: **18VAC90-50. Regulations Governing Certification of Massage Therapists.**

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

Name of Petitioner: JoAnn Agnone.

Nature of Petitioner's Request: To amend regulations to eliminate or reduce the mandated continuing education for massage therapists.

Agency's Decision: Request denied.

Statement of Reasons for Decision: The board determined that a requirement for continuing education or current certification by the national credentialing body in massage therapy is necessary to protect the public, but it has proposed to reduce the number of hours required from 25 to 24 per biennium.

Agency Contact: Jay P. Douglas, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4623, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R08-09; Filed May 22, 2008, 9:24 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Initial Agency Notice

Title of Regulation: **18VAC95-30. Rules Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Stuart Lovelace.

Nature of Petitioner's Request: To eliminate the requirement for a national examination for licensure of assisted living facility administrators and replace it with a state examination.

Agency's Plan for Disposition of Request: The request will be distributed to interested parties on the public participation list for the board and published in the Virginia Register on June 23, 2008. The board will consider the request and any comment received at its next meeting, which is scheduled for October 28, 2008.

Comments may be submitted until July 23, 2008.

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

VA.R. Doc. No. R08-16; Filed May 29, 2008, 10:17 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-20, Fees for Permits and Certificates; 9VAC25-31, Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation** and **9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation.** On September 25, 2007, the State Water Control Board voted to amend the Virginia Pollution Abatement Permit Regulation (9VAC25-32), the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31), the Fees for Permits and Certificates regulation (9VAC25-20), and the Sewage Collection and Treatment Regulations (9VAC25-790), where applicable, to reflect changes to §62.1-44.19:3 of the Code of Virginia. The changes to the code and these related amendments transferred oversight of the regulatory program pertaining to biosolids (treated sewage sludge) from the Virginia Department of Health to the Virginia Department of Environmental Quality as a final exempt regulatory action. The final exempt process did not allow substantive changes to be made to the regulation apart from those specifically outlined in the statutory mandate. As a result, several issues regarding inconsistency between biosolids land application requirements in the Virginia Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31) still exist. The amendments will address three regulatory actions initiated by the Board of Health pertaining to field storage of biosolids, permit fees, and site access control. In order to include consideration of the fee structure for biosolids land application permits, the Fees for Permits and Certificates regulation (9VAC25-20) is also included in this intended regulatory action. The board will also consider (i) issues pertaining to public notice processes, processes to establish appropriate buffers to address health concerns, permit modification procedures, sampling requirements, nutrient management requirements, animal health issues associated with grazing, financial assurance procedures, changes to permitting procedures to reduce administrative burden while securing adequate requirements for public notice, site-specific nutrient management and health; and (ii) input from the Biosolids Expert Panel.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 31, 2008.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email wknorris@deq.virginia.gov.

VA.R. Doc. No. R08-1248; Filed June 4, 2008, 10:20 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Veterinary Medicine has WITHDRAWN the Notice of Intended Regulatory for 18VAC150-20, Regulations Governing the Practice of Veterinary Medicine, that was published in 24:14 VA.R. 1888 March 17, 2008. The board is withdrawing the notice because legislation passed by the 2008 General Assembly has resolved most of the issues addressed.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4688, FAX (804) 527-4475, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R08-1217; Filed May 22, 2008, 2:16 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

MOTOR VEHICLE DEALER BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Motor Vehicle Dealer Board intends to consider promulgating the following regulations: **24VAC22-40, Motor Vehicle Dealer Operator Training Regulations.** The purpose of the proposed action is to establish regulations for mandatory, continuing education for independent (used) motor vehicle dealers.

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

Statutory Authority: §46.2-1506.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 5, 2008.

Agency Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104,

Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, or email bruce.gould@mvdb.virginia.gov.

VA.R. Doc. No. R08-1219; Filed June 4, 2008, 11:43 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with §2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: **4VAC20-140. Pertaining to the Identification and Location of Fish Pots (amending 4VAC20-140-10, 4VAC20-140-20; adding 4VAC20-140-25).**

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

Effective Date: March 17, 2009.

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

Summary:

The amendments: (i) require all hard crab pot fishermen to use their MRC ID number preceded by the letter "C" on each buoy or stake attached to each pot; (ii) require all peeler pot fishermen to use their MRC ID number preceded by the letter "P" on each buoy or stake attached to each peeler pot; (iii) make it illegal for any fisherman to place any additional numbers or letters on any crab pot or peeler pot buoy or stake; and (iv) allow fishermen legally licensed to crab pot or peeler pot in North Carolina or the Potomac River to also display identification required by those jurisdictions.

CHAPTER 140
PERTAINING TO ~~THE~~ IDENTIFICATION OF CRAB POTS, PEELER POTS AND ~~LOCATION OF~~ FISH POTS

4VAC20-140-10. Purpose.

The purpose of this chapter is to ~~lessen gear conflicts and to aid in enforcement of the requirement to keep gear out of marked navigable channels by requiring all fish pots to be appropriately identified~~ describe the lawful methods an individual shall use to identify his licensed crab pots, peeler pots or fish pots.

4VAC20-140-20. Identification of fish pots.

Any person owning or using a fish pot, for which a license is prescribed by law, shall display and maintain his ~~or its~~ current identification number, assigned by the Marine Resources Commission, on each floating buoy or stake attached to each such fish pot, in a legible and visible manner.

4VAC20-140-25. Identification of crab pots and peeler pots.

A. Any person placing, setting, or fishing crab pots in Virginia waters, for which a commercial license is prescribed by law, shall display his Marine Resources Commission identification number, preceded by the letter "C," on each floating buoy or stake attached to each such crab pot, in a legible and visible manner.

B. Any person placing, setting, or fishing peeler pots in Virginia waters, for which a commercial license is prescribed by law, shall display his Marine Resources Commission identification number, preceded by the letter "P," on each floating buoy or stake attached to each such peeler pot, in a legible and visible manner.

C. Except as provided in subsection D of this section, it shall be unlawful for any person to place numbers or letters on any crab pot or peeler pot buoy or stake that is in addition to the identification requirement described in subsection A or B of this section.

D. Any person who is legally licensed to crab pot or peeler pot in North Carolina or the Potomac River may also display identification required by those jurisdictions on the buoys or stakes attached to those crab pots or peeler pots while placing, setting or fishing those crab pots or peeler pots in Virginia waters.

VA.R. Doc. No. R08-1342; Filed May 30, 2008, 11:21 a.m.

Final Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-10, 4VAC20-270-50).**

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

Effective Date: June 1, 2008.

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

Summary:

The amendment establishes hard crab pot limits for crab pot category limits, up to 85 crab pots, up to 127 crab pots, up to 170 crab pots, up to 255 crab pots, and up to 425 for the 2008 crab pot season.

4VAC20-270-10. Purpose.

The purpose of this chapter is to allow for the conservation ~~of crabs~~ and rebuilding of the crab resource and to improve the enforceability of other laws pertaining to crabbing.

4VAC20-270-50. Peeler crab pot and crab pot limits.

A. It shall be unlawful for any person to place, set or fish or attempt to place, set or fish more than 210 peeler crab pots in Virginia tidal waters.

B. The lawful crab pot license categories and crab pot limits for the 2008 crab pot season are as follows:

1. Up to 85 crab pots.

2. Up to 127 crab pots.

3. Up to 170 crab pots.

4. Up to 255 crab pots.

5. Up to 425 crab pots.

C. The lawful crab pot license categories and crab pot limits for the 2009 crab pot season are as follows:

1. Up to 70 crab pots.

2. Up to 105 crab pots.

3. Up to 140 crab pots.

4. Up to 210 crab pots.

5. Up to 350 crab pots.

~~C.~~ D. It shall be unlawful for any person to knowingly place, set or fish any amount of crab pots that exceeds that person's crab pot limit, as described in ~~subsection~~ subsections B and C of this section.

VA.R. Doc. No. R08-1312; Filed May 30, 2008, 11:18 a.m.

Final Regulation

Title of Regulation: **4VAC20-450. Pertaining to the Taking of Bluefish (amending 4VAC20-450-30).**

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

Effective Date: June 1, 2008.

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

Summary:

The amendment establishes the 2008 commercial bluefish quota as 1,048,366 pounds.

4VAC20-450-30. Commercial landings quota.

A. During the period of January 1 through December 31, commercial landings of bluefish shall be limited to ~~1,018,660~~ 1,048,366 pounds.

B. When it is projected that 95% of the commercial landings quota has been realized, a notice will be posted to close commercial harvest and landings from the bluefish fishery within five days of posting.

C. It shall be unlawful for any person to harvest or land bluefish for commercial purposes after the closure date set forth in the notice described in subsection B of this section.

VA.R. Doc. No. R08-1324; Filed May 30, 2008, 11:22 a.m.

Final Regulation

Title of Regulation: **4VAC20-700. Pertaining to Crab Pots (amending 4VAC20-700-20; adding 4VAC20-700-15).**

Statutory Authority: §§28.2-201 and 28.2-210 of the Code of Virginia.

Effective Date: June 1, 2008.

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

Summary:

The amendments establish that all crab pots in any area shall contain four unobstructed cull rings, one 2-5/16-inch ring and one 2-3/16-inch ring, which shall be located one each in opposite exterior side panels of the upper chamber of the pot; and two 2-3/8-inch rings, which shall be located on each opposite exterior side panels of the upper chamber of the pot, except that in Virginia's seaside area, only two unobstructed cull rings (one cull ring as 2-3/16", another as 2-5/16", inside diameter) shall be required.

4VAC20-700-15. Definitions.

"Mainstem Chesapeake Bay" means all tidal waters westward of the shoreward boundary of Virginia's portion of the federal territorial sea, exclusive of the tributaries of the Chesapeake Bay and Potomac River.

"Seaside area" means any Virginia tidal waters on the ocean side of Accomack and Northampton counties, including any bays, inlets or other waters that have an open connection to ocean waters.

"Tributaries of the mainstem Chesapeake Bay" means those waters outside of the mainstem of the Chesapeake Bay but westward of the shoreward boundary of Virginia's portion of the federal territorial sea.

4VAC20-700-20. Cull ring requirements.

A. ~~It~~ Effective July 1, 2008, it shall be unlawful for any person to place, set or fish any crab pot, in Virginia's ~~tidal waters~~ seaside area, that does not contain at least two unobstructed cull rings of size and location within the pot, as described in this subsection, except as provided in ~~subsection~~ subsections B and C of this section. One cull ring shall be at least 2-5/16 inches inside diameter, and the other cull ring shall be at least 2-3/16 inches inside diameter. These cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot.

B. Effective July 1, 2008, it shall be unlawful for any person to place, set or fish any crab pot, in any Virginia waters, except as described in subsection A of this section, that does not contain at least four unobstructed cull rings of size and location within the pot, as described in this subsection. Two cull rings shall be at least 2-3/8 inches inside diameter. These cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot. A third cull ring shall be at least 2-5/16 inches inside diameter, and the fourth cull ring shall be at least 2-3/16 inches inside diameter. The 2-5/16 inch and 2-3/16 inch cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot.

~~B.~~ C. Peeler pots with a mesh size less than 1-1/2 inches shall be exempt from the cull ring requirement.

VA.R. Doc. No. R08-1320; Filed May 30, 2008, 11:27 a.m.

Final Regulation

Title of Regulation: **4VAC20-880. Pertaining to Hard Crab Pot Limits (amending 4VAC20-880-10, 4VAC20-880-30).**

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

Effective Date: June 1, 2008.

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

Summary:

The amendments (i) establish that between May 1, 2008, through November 30, 2008, it shall be unlawful to place, set or fish more than 255 hard crab pots in the tributaries of the mainstem Chesapeake Bay; (ii) establish that between May 1, 2008, through November 30, 2008, it is unlawful to fish more than 425 hard crab pots in the mainstem Chesapeake Bay or coastal area; and (iii) make it unlawful, from May 1, 2008, through November 30, 2008, to place, set or fish more than 425 pots in Virginia tidal waters.

4VAC20-880-10. Purpose.

The purpose of this chapter is to protect and conserve the blue crab resource by controlling fishing effort by establishing additional limits on the number of crab pots that can be set or fished.

4VAC20-880-30. Hard crab pot limits.

A. ~~It~~ From May 1, 2008, through November 30, 2008, it shall be unlawful for any person to place, set or fish more than ~~300~~ 255 hard crab pots in the tributaries of the mainstem Chesapeake Bay. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 210 hard crab pots in the tributaries of the mainstem Chesapeake Bay or the Potomac River tributaries.

B. ~~It~~ From May 1, 2008, through November 30, 2008, it shall be unlawful for any person to place, set or fish more than ~~500~~ 425 hard crab pots in the mainstem Chesapeake Bay and coastal area. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 350 hard crab pots in the mainstem Chesapeake Bay or coastal area.

C. ~~It~~ From May 1, 2008, through November 30, 2008, it shall be unlawful for any person to place, set or fish more than a combined total of ~~500~~ 425 hard crab pots in Virginia tidal waters. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 350 hard crab pots in Virginia tidal waters.

D. It shall be unlawful for any person to take or catch hard crabs or peeler crabs using any type of pot other than a licensed hard crab pot or peeler pot except as provided in §28.2-226 of the Code of Virginia.

VA.R. Doc. No. R08-1314; Filed May 30, 2008, 11:24 a.m.

Final Regulation

Title of Regulation: **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

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

Effective Date: June 1, 2008.

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

Summary:

The amendments establish crab hard pot categories and their limits for May 1, 2008, through November 30, 2008.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year.

1. COMMERCIAL LICENSES.	
Commercial Fisherman Registration License	$190.00
Commercial Fisherman Registration License for a person 70 years or older	$90.00
Delayed Entry Registration.	$190.00
Delayed Entry Registration License for a person 70 years or older	$90.00
Seafood Landing License for each boat or vessel	$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	$83.00
Seafood Buyer's License -- For each boat or motor vehicle	$63.00
Seafood Buyer's License -- For each place of business	$126.00
Clam Aquaculture Product Owner's Permit	$10.00
Oyster Aquaculture Product Owner's Permit	$10.00
Clam Aquaculture Harvester's Permit	$5.00
Oyster Aquaculture Harvester's Permit	$5.00
Nonresident Harvester's License	$444.00
OYSTER HARVESTING AND SHUCKING LICENSES	
For each person taking oysters by hand, or with ordinary tongs	$10.00
For each single-rigged patent tong boat taking oysters	$35.00
For each double-rigged patent tong boat taking oysters	$70.00
Oyster Dredge Public Ground	$50.00
Oyster Hand Scrape	$50.00
To shuck and pack oysters, for any number of gallons under 1,000	$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	$290.00
To shuck and pack oysters, for 200,000 gallons or over	$456.00
BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	$13.00
For ordinary trotlines	$13.00
For patent trotlines	$51.00
For each single-rigged crab-scrape boat	$26.00
For each double-rigged crab-scrape boat	$53.00
~~For up to 100 crab pots~~	~~$48.00~~
~~For over 100 but not more than 150 crab pots~~	~~$79.00~~
~~For over 150 but not more than 200 crab pots~~	~~$79.00~~
~~For over 200 but not more than 300 crab pots~~	~~$79.00~~
~~For over 300 but not more than 500 crab pots~~	~~$127.00~~
For up to ~~300~~ 210 peeler pots	$36.00
For up to 20 tanks and floats for shedding crabs	$9.00
For more than 20 tanks or floats for shedding crabs	$19.00
For each crab trap or crab pound	$8.00
CRAB POT LICENSES	
a. From May 1, 2008, through November 30, 2008, the following crab pot licenses and fees shall be in effect:	
For up to 85 crab pots	$48.00
For over 85 but not more than 127 crab pots	$79.00
For over 127 but not more than 170 crab pots	$79.00
For over 170 but not more than 255 crab pots	$79.00
For over 255 but not more than 425 crab pots	$127.00
b. After November 30, 2008, the following crab pot licenses and fees shall be in effect:	
For up to 70 crab pots	$48.00
For over 70 but not more than 105 crab pots	$79.00
For over 105 but not more than 140 crab pots	$79.00
For over 140 but not more than 210 crab pots	$79.00
For over 210 but not more than 350 crab pots	$127.00
~~For up to 210 peeler pots~~	~~$36.00~~

HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	$166.00
CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	$24.00
For each single-rigged patent tong boat taking clams	$58.00
For each double-rigged patent tong boat taking clams	$84.00
For each boat using clam dredge (hand)	$19.00
For each boat using clam dredge (power)	$44.00
For each boat using hydraulic dredge to catch soft shell clams	$83.00
For each person taking surf clams	$124.00
CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	$58.00
For each person taking channeled whelk by conch pot	$51.00
FINFISH HARVESTING LICENSES	
Each pound net	$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	$24.00
All other gill nets up to 600 feet	$16.00
All other gill nets over 600 feet and up to 1,200 feet	$24.00
Each person using a cast net or throw net or similar device	$13.00
Each fyke net head, weir, or similar device	$13.00
For fish trotlines	$19.00
Each person using or operating a fish dip net	$9.00
On each haul seine used for catching fish, under 500 yards in length	$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	$146.00
For each person using commercial hook and line	$31.00
For each person using commercial hook and line for catching striped bass only	$31.00
On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than $249	$4.00
On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the maximum license fee for such vessels shall not be more than $996	$8.00
For up to 100 fish pots or eel pots	$19.00
For over 100 but not more than 300 fish pots or eel pots	$24.00
For over 300 fish pots or eel pots	$62.00
2. COMMERCIAL GEAR FOR RECREATIONAL USE.	
Crab trotline (300 feet maximum)	$10.00
One crab trap or crab pound	$6.00
One gill net up to 300 feet in length	$9.00
Fish dip net	$7.00
Fish cast net	$10.00
Up to two eel pots	$10.00
3. SALTWATER RECREATIONAL FISHING LICENSE.	
Individual License	$12.50
Temporary 10-Day License	$5.00
Recreational boat	$38.00
Head Boat/Charter Boat, six or less passengers	$190.00
Head Boat/Charter Boat, more than six passengers plus $5.00 per person over six	$190.00
Rental Boat, per boat, with maximum fee of $635	$9.00
Commercial Fishing Pier (Optional)	$571.00
Disabled Resident Lifetime Saltwater License	$5.00
Reissuance of Saltwater Recreational Boat License	$5.00
Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season	
Residents	$24.50
Nonresidents	$42.50
Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days	
Residents	$10.50
Nonresidents	$15.50
Individual Lifetime License	$250.00

Individual Lifetime License age 45 - 50	$120.00
Individual Lifetime License age 51 - 55	$90.00
Individual Lifetime License age 56 - 60	$60.00
Individual Lifetime License age 61 - 64	$30.00

VA.R. Doc. No. R08-1315; Filed May 30, 2008, 11:25 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: **8VAC20-40. Regulations Governing Educational Services for Gifted Students (amending 8VAC20-40-10, 8VAC20-40-20, 8VAC20-40-40, 8VAC20-40-60; adding 8VAC20-40-55; repealing 8VAC20-40-30, 8VAC20-40-50, 8VAC20-40-70).**

Statutory Authority: §22.1-16 of the Code of Virginia.

Public Hearing Information:

September 25, 2008 - 11 a.m. - James Monroe Building, 101 N. 14th Street, 22nd Floor Conference Room, Richmond, VA 23218

September 22, 2008 - 7 p.m. - Marshall High School, 7731 Leesburg Pike, Falls Church, VA (703) 714-5400

September 22, 2008 - 7 p.m. - Oscar F. Smith High School, 1994 Tiger Drive, Chesapeake, VA (757) 548-0696

September 23, 2008 - 7 p.m. - Radford High School, 50 Dalton Drive, Radford, VA (540) 731-3649

Public Comments: Public comments may be submitted until 5 p.m. on September 26, 2008.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, Post Office Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose: This action is essential to ensure that students in the Commonwealth are provided with an education that is commensurate with their abilities. The state definitions and provisions found in the Regulations Governing Educational Services for Gifted Students establish the basic expectation for school divisions' services for gifted students. These regulations ensure that school divisions' programs respond appropriately to the learning needs of gifted students, especially those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed regulations reflect the relevant findings from research regarding effective program options, appropriate curricular designs and instructional strategies, and the significance of teacher professional development in providing appropriate instruction for gifted students.

Substance: The following changes are proposed to the Regulations Governing Educational Services for Gifted Students:

1. Additions to and revisions of critical terms;

2. Clarification of the screening, referral, identification, and placement components;

3. Addition of parental rights, notification, consent, and appeals information;

4. Revision of components of the local plan for the education of the gifted;

5. Revision of the role and function of the local advisory committee for the education of the gifted to comply with §22.1-18.l of the Code of Virginia; and

6. Addition and expansion of annual report expectations to comply with §22.1-18.1 of the Code of Virginia.

Issues: The primary advantages of the proposed regulations for the public or the Commonwealth:

1. Alignment of services for gifted students with current standards and practices found in relevant research and practice;

2. Establishment of basic expectations for the annual screening of all students for gifted education services;

3. Reduction of the number of instruments used to identify gifted students from four to three;

4. Establishment of basic expectations that programs for the gifted include monitoring and assessment of student outcomes;

5. Establishment of expectations that programs for the gifted will be provided within the school day and week to ensure these students have time to study with their age-level peers and their intellectual peers, and time to study independently; and

6. Establishment of expectations that school boards, and not the Department of Education, will approve local plans that are in compliance with the regulations.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to: 1) no longer require that school divisions submit their plan for the education of gifted students to the Department of Education (Department) for approval, 2) require that school divisions post their plan for the education of gifted students on their website and have printed copies of the plan available for citizens who do not have online access, 3) require that the identification and placement committee determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision within 60 business days of the receipt of the referral, 4) require that requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 business days of receipt of notification of the action by the division, 5) reduce the minimum number of criteria used for the identification of gifted students from four to three, 6) explicitly require that gifted services include English, history and social science in place of the current vague requirement for gifted services in humanities, 7) clarify that the appropriately differentiated curriculum and instruction for gifted students be provided "continuously and sequentially," and 8) require that school divisions provide professional development for instructional personnel who deliver services within the gifted education program based on the competencies specified for the gifted education add-on endorsement.

Result of Analysis. The costs likely exceed the benefits for one or more proposed changes. The benefits exceed the costs for one or more other proposed changes.

Estimated Economic Impact.

Plan for the education of gifted students

Section 22.1-18.1 of the Code of Virginia states that "With such funds as may be appropriated for this purpose, the Department of Education shall conduct an annual review of all local gifted education programs, on such date as it may determine, to ensure full implementation and compliance with federal and state laws and regulations governing gifted education. The Department may conduct the review as an on-site observation or require certification of compliance from the division superintendent." The current regulations require that "Each school division shall submit to the Department of Education for approval a plan for the education of gifted students."

In practice, the Department of Education (Department) requires that each school division submit their plan for the education of gifted students every fifth year. Department staff invite gifted education coordinators from other school divisions to participate in peer review of the submitted plans. According to the gifted education coordinator for Charlottesville Public Schools, the reviews are very useful in that excellent feedback is received from the Department staff and the other school coordinators. According to Department staff, gifted education coordinators who participate in the reviews consistently state that the reviews are an excellent experience that provides useful information for themselves as well. Approximately 150 hours a year of staff time is spent on the reviews. The Department reimburses gifted education coordinators on average approximately $4,000 a year for lodging and travel.

The Board proposes to repeal the language stating "Each school division shall submit to the Department of Education for approval a plan for the education of gifted students." Consequently, plans would no longer be submitted for approval, and there would no longer be state-run peer reviews of plans for the education of gifted students. The Commonwealth would save approximately $4,000 a year in lodging and travel costs and about 150 hours a year of staff time. Significant though essentially unquantifiable benefits will be lost if Department and peer reviews no longer occur. School division coordinators will learn less about their peer's experiences, and will thus be less likely to learn about improved methods of providing gifted services. Implementation of these improved methods could result in improved student learning. Parents will also no longer be able to check with the Department to see if their local school division's plan for the education of gifted students officially complies with the state regulations. Estimating the value of the significant but uncertain potential of gifted education coordinators learning about improved methods of providing gifted services that could result in improved student learning, and parents' ability to check with the Department to see if their local school divisions plan for the education of gifted students officially complies with the state regulations is inherently subjective. Nonetheless, it seems likely that the value exceeds $4,000 plus 150 hours of staff time. Thus, the ending of state and peer review of school divisions' plan for the education of gifted students will likely produce a net cost for the Commonwealth.

Under the proposed regulations school divisions will still be required to prepare a detailed plan for the education of gifted students. Thus, school division staff time will still be expended preparing the plan. The Board proposes to require that school divisions post their plan for the education of gifted students on their website and have printed copies of the plan available for citizens who do not have online access. Since all school divisions already must produce a plan for the education of gifted students, and all school divisions already have a website, the proposal to require posting the plan on the website will produce minimal cost. The value for the public to have easy access to the plan almost certainly exceeds the cost of posting the plan. Thus, this proposal produces a net benefit for the Commonwealth. The value of school divisions keeping some printed copies of the plan for those who do not

have online access also likely exceeds the costs to school divisions of printing and keeping those copies.

Time limits

The current regulations do not specify any time limit for gifted identification and placement committees to determine the eligibility status of each student referred for the division's gifted education program. The Board proposes to require that the identification and placement committee determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision within 60 business days of the receipt of the referral. Providing a time limit is beneficial in that it allows families to plan and helps insure that students do not spend unnecessary time in suboptimal educational settings. Generally, school division staff have not objected to there being a time limit, but some have objected to the specific time limit of 60 business days. Some school officials have argued for 60 class days or 90 business days instead. Short time limits could potentially force school staff to delay other useful activities; while long time limits dilute the value of having time limits. Thus, while it is not within the scope of this analysis to determine the precise appropriate time limit, it can be said that the value of introducing a feasible time limit likely exceeds the cost.

The current regulations do not specify any time limit for parents or guardians to appeal decisions of gifted identification and placement committees. The Board proposes to require that requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 business days of receipt of notification of the action by the division. Providing a time limit for appeals is potentially beneficial in that staff time can be saved from expenditure on a process that may provide little benefit. After a period of time families can reapply for gifted services based on new evidence; so appealing old decisions can produce administrative costs that are best not spent. On the other hand, if the time limit is set too short reasonable families may be shut out of the process. For example, notice may be sent while the family is on vacation. Families do on occasion go on vacation for two weeks; so a ten business day time limit may be less than ideal. Overall, setting a reasonable time limit for parents or legal guardians to appeal actions of the gifted identification and placement committee will likely produce a net benefit; but the net benefit would likely be greater if the limit was longer than 10 days.

Criteria for identification

The current regulations require the school divisions use at least four criteria from the following list for gifted screening and identification:

1. Assessment of appropriate student products, performance, or portfolio;

2. Record of observation of in-classroom behavior;

3. Appropriate rating scales, checklists, or questionnaires;

4. Individual interview;

5. Individual or group aptitude tests;

6. Individual or group achievement tests;

7. Record of previous accomplishments (such as awards, honors, grades, etc.);

8. Additional valid and reliable measures or procedures.

The Board proposes to remove "Individual or group aptitude tests" and "Individual or group achievement tests" from the list of criteria, and add "Individually-administered or group-administered, norm-referenced aptitude tests" in their place. According to the Department, this proposed change was made to ensure that only tests that are designed to measure aptitude are used, while tests such as the Standards of Learning examinations that are not intended to distinguish gifted students from reasonably successful students who are not gifted are excluded. To the extent that the probability that inappropriate tests are used for gifted screening and identification is reduced, this proposed change will create a net benefit.

The Board also proposes to reduce the minimum number of criteria used for the screening and identification of gifted students from four to three. This provides school divisions with some additional flexibility which should be beneficial from their point of view. It may also provide for some moderate cost savings. As long as no school division drops a criterion from their screening and identification process that would have accurately identified students as gifted who will not be identified as gifted without that criterion, the proposal will not introduce costs. The probability of this happening is unknown, but it seems likely that school divisions could produce accurate identifications with three criteria.

Nature of services

The current regulations specify that "If the school division elects to identify students with specific academic aptitudes, they shall include procedures for identification and service in mathematics, science, and humanities." The board proposes to replace "humanities" with "English, history and social science." According to the Department "humanities" has been interpreted differently by different school divisions. Not all school divisions have interpreted humanities to include English, history and social science and have thus not provided identification and service in all three of those disciplines. To the extent that school divisions that are not currently providing identification and service in English, history or social science choose to comply with this proposed change, there will be significant impact.[1] Students who are capable of handling gifted level instruction in the newly introduced

disciplines would likely benefit by receiving such instruction. On the other hand, by newly spending resources on identification and service in new disciplines the school divisions will necessarily reduce resource expenditure elsewhere or otherwise raise additional revenue. By having chosen to not provide identification and service in these disciplines previously, local decision makers have implicitly shown that they believe that the costs of providing these services exceed the benefits (if they must use their own resources).

Section 22.1-253.13:1 of the Code of Virginia (Standard 1 of the Standards of Quality) states that local school boards shall implement "Early identification of gifted students and enrollment of such students in appropriately differentiated instructional programs." The current regulations define appropriately differentiated curricula as follows:

> "Appropriately differentiated curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula provide emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research or production, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus on issues, themes, and ideas within and across areas of study.

The Board proposes wording changes to the definition, including emphasizing that appropriately differentiated curriculum and instruction are offered "continuously and sequentially." According to the Department, some school divisions provide appropriately differentiated instruction one or two days a week, but do not on the other days of the week. For example, students gifted in English receive appropriately differentiated instruction on Mondays, but receive basic grade-level English instruction on Tuesdays through Fridays. Continuous and sequential instruction would essentially require that the appropriately differentiated instruction be provided every day the subject is taught. Gifted students would likely benefit significantly if aptitude-appropriate instruction is provided more often. For a school division to go from providing appropriately differentiated instruction one day a week to five days a week would require additional resources, though. These resources would come from either reducing expenditure elsewhere or otherwise raising additional revenue. To the extent that school divisions that are not currently providing appropriately differentiated curriculum and instruction continuously and sequentially do provide such instruction to comply with this proposed amendment, there will be significant impact.[2]

Professional development

The Board proposes to require that school divisions provide professional development for instructional personnel who deliver services within the gifted education program based on the competencies specified in 8VAC 20-542-310 for the gifted education add-on endorsement. There would be definite value in having personnel who deliver services within the gifted education program be trained in best practices and advances in the field as they develop. The proposed requirement does not specify a minimum amount of professional development to be dedicated toward gifted education competencies; thus, the proposal does not create a particularly costly burden. Thus, the benefits of this proposal likely exceed the costs.

Businesses and Entities Affected. All 132 school divisions in the Commonwealth are affected by the proposed amendments. School staff and families involved in gifted education will be particularly affected.

Localities Particularly Affected. All localities are affected.

Projected Impact on Employment. To the extent that: 1) school divisions that are not currently providing gifted identification and service in English, history or social science choose to provide these services and 2) school divisions that are not currently providing appropriately differentiated instruction every day begin to do so due to the proposed amendments, there may increased employment for those teachers trained to provide gifted education.

Effects on the Use and Value of Private Property. The proposed amendments to these regulations are not likely to significantly affect the use and value of private property in the short run. To the extent that the quality of gifted instruction is improved due to changes, there may be some positive impact on the value of property produced by current gifted students in the long run.

Small Businesses: Costs and Other Effects. The proposed amendments do not directly affect small businesses.

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

Real Estate Development Costs. The proposed amendments do not directly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed

regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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[1] The proposed end to required submittal of plans for the education of gifted students for state approval and end to peer review of plans will result in the Commonwealth no longer regularly determining compliance with the regulations. Thus, the public will no longer be able to check with the Department to see if their local school division is officially complying with the regulations. This may result in less public pressure for school divisions to comply with these regulations. On the other hand, energetic and knowledgeable parents will be able to view the school division plan for the education of gifted students on their local school division website and compare it to the requirements in these regulations.

[2] As noted earlier, the proposed end to required submittal of plans for the education of gifted students for state approval and end to peer review of plans may result in less public pressure for school divisions to comply with these regulations.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The proposed amendments (i) eliminate the requirement that school divisions submit their plan for the education of gifted students to the Department of Education for approval, (ii) require that school divisions post their plan for the education of gifted students on their websites and have printed copies of the plan available for citizens who do not have online access, (iii) require that the identification and placement committee determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision within 60 business days of the receipt of the referral, (iv) require that requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 business days of receipt of notification of the action by the division, (v) reduce the minimum number of criteria used for the identification of gifted students from four to three, (vi) explicitly require that gifted services include English, history and social science in place of the current vague requirement for gifted services in humanities, (vii) clarify that the appropriately differentiated curriculum and instruction for gifted students be provided "continuously and sequentially," and (viii) require that school divisions provide professional development for instructional personnel who deliver services within the gifted education program based on the competencies specified for the gifted education add-on endorsement.

~~Part I~~
~~Applicability and Definitions~~

8VAC20-40-10. Applicability.

This chapter shall apply to all local school divisions in the Commonwealth, regarding their services for students from kindergarten through high school graduation.

8VAC20-40-20. Definitions.

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

"Appropriately differentiated ~~curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula provide emphasis on both accelerative and enrichment opportunities for~~ curriculum and instruction" means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of eligible or identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction~~,~~ ; (ii) original research or production~~,~~ ; (iii) problem finding and solving~~,~~ ; (iv) higher level thinking that leads to the generation of products~~,~~ ; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes, and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers.

"Eligible student" means a student who has been identified as gifted by the identification and placement committee for the school division's gifted education program.

"Gifted students" means those students in public elementary, middle, and secondary schools beginning with kindergarten through graduation ~~whose abilities~~ who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age, experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated ~~abilities and who have evidence of~~

~~high performance capabilities, which may include leadership,~~ aptitudes in one or more of the following areas:

1. ~~Intellectual~~ General intellectual aptitude ~~or aptitudes~~. ~~Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers.

2. Specific academic aptitude. ~~Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas that include English, history and social science, mathematics, and science.

3. ~~Technical and practical arts~~ Career and technical aptitude. ~~Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent technical curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in career and technical fields.

4. Visual or performing arts aptitude. ~~Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.~~ Such students demonstrate or have the potential to demonstrate superior creative reasoning and imaginative expression; persistent artistic curiosity; and advanced acquisition and mastery of techniques, perspectives, concepts, and principles beyond their age-level peers in visual or performing arts.

"Identification" ~~is~~ means the multistaged process of ~~reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.~~ finding students who are eligible for the division's gifted education program. The identification process begins with a divisionwide screening component that is followed by a referral component, and that concludes with the determination of eligibility by the school division's identification and placement committee. The identification process includes the review of valid and reliable student data based on criteria established and applied consistently by the school division. The process shall include the review of information or data from multiple sources to determine whether a student's aptitudes and learning needs are most appropriately served through the school division's gifted education program.

~~"Identification/Placement Committee"~~ "Identification and placement committee" means ~~a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division.~~ the building-level or division-level committee that shall determine a student's eligibility for the division's gifted education program, based on the student's assessed aptitude and learning needs. The identification and placement committee shall determine which of the school division's service options are appropriate for meeting the learning needs of the eligible student.

"Learning needs of gifted students" means gifted students' needs for advanced and complex content that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem-solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.

"Placement" means the determination of the appropriate educational ~~option~~ options for each eligible student.

"Referral" means the formal and direct process that parents, teachers, professionals, or students use to request that a kindergarten through twelfth-grade student be assessed for gifted education program services.

"Screening" ~~is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification~~ means the divisionwide search each school division conducts at least once annually across all its students to determine which students should be referred for identification and service in the gifted education program.

The annual screening shall, at a minimum, consist of a review of current assessment data for all kindergarten through twelfth-grade students. Students selected through the school division's screening process are then referred for formal identification.

"Service options" ~~include~~ means the instructional ~~approach or~~ approaches, ~~setting or~~ settings, and staffing selected for the delivery of appropriate ~~service or services that are based on student needs~~ programs provided to eligible students based on their assessed needs in their areas of strength.

"Student outcomes" ~~are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners~~ means the advanced achievement and performance expectations established for each gifted student, through the review of the student's assessed learning needs and the goals of the program of study, that are reviewed and reported to parents or legal guardians.

~~Part II~~

~~Responsibilities of the Local School Divisions~~

8VAC20-40-30. ~~Applicability.~~ (Repealed.)

~~The requirements set forth in this part are applicable to local school divisions providing educational services for gifted students in elementary and secondary schools from kindergarten through graduation.~~

8VAC20-40-40. ~~Identification~~ Screening, referral, identification, and placement.

A. Each school division shall establish ~~a~~ uniform ~~procedure with common criteria~~ procedures for screening, referral, and identification of general intellectual or specific academic aptitude gifted students. If the school division elects to identify students with specific academic aptitudes, ~~they~~ it shall include procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science~~, and humanities~~. ~~These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.~~ School divisions may identify and serve gifted students in career and technical aptitude or visual and performing arts aptitude, or both, at their discretion.

B. ~~Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee.~~ These uniform procedures shall include a screening process that requires instructional personnel to review, at a minimum, current assessment data on each kindergarten through twelfth-grade student annually. Some data used in the screening process may be incorporated into multiple criteria reviewed by the identification and placement committee to determine eligibility, but those data shall not replace norm-referenced aptitude test data.

C. These uniform procedures shall permit referrals from school personnel, parents or legal guardians, or other persons of related expertise, as well as peer or self-referral. Such referrals shall be accepted for kindergarten through twelfth-grade students.

D. An identification and placement committee shall review pertinent information, records, and other performance evidence for referred students. The committee shall include a professional who knows the child, as well as classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education. The committee shall (i) review data from multiple sources selected and used consistently within the division to assess students' aptitudes in the areas of giftedness the school division serves, (ii) determine whether a student is eligible for the division's services, and (iii) determine which of the school division's service options match the learning needs of the eligible student. The committee may review valid and reliable data administered by another division for a transfer student who has been identified previously.

1. Identification of students for the gifted education program shall be based on multiple criteria established by the school division and designed to seek out those students with superior aptitudes, including students for whom accurate identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. Data shall include scores from valid and reliable instruments that assess students' potential for advanced achievement, as well as instruments that assess demonstrated advanced skills, conceptual knowledge, and problem-solving aptitudes.

2. Valid and reliable data for each referred student shall be examined by the building-level or division-level identification and placement committee. The committee shall determine the eligibility of each referred student for the school division's gifted education program. Students who are found eligible by the identification and placement committee shall be offered programs or courses with appropriately differentiated curriculum and instruction by the school division.

3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall

include at least three measures from the following categories:

a. Assessment of appropriate student products, performance, or portfolio;

b. Record of observation of in-classroom behavior;

c. Appropriate rating scales, checklists, or questionnaires;

d. Individual interview;

e. Individually administered or group-administered, norm-referenced aptitude tests;

f. Record of previous accomplishments (such as awards, honors, grades, etc.); or

g. Additional valid and reliable measures or procedures.

4. If a program is designed to address general intellectual aptitude or specific academic aptitude, an individually administered or group-administered, norm-referenced aptitude test shall be included as one of the three measures used in the school division's identification procedure.

5. If a program is designed to address either the visual and performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as part of the data reviewed by the identification and placement committee.

E. Within 60 business days of the receipt of a referral, the identification and placement committee shall determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision. If a student is identified as gifted and eligible for services, the identification and placement committee shall determine which service options most effectively meet the assessed learning needs of the student. Identified gifted students shall be offered placement in a classroom or program setting that provides:

1. Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students; and

2. Monitored and assessed student outcomes that are reported to the parents and legal guardians.

8VAC20-40-50. ~~Criteria for screening and identification.~~ (Repealed.)

~~Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:~~

~~1. Assessment of appropriate student products, performance, or portfolio;~~

~~2. Record of observation of in-classroom behavior;~~

~~3. Appropriate rating scales, checklists, or questionnaires;~~

~~4. Individual interview;~~

~~5. Individual or group aptitude tests;~~

~~6. Individual or group achievement tests;~~

~~7. Record of previous accomplishments (such as awards, honors, grades, etc.);~~

~~8. Additional valid and reliable measures or procedures.~~

~~If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted.~~

8VAC20-40-55. Parental rights for notification, consent, and appeal.

A. School divisions shall provide written notification to and seek written consent from parents and legal guardians to:

1. Conduct any required assessment to determine a referred student's eligibility for the school division's gifted education program;

2. Announce the decision of the identification and placement committee regarding a referred student's eligibility for and placement in the school division's gifted education program; and

3. Provide services for an identified gifted student in the school division's gifted education program.

B. Each school division shall adopt a review procedure for students whose cases are appealed. This procedure shall involve a committee, the majority of whose members did not serve on the initial identification and placement committee, and shall inform parents or legal guardians, in writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 business days of receipt of notification of the action by the division. The process shall include an opportunity to meet with an administrator to discuss the decision.

1. A parent or legal guardian of a student who was referred but not identified by the identification and placement

committee as eligible for services in the school division's gifted education program shall be informed, in writing, within 10 business days, of the school division's process to appeal the committee's decision.

2. A parent or legal guardian of an identified gifted student may appeal any action taken by the school division to change the student's identification for, placement in, or exit from the school division's gifted education program.

C. Following the notification and consent of a parent or legal guardian, the identification and placement committee shall apprise school administrators of each student's eligibility status.

8VAC20-40-60. Local plan, local advisory committee, and annual report.

A. Each school ~~division~~ board shall ~~submit to the Department of Education for approval a~~ review and approve annually a comprehensive plan for the education of gifted students that includes the components identified in these regulations. ~~Modifications to the plan shall be reported to the Department of Education on dates specified by the department.~~ The development process for the school division's local plan for the education of the gifted shall include opportunities for public review of the school division's plan. The approved local plan shall be accessible through the school division's website and the school division shall ensure that printed copies of the comprehensive plan are available to citizens who do not have online access. The plan shall include the following components ~~as follow~~:

1. A statement of philosophy for the gifted education program;

2. A statement of the school division's gifted education program goals and objectives for identification, delivery of services, curriculum and instruction, personnel preparation, and parent and community involvement;

3. Procedures for the early and on-going screening, referral, identification and placement of gifted students~~;~~, beginning with kindergarten through ~~secondary graduation~~ twelfth-grade in at least ~~one of the four defined areas of giftedness;~~ a general intellectual or a specific academic aptitude program; and, if provided in the school division, procedures for the screening, referral, identification, and placement of gifted students in visual and performing arts or career and technical aptitude programs;

4. A procedure for ~~notifying~~ written notification of parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission of parents or legal guardians prior to placement of ~~students~~ a gifted student in the appropriate ~~program~~ service options;

5. A policy for ~~notifying gifted students' change of placement within, and~~ written notification to parents or legal guardians of identification and placement decisions, including initial changes in placement or exit from the program~~, which includes an opportunity for parents who disagree with the committee or committees decision to meet and discuss their concern or concerns with an appropriate administrator~~. Such notice shall include an opportunity for parents or guardians to meet and discuss their concerns with an appropriate administrator and to file an appeal;

6. Assurances that student records are maintained ~~according to 8VAC20-150-10 et seq., Management of Student's Scholastic Record in the Public Schools of Virginia~~ in compliance with applicable state and federal privacy laws and regulations;

7. Assurances that (i) testing and ~~evaluation~~ assessment materials selected and administered are ~~sensitive to~~ free of cultural, racial, and linguistic ~~differences,~~ biases; (ii) identification procedures are constructed so that ~~they~~ those procedures may identify ~~high potential/ability in all underserved culturally diverse, low socio-economic, and disabled populations,~~ high potential or aptitude in any student whose accurate identification may be affected by economic disadvantages, by limited English proficiency, or by disability; (iii) standardized tests and other measures have been validated for the ~~specific purpose for which they are used~~ purpose of identifying gifted students; and (iv) instruments are administered and interpreted by a trained personnel in conformity with the developer's instructions ~~of their producer~~;

~~8. A procedure to identify and evaluate student outcomes based on the initial and ongoing assessment of their cognitive and affective needs;~~

~~9. A procedure to match service options, including instructional approaches, settings, and staffing, to designated student needs;~~

~~10. A framework for appropriately differentiated curricula indicating accelerative and enrichment opportunities in content, process, and product;~~

~~11. Procedures for the selection/evaluation of teachers and for the training of personnel to include administrators/supervisors, teachers, and support staff;~~

~~12. Procedures for the appropriate evaluation of the effectiveness of the school division's program for gifted students; and~~

~~13. Other information as required by the Department of Education.~~

8. Assurances that accommodations or modifications determined by the school division's special education Individualized Education Program (IEP) team, as required for the student to receive a free appropriate public

education, shall be incorporated into the student's gifted education services;

9. Assurances that a written copy of the school division's approved local plan for the education of the gifted is available to parents or legal guardians of each referred student, and to others upon request;

10. Evidence that gifted education service options from kindergarten through twelfth grade are offered continuously and sequentially, with instructional time during the school day and week to (i) work with their age-level peers, (ii) work with their intellectual and academic peers, (iii) work independently; and (iv) foster intellectual and academic growth of gifted students. Parents and legal guardians shall receive assessment of each gifted student's intellectual and academic growth;

11. A description of the school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content within programs or courses;

12. Polices and procedures that allow access to programs of study and advanced courses at a pace and sequence commensurate with their learning needs;

13. Evidence that school divisions provide professional development based on the competencies specified in 8VAC20-542-310, Gifted education (add-on endorsement), for instructional personnel who deliver services within the gifted education program; and

14. Procedures for the annual evaluation of the effectiveness of the school division's gifted education program, including review of student outcomes and the intellectual and academic growth of gifted students. Such evaluations shall be based on multiple criteria and shall include multiple sources of information for gifted students.

B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members who are appointed by the school board. This committee shall reflect the ethnic and geographical composition of the school division. ~~The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the~~ This committee shall have two responsibilities: (i) to review annually the local plan for the education of gifted students, including revisions, and (ii) to determine the extent to which the plan for the previous year was implemented. The findings of the annual program effectiveness and the recommendations of the advisory committee shall be submitted annually in writing ~~through~~ to the division superintendent ~~to~~ and the school board.

C. Each school division shall submit an annual report to the Department of Education in a format prescribed by the department.

8VAC20-40-70. ~~Funding.~~ (Repealed.)

~~State funds administered by the Department of Education for the education of gifted students shall be used to support only those activities identified in the school division's plan as approved by the Board of Education.~~

VA.R. Doc. No. R07-94; Filed June 4, 2008, 11:40 a.m.

Proposed Regulation

Titles of Regulations: **8VAC20-280. Jointly Owned and Operated Schools and Jointly Operated Programs (repealing 8VAC20-280-10, 8VAC20-280-20).**

8VAC20-281. Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs (adding 8VAC20-281-10, 8VAC20-281-20).

Statutory Authority: §§22.1-16 and 22.1-26 of the Code of Virginia.

Public Hearing Information:

July 17, 2008 - 11 a.m. - James Monroe Building, 101 N. 14th Street, 22nd Floor Conference Room, Richmond, VA 23218

Public Comments: Public comments may be submitted until 5 p.m. on August 25, 2008.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, Post Office Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. In addition, §22.1-26 of the Code of Virginia provides the Board of Education with the legal authority to promulgate regulations that govern joint schools.

Purpose: These regulations provide joint schools and joint school boards with guidance and operating procedures that support regional efforts to establish programs that meet the needs of their communities and ensure that these programs are managed appropriately and in a fiscally sound manner.

Substance: The current regulations (8VAC20-280) are being repealed. The proposed regulations (8VAC20-281) include the following:

1. Addition of a definitions section for clarity.

2. Revision of the second section of the regulations that includes all of the organizing and operating procedures, including membership, organization, authority, authority of the division superintendent, annual budget and financing plan, and expenditures. Most of these headings/catchlines from the current regulations remain, but the language has been streamlined and is more user-friendly.

3. Addition of the new language related to HB 2371 that was passed by the 2007 General Assembly regarding the appointment of a fiscal agent and the holding of title to property.

Issues: The proposed amendments to these regulations are advantageous to the public, the agency, and the Commonwealth as they establish clear and basic expectations for all programs subject to its requirements, replace current regulations that are ambiguous in some areas, and replace one section of the current regulations where much of the language is aspirational.

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

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes amendments to these regulations including the following: 1) repealing aspirational language, 2) adding a definitions section, 3) altering the requirements concerning membership of the governing board of the joint school to be less restrictive, and 4) specifying that the fiscal agent can be selected from any of the treasurers of the participating localities.

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

Estimated Economic Impact. Joint schools include academic-year Governor's schools, alternative education centers, career and technical centers, and special education centers. The Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs were adopted September 1, 1980 and have not been amended since.

The Board's proposal to repeal aspirational language will have no impact since the text contained no legal requirements. The proposed addition of the definitions section will provide a small benefit in that it will provide clarity.

The current regulations require that:

> When not more than two school boards agree to establish a joint board, its membership shall consist of three members of each of the participating school boards. When three school boards agree to establish a joint board, its membership shall consist of two members from each participating school board. When more than three school boards agree to establish a joint board, its membership shall consist of one member from each of the participating school boards."

The Board proposes to allow greater discretion by repealing the language above and to just require that membership of the joint board "be composed of at least one member of each of the local school boards participating in the joint program." This should provide a net benefit since the local boards will be free to arrange their joint board in the manner that they find most appropriate, while still guaranteeing that each participating locality is represented.

The current regulations require that the fiscal agent for the joint school "be the treasurer of the county or city where the school is located." Pursuant to Chapter 45 of the 2007 Virginia Acts of Assembly, the Board proposes to allow the fiscal agent to be selected from any of the treasurers of the participating localities. It is entirely plausible that the best suited treasurer to be fiscal agent may be from a locality other the one where the joint school is physically located. Thus, the proposal to permit such an individual to be chosen as the fiscal agent is clearly beneficial. There is no apparent cost to this proposed change. Therefore this proposed amendment will create a net benefit.

Businesses and Entities Affected. All 132 school divisions in the Commonwealth are potentially affected by the proposed amendments.

Localities Particularly Affected. All localities are potentially affected. Localities which currently or plan to jointly operate schools or programs with other localities are particularly affected.

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

Effects on the Use and Value of Private Property. The proposed amendments will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments do not directly affect small businesses.

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

Real Estate Development Costs. The proposed amendments do not directly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact

on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by DPB. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

The Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs were adopted on or before September 1, 1980. These regulations have not been amended since then and do not address changes made in these programs since that time. Joint schools include academic-year Governor's schools, alternative education centers, career and technical centers, and special education centers. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8VAC20-280) and promulgate new regulations (8VAC20-281).

Significant changes are made in the proposed regulations. The first section of the regulations has been deleted because it is primarily aspirational; the second section has been reorganized, revised, and streamlined; and a definitions section has been added for clarity. The proposed regulations also make membership requirements of the governing board of the joint school less restrictive and, in response to Chapter 45 of the 2007 Acts of Assembly, specify that the fiscal agent can be selected from any of the treasurers of the participating localities.

CHAPTER 281
REGULATIONS GOVERNING JOINTLY OWNED AND OPERATED SCHOOLS AND JOINTLY OPERATED PROGRAMS

8VAC20-281-10. 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:

"Alternative education program" means any program designed to offer instruction to students for whom the regular program of instruction may be inappropriate, as defined in §22.1-276.01 of the Code of Virginia, and as prescribed in the Rules Governing Alternative Education (8VAC20-330).

"Classification of expenditures" means a system of accounting for all school funds, as prescribed in §22.1-115 of the Code of Virginia.

"Finance officer" means fiscal agent for the joint school.

"Fiscal agent" means the treasurer of a county or city in which a joint school is physically located or the treasurer from one of the participating localities as selected by agreement of the participating local school boards with approval of the participating local governing bodies. (See also "finance officer" or "treasurer.")

"Joint board" means the governing board of the joint school. The joint board is composed of at least one member from each participating local school board.

"Joint school" means a program or school established by two or more local school boards, including a regional public charter school, as defined in §22.1-212.5 of the Code of Virginia, or a comprehensive school offering part- or full-day programs.

"Operation and maintenance" means budget preparation, contracts for services, personnel matters, use of or construction of a school building and grounds and the operation and maintenance thereof, and the provision of any services, activity, or undertaking that the joint school is required to perform in order to carry out its educational program.

"Regional public charter school" means a public charter school operated by two or more school boards and chartered directly by the participating school boards, as defined in §22.1-212.5 of the Code of Virginia.

"Treasurer" means the fiscal agent of the joint school, in accordance with §58.1-3123 of the Code of Virginia.

8VAC20-281-20. Organization and operating procedures.

Two or more school boards, by individual resolution, may establish a joint board to manage and control schools or programs jointly owned and operated in accordance with the following requirements:

1. Membership. The membership of the joint board shall be composed of at least one member of each of the local school boards participating in the joint program. Each school board shall fill any vacancies in its membership on

the joint board. If a member of the joint board ceases to be a member of the school board that elected him, the local school board shall appoint his successor to the joint board. If at any time the number of members of the joint board shall fall below a quorum, the local board shall appoint a member to fill the vacancy or vacancies within 30 calendar days.

Members of the joint board may receive compensation fixed by each of the participating school boards. This compensation shall be paid by the local boards and shall not exceed the amount paid for service on the local school boards.

The joint board shall adopt bylaws or rules of operation and shall establish the length and beginning dates or terms of its members and establish committees that might be needed to carry out its responsibilities. Such bylaws shall address the receipt, custody, and disbursement of funds and the payment of all claims related to the operation and maintenance of the joint facility, consistent with the state statutes and regulations of the Board of Education.

2. Organization. The joint board shall elect from its membership a chairman who shall preside at its meetings and a vice-chairman who shall preside in the absence of the chairman.

The joint board shall elect a clerk and, if desired, a deputy clerk. Neither the clerk nor the deputy clerk shall be a member of the joint board but shall keep record of the proceedings. The compensation of the clerk and the deputy clerk shall be fixed by the joint board. The clerk and the deputy clerk shall execute bond of at least $10,000, as provided by §22.1-76 of the Code of Virginia.

The joint board also shall elect a finance officer, who shall have custody of its funds, fix the compensation, and provide for bond. All disbursements shall be by warrant signed by the clerk of the joint board and countersigned by the finance officer. Through its finance officer, the joint board shall arrange for the safe depository of the funds and, where necessary, see that sufficient collateral is posted to secure such funds.

3. Authority. The joint board shall be authorized to employ the staff required to operate the joint school and programs; purchase supplies; purchase, sell, or dispose of equipment or appliances; determine policies concerning instruction; approve the curriculum in keeping with the general laws, and with the regulations and requirements of the Virginia Board of Education; maintain jointly owned school buildings; and, in general, manage, operate, and conduct joint schools and programs.

The title to all property acquired for joint schools shall vest jointly in the participating school boards in such respective proportions as the participating school boards may determine, and the schools or programs shall be managed and controlled by the participating school boards jointly. With the approval of the participating school boards and the respective local governing bodies, title to property acquired for a joint school shall be vested in the governing body of such school.

Except as otherwise provided, all meetings and procedures of the joint board shall be in accordance with provisions of §§22.1-72 through 22.1-75 of the Code of Virginia. Any action by the joint board shall be deemed an action by the school boards jointly owning such school.

4. Authority of the division superintendent. The division superintendents representing the counties or cities of the school boards that form the joint board shall constitute a Committee of Superintendents and shall jointly exercise the same authority they have in the counties or cities for which they are appointed. With the approval of their respective school boards, the division superintendents may elect one of their members as executive officer in whom may be vested such authority as the superintendents may from time to time find advisable.

The Committee of Superintendents shall prepare, with the advice and approval of the joint board, an annual program plan, budget, and plan for financing the operation of the joint school that would include appropriate state and local funding from each participating school division. The financing plan shall include an estimate of the amount of money that will be needed from each participating school system during the next scholastic year for operation and maintenance of the joint school facility. The estimate shall clearly show all necessary details and be provided in a timely manner so that the participating school boards may be well-informed about every item included in the estimate.

In case of disagreement, all matters shall be referred to the joint board for resolution.

5. Budget and expenditures. Each participating school board shall review and approve the annual budget presented by the joint board and provide funds to cover its share of the cost of operating and maintaining the joint school facility. The amount provided by each participating school board shall be made available for expenditures by the joint board as follows:

a. Funds to be provided by participating school boards shall be made available to the joint board upon its requests.

b. Funds to be provided on a fee for service basis shall be paid to the joint board upon receipt of an appropriate invoice.

On a regular monthly basis, the clerk of the joint board shall transmit to the Committee of Superintendents of the participating school boards an itemized statement of

receipts and disbursements during the preceding months, with a cumulative statement of all receipts and disbursements since the beginning of the current fiscal year.

VA.R. Doc. No. R07-279; Filed June 2, 2008, 8:12 a.m.

Fast-Track Regulation

Title of Regulation: **8VAC20-650. Regulations Governing the Determination of Critical Teacher Shortage Areas (amending 8VAC20-650-30).**

Statutory Authority: §§22.1-16 and 22.1-290.01 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 25, 2008.

Effective Date: September 15, 2008.

Agency Contact: Mrs. Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, FAX (804) 225-2524, or email patty.pitts@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." Additionally, §22.1-290.01 of the Code of Virginia requires the Board of Education to "establish, in regulation, criteria for determining critical teacher shortage areas for awarding scholarships pursuant to this section."

Purpose: The purpose for the amended regulations is that, according to the Code of Virginia, the board may promulgate such regulations as may be necessary for the implementation of the Virginia Teaching Scholarship Loan Program. The purpose of the regulation amendment is to align the text with the amendments to the Code of Virginia.

Rationale for Using Fast-Track Process: The Administrative Process Act provides for expedited rulemaking for regulatory actions that are expected to be noncontroversial. The regulation as proposed is expected to be noncontroversial since there is minimal to no fiscal or administrative impact on the local school divisions or on the Department of Education.

Substance: The proposed amendments (i) delete the requirement to include one Commonwealth Scholarship from each college or university, (ii) align revised parameters for eligibility, and (iii) provide greater flexibility in appointment of the selection panel by the Superintendent of Instruction when the teacher education program recommendations for scholarships exceed the appropriation.

Issues: The purpose of the proposed amendments is to align the language in the regulation with the amendments to §22.1-290.01 of the Code of Virginia made by HB 1913 (2007). The advantage of these amendments to the public, the agency, and the Commonwealth is that the language in the regulation would be consistent with the language in the Code of Virginia. There are no disadvantages.

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

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes several amendments to these regulations to match changes to §22.1-290.01 of the Code of Virginia generated by Chapter 31 of the 2007 Acts of Assembly. All of the amendments concern the Virginia Teaching Scholarship Loan Program (Program). Additionally, the Board proposes to 1) remove the requirement that each nominating institution be guaranteed one scholarship, 2) repeal the Virginia residency requirement, and 3) allow the Superintendent of Instruction additional flexibility in appointing panel members who determine scholarship recipients when the dollar value of qualified scholarship applications exceed the scholarship appropriation.

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

Estimated Economic Impact. According to the Department of Education (Department) not all institutions nominate scholarship candidates every year despite being well informed of the opportunity. Consequently, the Board proposes to remove the requirement that each institution be guaranteed one scholarship in the Program. The Department does plan to continue to try to give scholarships to students at every approved teacher education program. Thus, the repeal of this requirement will likely not affect what occurs in practice.

Further, the Board seeks to remove the requirement of Virginia residency for applicants. As a result of this change, additional individuals would be eligible to participate in the Program. For example, an individual residing in the District of Columbia or Maryland who is training to be a teacher at George Mason University and meets all other criteria would become eligible to receive the scholarship with the removal of the residency requirement. The Program requires scholarship recipients to teach in Virginia for the same number of years as they received the scholarship. Thus, this proposed amendment may moderately increase the supply of teachers in Virginia. Given the difficulty school divisions at times have finding highly qualified teaching candidates, increasing the supply of teachers is clearly beneficial.

The current regulations specify that panel members who determine scholarship recipients when the dollar value of

qualified scholarship applications exceed the scholarship appropriation must include teachers, college and university faculty, members of professional organizations, and Department personnel. The Board proposes to permit the Superintendent of Instruction the flexibility to appoint panel members as she or he sees fit. The proposed increase in flexibility in choosing panel members would allow decisions to be made in a timelier manner. As long as reasonable representation is maintained and decisions are made equitably, this proposed change will likely produce a small net benefit.

Businesses and Entities Affected. The proposed amendments affect the 37 approved teacher education programs in the Commonwealth, as well as individuals interested in participating in the Virginia Teaching Scholarship Loan Program. Approximately 200 scholarships are granted per annum.[1]

Localities Particularly Affected. All Virginia localities are affected by these regulations. Localities adjacent to the state border may be particularly affected by the elimination of the residency requirement for the scholarship.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the value of private property in the short run. In the long run increasing the supply of qualified teachers may allow school divisions to be more selective in whom they hire. Better teachers may lead to students becoming more productive adults. The increase in supply will likely be small so the long-run impact will likely be small as well.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

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

[1] Source: Department of Education

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by DPB. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The amendments (i) remove the requirement that each nominating institution be guaranteed one Commonwealth Scholarship in Teacher Education, (ii) repeal the Virginia residency requirement, and (iii) allow the Superintendent of Instruction additional flexibility in appointing panel members who determine scholarship recipients when the dollar value of qualified scholarship applications exceeds the scholarship appropriation.

8VAC20-650-30. Virginia Teaching Scholarship Loan Program requirements and selection procedures.

A. Annually, the teacher preparation institutions in Virginia that have approved teacher preparation programs shall be invited to nominate individuals to receive loans through the Virginia Teaching Scholarship Loan Program subject to available appropriations. ~~Subject to available appropriations, each nominating institution shall be guaranteed at least one scholarship loan that is designated as the Commonwealth Scholarship in Teacher Education. Scholarships shall be awarded to undergraduate students in the sophomore, junior, or senior year of college, and to graduate students at an accredited public or private four-year institution of higher education in the Commonwealth.~~

B. ~~To be nominated by the college or university, students must (i) be~~ The Virginia Teaching Scholarship Loan Program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at a regionally accredited

public or private four-year institution of higher education in the Commonwealth, who (i) are enrolled ~~full-time~~ full time or ~~part-time~~ part time in an approved teacher education program or ~~in a critical teacher shortage discipline, or employed as paraprofessionals and enrolled full-time or part-time to complete an~~ are participants in another approved teacher education program ~~to become fully licensed teachers~~; (ii) have ~~and maintain~~ maintained a cumulative grade point average of at least 2.7 on a 4.0 scale or its equivalent; and (iii) ~~be~~ are nominated for ~~the~~ such scholarship by the institution where they are enrolled~~; and (iv) be identified as a Virginia domiciliary resident. Students enrolled in any area of an approved teacher education program who are seeking endorsements in elementary or middle education who meet the program requirements may be eligible for the award~~. In addition, the candidates must meet one or more of the following criteria: (a) be enrolled in a program leading to an endorsement in a critical shortage area as established by the Board of Education; (b) be a male teacher candidate in an elementary or middle school education program; or (c) be a minority teacher candidate enrolled in any teacher endorsement area.

~~C. Scholarship recipients shall be selected by a panel appointed by the Superintendent of Public Instruction representing the various critical teacher shortage areas, geographic regions of the state, and members of professional organizations. The selection panel shall be composed of representatives from the following categories:~~

~~1. Teachers;~~

~~2. College and university faculty;~~

~~3. Members of professional organizations; and~~

~~4. Department of Education personnel.~~

C. A selection panel appointed by the Superintendent of Public Instruction may be convened if the number of Teacher Education Program recommendations for scholarships exceed the appropriations. The panel shall select recipients for the teaching scholarship loan from the eligible applicants. Efforts should be made to have an appropriate distribution of scholarships among the identified critical teacher shortage areas.

VA.R. Doc. No. R08-1100; Filed June 2, 2008, 8:12 a.m.

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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Fast-Track Regulation

Titles of Regulations: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-120).**

9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-10, 9VAC25-820-20, 9VAC25-820-70).

Statutory Authority: §§62.1-44.15 and 62.1-44.19:4 of the Code of Virginia; §303 of the Clean Water Act.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 23, 2008.

Effective Date: August 7, 2008.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, or email jmkennedy@deq.virginia.gov.

Basis: The State Water Control Law at §62.1-44.15 of the Code of Virginia mandates the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. In addition, §62.1-44.15 requires the board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

Purpose: The purpose of the proposed amendments is to revise the total nitrogen and total phosphorus waste load allocations (WLAs) for the Doswell Wastewater Treatment Plant, to exclude the portions attributable to Bear Island Paper Company, and add separate WLAs for their industrial facility. These revisions will make Bear Island Paper accountable for their own nutrient discharges and eligible to participate in the Nutrient Credit Exchange Program. The beneficial results of nutrient reduction from point sources in the Bay watershed are maintained with these changes, as the sum of the WLAs for the individual plants in question will be the same as the original WLAs originally assigned just to the Doswell plant (i.e., no increase in nutrient WLAs results from these changes).

Rationale for Using Fast-Track Process: The proposed amendments are expected to be noncontroversial, and

therefore justify using the fast-track process. The primary Action under this proposal will reduce the Doswell WWTP TN and TP WLAs to exclude the portion of the discharge attributable to Bear Island Paper Company, and add to the listing separate WLAs for Bear Island Paper. The total WLAs from the combined discharge remain unchanged, and Bear Island Paper will be accountable for their own nutrient discharges.

The secondary action will simply revise the definition of "existing discharge" to include certain industrial plants that have WLAs in the Water Quality Management Planning Regulation, but do not hold an individual VPDES permit, allowing them to participate in the Nutrient Credit Exchange Program.

Substance: In 9VAC25-720-120, for the Doswell WWTP (VA0029521), revise the total nitrogen waste load allocation figure from 65,601 to 18,273 pounds per year, and the total phosphorus waste load allocation figure from 14,923 to 2,132 pounds per year. Add to the listing Bear Island Paper Company, with a total nitrogen waste load allocation figure of 47,328 pounds per year, and a total phosphorus waste load allocation figure of 12,791 pounds per year.

The changes to 9VAC25-820-10 add the following as the last sentence in the definition of "existing facility": …"shall also mean and include any industry that holds a separate waste load allocation in the Water Quality Management Planning Regulation but does not hold an individual VPDES permit authorizing its discharge."

Changes to 9VAC25-820-20 and 9VAC25-820-70, where applicable, add references to the revised definition of "existing facility."

Issues: The public will benefit, as these amendments will result in the discharge of reduced amounts of nitrogen and phosphorus in the Chesapeake Bay watershed. This, in turn, will aid water quality restoration in the Bay and its tributary rivers, and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the Bay. Hanover County and Bear Island Paper will benefit, as each will now be accountable for just the nutrient loads discharged by their individual plants. Additionally, having waste load allocations assigned in 9VAC25-720-120, along with the revised definition of "existing facility" in 9VAC25-820-10, will allow Bear Island Paper to participate in the Nutrient Credit Exchange Program, which was authorized by the Virginia General Assembly to aid in achieving point source nutrient load reductions more cost-effectively and in a timely manner. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

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

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) is proposing to revise the total nitrogen and total phosphorous waste load allocations (WLAs) for the Doswell Wastewater Treatment Plant (WWTP) to exclude the portions attributable to Bear Island Paper Company (BIPCo), and add separate WLAs for BIPCo. The Board is also proposing to amend the definition of "existing facilities" to include plants that have WLAs in the Water Quality Management Planning Regulation, even if they do not have an individual Virginia Pollution Discharge Elimination System (VPDES) permit. This will allow those plants (such as BIPCo) to participate in the Nutrient Credit Exchange Program.

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

Estimated Economic Impact. With these amendments, the Board proposes to do the following: (1) separate out the Bear Island Paper Company (BIPCo) waste load allocations (WLAs) for nitrogen and phosphorous from the Doswell WWTP WLAs, (2) amend the definition of "existing facility" to allow it to include any facility which holds a separate WLA (thereby including BIPCo in the definition of "existing facility"), and (3) amend the regulation to authorize any facility that fits the definition of "existing facility" to discharge to surface waters and exchange credits for total nitrogen and/or total phosphorous. In other words, any "existing facility," including BIPCo, can receive a general permit for total nitrogen and total phosphorous discharges and nutrient trading in the Chesapeake watershed in Virginia.

Under current regulation, Doswell WWTP and BIPCo WLAs are both under the jurisdiction of Hanover County, which owns and operates the Doswell WWTP. Under the proposed amendment, the BIPCo WLAs will be separated out from Doswell, allowing BIPCo to participate in the nutrient credit exchange program. The amendment should not have any effect on the environment, nor on the operations of Doswell WWTP or BIPCo, with the exception that BIPCo will now have an incentive to cut down on the amount of discharge or the concentration of nitrogen or phosphorous in its discharge in order to sell nutrient credits, which would be $2/lb for nitrogen and $4/lb for phosphorous.

This amendment does not change the total amount of allowable nitrogen and phosphorous discharge. Under current regulation, Doswell WWTP is allocated 65,601 lbs/year of total nitrogen and 14,923 lbs/year of total phosphorous. Under the proposed amendment, Doswell WWTP would be allocated 18,273 lbs/year of total nitrogen and 2,132 lbs/year of total phosphorous, and BIPCo will be allocated 47,328 lbs/year of total nitrogen and 12,791 lbs/year of total phosphorous. Since 18,273 + 47,328 = 65,601 and 2,132 + 12,791 = 14,923, clearly the total allowable amount of nitrogen and phosphorous that can be discharged is unchanged.

The nutrient allocations to BIPCo and Doswell WWTP (and, in fact, to all relevant facilities) are based on the design capacity of the plant and the annual average nutrient concentration. For example, the Doswell WWTP design flow for nitrogen is 1.0 mllion gallons per day (MGD) and the annual average total nitrogen concentration is 6.0 mg/L. Therefore, the total nitrogen waste load allocation (WLA) for Doswell WWTP for nitrogen is 18,273 lbs/year.[1] Similarly, the Doswell phosphorous concentration is 0.7, so the total phosphorous WLA is 2,132 lbs/yr.[2] BIPCo's design capacity is 4.2 MGD, with an annual average nitrogen concentration of 3.7 and a phosphorous concentration of 1.0, so BIPCo nitrogen and phosphorous allocations are 47,328 lbs/year and 12,791 lbs/year, respectively.[3]

In late 2005, the Department of Environmental Quality (Department) adopted the Watershed General Permit Regulation (9 VAC25-820) to reduce nutrient loading into Virginia waterways that included facility-specific waste load allocations. The average annual nutrient concentrations were based on the Department's decision to reduce nutrient discharge by allowing facilities to utilize the full capacity of the plant design but restricting the nutrient concentration of the discharge. The facilities were granted a compliance period until January 1, 2011, at which point each facility must be in compliance with their assigned waste load allocation. Therefore, the WLAs assigned to Doswell WWTP and BIPCo represent reductions in the total nitrogen and phosphorous discharge, but the total reduction was agreed upon in earlier regulatory changes.

The separation of BIPCo allocations from Doswell was the result of a legal action taken by BIPCo, who appealed the adoption of the Watershed General Permit Regulation. Part of the settlement offer in that suit was to propose the separate allocations and to qualify BIPCo as a facility eligible to participate in the nutrient credit exchange program. BIPCo wants to participate in the nutrient credit exchange program so that it can acquire its own compliance credits rather than relying on the current agreement with Hanover County. Hanover County has endorsed the proposed separate nitrogen and phosphorous load allocations.

Because the waste load allocations were made using the same formula used for all facilities' allocations, we have no reason to believe that the allocations themselves will lead to costs or benefits. (For example, there is no reason to believe that we will see a scenario like the following: Plant A discharges 75 units. Plant B discharges 25 units. Plant A and Plant B allocations are separated so each is allowed to discharge only 50 units. In this case, if both plants strive to be in compliance with regulation, total discharge would be reduced from 100 units to 75 units, even though the total allowable amount has not changed.) Therefore, the costs and benefits will depend upon how BIPCo uses its allocation. Is BIPCo more likely to buy or sell nutrient exchange credits if they have a separate WLA than they would under Hanover County's WLA? If they are more likely to buy or sell credits, will they buy credits or sell credits and what will be the economic effects of the exchange on the company and Virginia citizens?

These two questions are difficult to answer for two reasons. First, although the Department knows that BIPCo would be held accountable by Hanover County for any violations of the Doswell permit that could be attributed to the performance of BIPCo's wastewater treatment facility, the Department is not privy to the terms of the agreement. We do not know if BIPCo could come to an internal agreement with Hanover County about buying or selling credits. Second, although all facilities affected by the Watershed General Permit Regulation have been required to submit compliance plans with details on how they will meet the new waste load requirements, because BIPCo was not considered a separate facility, it has not submitted a plan. BIPCo will be required to submit a plan only with the passage of this regulatory change. Without a plan, we do not know if BIPCo will buy or sell credits through the nutrient credit exchange program.

In the end, if BIPCo would be able to exchange credits through Doswell under the current agreement, this amendment leaves the status quo unchanged and, therefore, provides neither cost nor benefit. If BIPCo would not be able to exchange credits under the current system, then assuming that the nutrient credit exchange program is economically beneficial to Virginia, the benefits of this amendment outweigh the costs.

Businesses and Entities Affected. Doswell WWTP, Bear Island Paper Company (BIPCo), and whichever facilities BIPCo chooses to exchange credits with (if it chooses to exchange credits), are affected by the proposed amendments.

Localities Particularly Affected. Only Hanover County, which owns and operates Doswell WWTP, is directly affected by the proposed amendments. If Bear County Island Paper Company sells nutrient discharge credits to facilities in different counties, however, those counties will also be affected.

Projected Impact on Employment. The proposed changes are not anticipated to have any impact on employment.

Effects on the Use and Value of Private Property. The proposed changes will allow Bear Island Paper Company to participate in the Nutrient Credit Exchange Program, which could increase the value of the business, thereby improving the use and value of private property.

Small Businesses: Costs and Other Effects. Since BIPCo is not a small business and, according to the Department, none of the facilities from which it could acquire/to which it could sell credits are small businesses, the proposed amendment should have no effect on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not add cost to, or otherwise affect, small businesses.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

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

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[1] The equation is WLA=Design Flow*concentration*8.344*365, where the design flow is measured in MGD, concentration is measured in mg/L, 8.344 is the conversion for mg/L into lbs/day, and 365 is the number of days in a year. So, the nitrogen WLA for Doswell WWTP is: 1.0*6.0*8.344*365= 18,273 lbs/year

[2] 1.0*0.7*8.344*365=2,132

[3] Nitrogen WLA: 4.2*3.7*8.344*365=47,328, Phosphorous WLA: 4.2*1.0*8.344*365=12,791

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary

The proposed amendments (i) revise the total nitrogen and total phosphorus waste load allocations (WLAs) for the Doswell Wastewater Treatment Plant (VA0029521) to exclude the portions attributable to Bear Island Paper Company and add separate WLAs for Bear Island Paper Company, and (ii) define certain industrial plants as existing facilities eligible to exchange nutrient credits.

9VAC25-720-120. York River Basin.

A. Total Maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 -- RECOMMENDED STREAM SEGMENTS IN THE YORK RIVER BASIN

Segment Number	Classification	Name of River (Description)*
8-1	EL	North Anna River (main and tributaries except Goldmine Creek and Contrary Creek) R.M. 68.4-0.0
8-2	EL	Goldmine Creek
8-3	WQ	Contrary Creek (main only) R.M. 9.5-0.0
8-4	EL	South Anna River (main and tributaries) R.M. 101.2-97.1
8-5	EL	South Anna River (main only) R.M. 97.1-77.4
8-6	EL	South Anna River (main and tributaries) R.M.77.4-0.0
8-7	EL	Pamunkey River (main and tributaries) R.M. 90.7-12.2
8-8	WQ	Pamunkey River (main only) R.M. 12.2-0.0
8-9	EL	Mattaponi River (main and tributaries) R.M.102.2-10.2
8-10	EL	Mattaponi River (main only) R.M.10.2-0.0
8-11	WQ	York River (main only) R.M. 30.4-22.4
8-12	EL	York River (main and tributaries except King Creek and Carter Creek) –R.M. 22.4-0.0
8-13	EL	Carter Creek (main and tributaries) R.M. 5.4-2.0
8-14	EL	Carter Creek (main only) R.M. 2.0-0.0
8-15	EL	King Creek (main only) R.M.5.6-0.0
8-16	WQ	Condemned shellfish areas-Timberneck, Queens, and Sarah Creeks and portions of the main stream of the York River.

*R.M.= River Mile, measured from the river mouth

Source: Roy F. Western

TABLE B2 - WASTE LOAD ALLOCATIONS (IN LBS PER DAY)											
POINT SOURCE	1977 WASTE LOAD[2]		MAXIMUM[7] DAILY LOAD		RECOMMENDED ALLOCATION			RAW WASTE LOAD AT 1995		REQUIRED & REMOVAL EFFICENCY 1995	
	$CBOD_5$	UBOD[1]	$CBOD_5$	UBOD	$CBOD_5$	UBOD	PERCENT RESERVE	$CBOD_5$	UBOD	$CBOD_5$	UBOD
Gordonsville	145	398	150	412	150	412	0	1950	2730	92	85
Louisa-Mineral	50	108	55	118	55	118	0	850	1150	93	90
Doswell	52	110	862[8]	1407[8]	690[8]	1125[8]	20	1080	1444	85[4]	71
Thornburg	63	150	68	162	68	162	0	1240	1690	94	90
Bowling Green	27	64	29	68	29	68	0	680	926	96	93
Ashland	160	303	235	559	188	447	20	2250	3825	92	88
Hanover (Regional STP)	170	437	280	820	280	820	0	5730	7930	96	90
Chesapeake Corp.	6400	8000	10445[5]	15000[5]	10445[5]	15000[5]	N/A	51700	64630	90	90
West Point	105	380	281[3]	1020	225	814	20	1000	1600	85[4]	66

[1]BOD is Ultimate Biochemical Oxygen Demand. Its concentration is derived by the following: BOD_5 /0.80+ 4.5(TKN)=(UBOD). NOTE: The amount of TKN utilized depends on the location in the basin.

[2]Projected for 1977 based on population projections.

[3]Recommended allocation based on BPCTCA effluent guidelines applied to raw waste loads at 2020.

[4]Minimum removal efficiency.

[5]Allocation based on BPCTCA effluent guidelines; amended by Minute 25, June 3-5, 1979 board meeting.

[7]Assimilative capacity.

[8]Amended by Minute 1, August 17, 1978, board meeting.

Source: Roy F. Weston, Inc.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
F20R	Caroline County STP	VA0073504	9,137	1,066
F01R	Gordonsville STP	VA0021105	17,177	2,004
F04R	Ashland WWTP	VA0024899	36,547	4,264
F09R	Doswell WWTP	VA0029521	~~65,601~~ 18,273	~~14,923~~ 2,132
F09R	Bear Island Paper Company	VA0029521	47,328	12,791
F27E	Giant Yorktown Refinery	VA0003018	167,128	22,111
F27E	HRSD - York River STP	VA0081311	274,100	31,978

F14R	Parham Landing WWTP[(1)]	VA0088331	54,820	6,396
F14E	Smurfit Stone - West Point	VA0003115	259,177	70,048
F12E	Totopotomoy WWTP	VA0089915	182,734	21,319
F25E	West Point STP	VA0075434	10,964	1,279
C04E	HRSD - Mathews Courthouse STP	VA0028819	1,827	213
	TOTALS:		1,079,212	175,601

NOTES: [(1)] Parham Landing WWTP: waste load allocations (WLAs) based on a design flow capacity of 3.0 million gallons per day (MGD). If plant is not certified to operate at 3.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow capacity of 0.57 MGD.

9VAC25-820-10. Definitions.

Except as defined below, the words and terms used in this chapter shall have the meanings defined in the Virginia Pollution Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means the daily total nitrogen concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.3438 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the daily total phosphorus concentration (expressed as mg/l to the nearest 0.01mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD) multiplied by 8.3438 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by §62.1-44.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

"Biological nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen and total phosphorus through the recycle or reuse of wastewater as determined by the department.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as determined by the specific geographic location of the permitted facility, to account for attenuation that occurs during riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

"Department" means the Department of Environmental Quality.

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.05 million gallons per day.

"Existing facility" means a facility holding a current individual VPDES permit that has either commenced discharge from, or has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) the treatment works used to derive its waste load allocation on or before July 1, 2005, or has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, without an individual VPDES permit, which holds a separate waste load allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005.

"Facility" means a point source discharging or proposing to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by §62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

"New discharge" means any discharge from a facility that did not commence the discharge of pollutants prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Offset" means to acquire an annual waste load allocation of total nitrogen or total phosphorus by a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

"Permitted facility" means a facility authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger, that does not have a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the facility must acquire credits at the end of a calendar year. For the purpose of this regulation, facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged by that facility, that clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored annual mass load of total phosphorus

discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level (QL)" means the lowest standard in the calibration curve for a given analyte. The QL must have a value greater than zero and be verified each day of analysis by analyzing a sample of known concentration at the selected QL with a recovery range of 70% - 130%.

"Registration list" means a list maintained by the department indicating all facilities that have registered for coverage under this general permit, by tributary, including their waste load allocations, permitted design capacities and delivery factors as appropriate.

"Significant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that is expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that is expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins for which separate tributary strategies were prepared pursuant to §2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to §62.1-44.19:15 of the Code of Virginia for new or expanded facilities, or (iii) applicable total nitrogen or total phosphorus total maximum daily loads to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-20. Purpose, applicability, delegation of authority.

A. This regulation fulfills the statutory requirement for the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus discharges and nutrient trading in the Chesapeake watershed issued by the board pursuant to the Clean Water Act (33 USC §1251 et seq.) and §62.1-44.19:14 of the Code of Virginia.

B. This general permit regulation governs facilities holding individual VPDES permits or that otherwise meet the definition of existing facility that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

C. The director may perform any act of the board provided under this regulation, except as limited by §62.1-44.14 of the Code of Virginia.

9VAC25-820-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein.

General Permit No.: VAN000000

Effective Date: January 1, 2007

Expiration Date: December 31, 2011

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE WATERSHED IN VIRGINIA

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen and/or total phosphorus discharges to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen and/or total phosphorus.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I
Special Conditions Applicable To All Facilities

A. Authorized activities.

1. Authorization to discharge for facilities required to register.

a. Every owner or operator of a facility required to submit a registration statement to the department by January 1, 2007, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner or operator of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for facilities not required to register. Any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners or operators of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

B. Waste load allocations.

1. Waste load allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable total maximum daily loads, or waste load allocations acquired by new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The waste load allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose mass loads are derived from permitted design capacities.

2. Except as described in subdivision 2 d of this subsection, an owner or operator of two or more facilities covered by this general permit and located in the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations or permitted design capacities established for such facilities individually.

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the waste load allocations assigned to any of the affected facilities in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C and 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

c. Credits shall not be generated by permittees whose aggregated mass load limit is derived entirely from permitted design capacities.

d. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

e. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner who consolidates two or more facilities located in the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus, subject to the following conditions:

a. If all of the affected facilities have waste load allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the waste load allocations of the

affected facilities. The regional facility shall be eligible to generate credits.

b. If any, but not all, of the affected facilities has a waste load allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(1) Waste load allocations of those facilities that have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a waste load allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, calculated by the following formulae:

Nitrogen Load (lbs/day) = flow (expressed as MGD to the nearest 0.01 MGD) x 8.0 mg/l x 8.3438 x 365 days/year

Phosphorus Load (lbs/day) = flow (expressed as MGD to the nearest 0.01 MGD) x 1.0 mg/l x 8.3438 x 365 days/year

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

c. If none of the affected facilities have a waste load allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities. The regional facility shall not be eligible to generate credits.

4. Unless otherwise noted, the nitrogen and phosphorus waste load allocations assigned to permitted facilities are considered total loads including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned waste load allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus waste load allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the bioavailable portion of the assigned waste load allocation.

C. Schedule of compliance.

1. The following schedule of compliance pertaining to the load allocations for total nitrogen and total phosphorus applies to the facilities in each tributary, as listed.

a. Compliance shall be achieved as soon as possible, but no later than the following dates, subject to any compliance plan-based adjustment by the board pursuant to subdivision 1 b of this subsection, for each parameter:

Tributary	Parameter	Final Effluent Limits Effective Date
James River	Nitrogen	January 1, 2011
	Phosphorus	January 1, 2011
Shenandoah and Potomac Rivers	Nitrogen	January 1, 2011
	Phosphorus	January 1, 2011
Rappahannock River	Nitrogen	January 1, 2011
	Phosphorus	January 1, 2011
York River	Nitrogen	January 1, 2011
	Phosphorus	January 1, 2011
Eastern Shore	Nitrogen	January 1, 2011
	Phosphorus	January 1, 2011

b. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the board shall reevaluate the schedule of compliance in subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in §62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the

board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.

2. The registration list shall contain individual dates for compliance (as defined in Part I J 1 a-b of this general permit) for dischargers, as follows:

a. Facilities that were required to submit a registration statement with the department by January 1, 2007, will have individual dates for compliance based on their respective compliance plans, that may be earlier than the basin schedule listed in subdivision 1 of this subsection.

b. Facilities that have waived their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, 2007.

c. Upon completion of the projects contained in their compliance plans, facilities may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than the basin schedule listed in subdivision 1 of this subsection.

d. New and expanded facilities will have individual dates for compliance corresponding to the date that coverage under this general permit was extended to the facility.

D. Annual update of compliance plan. Every owner or operator of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined waste load allocations of all the permittees in the tributary. Compliance plans for facilities that were required to submit a registration statement with the department by January 1, 2007, may rely on the acquisition of point source credits in accordance with Part I J of this general permit, but not the acquisition of credits through payments into the Water Quality Improvement Fund, to achieve compliance with the individual and combined waste load allocations in each tributary. Compliance plans for expansions or new discharges for facilities that are required to submit a registration statement with the department may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined waste load allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified below:

STP design flow	>20.0 MGD	1.0-19.999 MGD	0.040-0.999 MGD
Effluent TN load limit for industrial facilities		>100,000 lb/yr	487-99,999 lb/yr
Effluent TP load limit for industrial facilities		>10,000 lb/yr	37-9,999 lb/yr
Parameter	Sample Type and Collection Frequency		
Flow	Totalizing, Indicating and Recording		
Nitrogen Compounds (Total Nitrogen = TKN + NO_2- (as N) + NO_3- (as N))	24 HC 3 Days/Week	24 HC 1/Week	8 HC 2/Month, > 7 days apart
Phosphorus Compounds (Total Phosphorus and Orthophosphate)	24 HC 3 Days/Week	24 HC 1/Week	8 HC 2/Month, > 7 days apart

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit and monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136 (2006), unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. Monitoring may be performed by the permittee at frequencies more stringent than listed above; however, the permittee shall report all results of such monitoring.

3. Loading values reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the facility's individual permit. The total monthly load shall be calculated in accordance with the following formula:

$ML = ML_{avg} * d$

where:

ML = total monthly load (lb/mo)

ML_{avg} = monthly average load as reported on DMR (lb/d)

d = number of discharge days in the calendar month

$ML_{avg} = \sum DL / s$

where:

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.3438 and rounded to the nearest whole number to convert to pounds per day (lbs/day)

s = number of days in the calendar month in which a sample was collected and analyzed

All daily concentration data below the quantification level (QL) for the analytical method used should be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

The total year-to-date mass load shall be calculated in accordance with the following formula:

AL-YTD = $\sum_{(\text{Jan-Dec})} ML$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo) as reported on DMR

F. Annual reporting.

1. Annually, on or before February 1, the permittee shall either individually or through the Virginia Nutrient Credit Exchange Association file a report with the department, using a reporting form supplied by the department. The report shall identify:

a. The annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each of its permitted facilities during the previous calendar year;

b. The delivered total nitrogen load and delivered total phosphorus load discharged by each of its permitted facilities during the previous year; and

c. The number of total nitrogen and total phosphorus credits for the previous calendar year to be acquired or eligible for exchange by the permittee.

The total annual mass load shall be calculated in accordance with the following formula:

AL = $\sum_{(\text{Jan-Dec})} ML$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo) as reported on DMR

G. Requirement to register; exclusions.

1. The following owners or operators are required to register for coverage under this general permit:

a. Every owner or operator of an existing facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into nontidal waters, shall submit a registration statement to the department by January 1, 2007, and thereafter upon the reissuance of this general permit in accordance with Part III B. The conditions of this general permit will apply to such owner and operator upon approval of a registration statement.

b. Any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, and thereafter upon the reissuance of this general permit in accordance with Part III B. The conditions of this general permit will apply to such owner or operator beginning on the start of the calendar year immediately following submittal of a registration statement and issuance or modification of the individual permit.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address and telephone number, e-mail address and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, e-mail address and fax number for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated waste load allocation in accordance with Part I B 2 of this permit, list all affected

facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of waste load allocation acquired; and

f. For existing facilities, the amount of a facility's waste load allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

2. The registration statement shall be submitted to the DEQ Central Office, Office of Water Permit Programs.

3. An amended registration statement shall be submitted upon the acquisition or transfer of a facility's waste load allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new waste load allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new waste load allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion, or (ii) delivery factor, shall be published once a week for two consecutive weeks in a major local newspaper of general circulation serving the locality where the facility is located informing the public that the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the owner or operator's intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of waste load allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication and to establish a dialogue between the owner or operator and persons who may be affected by the facility;

f. An announcement of a 30-day comment period, in accordance with 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, and the name, telephone number, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions;

g. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

h. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with waste load allocations.

1. Methods of compliance. The permitted facility shall comply with its waste load allocation contained in the registration list maintained by the department. The permitted facility shall be in compliance with its waste load allocation if:

a. The annual mass load is less than or equal to the applicable waste load allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility; or

c. In the event it is unable to meet the individual waste load allocation pursuant to subdivision 1 a or 1 b of this subsection, the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Water Quality Improvement Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

2. Credit acquisition from permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more permitted facilities with waste load allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110

C and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, including the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority, only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's waste load allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Water Quality Improvement Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the Water Quality Improvement Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Virginia Water Quality Improvement Fund established in §10.1-2128 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include, but not be limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee is located. Payments to the Water Quality Improvement Fund shall be in the amount of $11.06 for each pound of nitrogen and $5.04 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year,

b. The credits are generated in the same tributary,

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires, nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

Part II
Special Conditions Applicable To New And Expanded Facilities

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable waste load allocation assigned to the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner or operator of multiple facilities located in the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities, shall be required to acquire waste load allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of waste load allocations. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations from one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of nonpoint source load allocations, using a trading ratio of two pounds reduced for every pound to be discharged, through the use of best management practices that are:

(1) Acquired through a public or private entity acting on behalf of the land owner;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by the Virginia tributaries strategies plans; and

(5) Included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit;

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Virginia Water Quality Improvement Fund established in §10.1-2128 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis.

2. Acquisition of allocations is subject to the following conditions:

a. The allocations shall be generated and applied to an offset obligation in the same calendar year;

b. The allocations shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual Virginia Pollutant Discharge Elimination permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied;

e. If obtained from a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's waste load allocations; and

f. No later than June 1 in the year prior to the calendar year in which the allocations are to be applied, the permittee shall certify on an exchange notification form supplied by the department that he has acquired sufficient allocations to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the exchange notification form submitted to the department.

3. Priority of options. The board shall give priority to allocations acquired in accordance with subdivisions 1 a and 1 b of this subsection. The board shall approve allocations acquired in accordance with subdivisions 1 c and 1 d of this subsection only after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include, but not be limited to, providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee is located.

4. Annual allocation acquisitions from the Water Quality Improvement Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the WQIF, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the Department of Conservation and Recreation on an

annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

Part III
Conditions Applicable To All VPDES Permits

A. Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the law and the Clean Water Act, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

B. Duty to register for reissued general permit. If the permittee wishes to continue an activity regulated by the general permit after its expiration date, the permittee must register for coverage under the new general permit, when it is reissued by the department.

C. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Property rights. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit, pertaining to activities related to the permitted facility.

I. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the law, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 (2006) or alternative EPA-approved methods, unless other test procedures have been specified in the permit.

K. Signatory requirements. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-31-110.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the Clean Water Act.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 (2006), or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR specified by the department.

c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment work or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four-hour reporting.

a. The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information that must be reported within 24 hours under this subdivision.

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the written report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

M. Bypass.

1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

VA.R. Doc. No. R08-936; Filed June 3, 2008, 1:25 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (adding 12VAC5-490-30, 12VAC5-490-40).**

Statutory Authority: §32.1-229 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on August 22, 2008.

Agency Contact: Les Foldesi, Director, Bureau of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

Basis: Section 32.1-229 authorizes the Board of Health to establish fee schedules, which shall not exceed comparable federal Nuclear Regulatory Commission fees, for the

licensure and inspection of radioactive materials. Section 32.1-232.1 establishes a special trust fund for Radioactive Materials Facility Licensure and Inspection fees.

Purpose: The proposed regulatory action addresses the radioactive materials licensing and inspection activity. Additional sections are required to implement a fee schedule to support a radioactive materials licensing and inspections program for certain radioactive materials the federal government currently implements. During the 1999 session of the General Assembly, legislation was passed that authorized implementation of a fee schedule to support a radioactive materials licensing and inspections program for the radioactive materials the federal government currently regulates, and created a special fund for the fees collected. This fee schedule will not be implemented until the Governor enters into an agreement with the U.S. Nuclear Regulatory Commission (NRC) for the regulation of these materials. The Governor sent a letter of intent in December 2005 to the NRC requesting an agreement. The NRC will not enter into an agreement until the state demonstrates its ability to fiscally support this activity.

The harmful effects of radiation are well known, as well as the many beneficial applications of radiation in industry and healthcare. Adequate regulatory controls for the useful application of radiation are necessary to protect the health, safety and welfare of citizens. Adequate funding is also required to support such a regulatory program.

Substance: 8VAC5-490-30 is being created to establish licensing fees for naturally occurring radioactive materials and accelerator-produced materials that Virginia currently regulates, which will revert to the NRC in 2009 unless the Commonwealth enters into an agreement with the NRC.

8VAC5-490-40 is being created to establish the licensing fees for radioactive material users currently regulated by the NRC. These fees will provide sufficient funding to cover the expenses relating to licensing, inspections, investigations, emergency response, and personnel training.

Issues: The primary advantage to the public is that the radioactive materials licensing and inspection activities will not rely on general funds to support these activities and will financially impact the businesses that directly benefit from the use of radiation. It is also advantageous to businesses currently using radioactive materials under a federal license to pay a lesser fee when the Commonwealth enters into an agreement with the NRC.

There are no disadvantages to the public in promulgating the proposed fee schedule.

Primary advantages and disadvantages to the agency and Commonwealth: approving the proposed fee structure will allow VDH to eliminate its dependence on its general fund appropriation to support this regulatory program. The proposed fee schedule will also allow the Commonwealth to enter into an agreement with the NRC to regulate radioactive materials and be self-sufficient. There are no disadvantages to the agency and Commonwealth in promulgating the proposed fee schedule.

Pertinent matters of interest to the regulated community: VDH does not anticipate any issues from most of the radioactive materials licensees, since the proposed fee schedule for radioactive materials will be significantly reduced in most cases from the fees the licensees are currently paying to the NRC.

Other matters: In 1995, President Bush signed the Energy Policy Act (EPA), which changed the definition of radioactive material to include naturally occurring and accelerated-produced material (NARM). By signing the EPA, the NRC will assume full regulatory control of all radioactive material unless a state has entered into an agreement with the NRC. This process will conclude in 2009. Currently, 34 states have entered into such an agreement. Pennsylvania, Virginia and New Jersey have signed letters of intent to become Agreement States.

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

Summary of the Proposed Amendments to Regulation.

Section 32.1-229 of the Code of Virginia authorizes the Board of Health (Board) to establish fee schedules which shall not exceed comparable U.S. Nuclear Regulatory Commission (NRC) fees. The Board proposes to amend the existing Radiation Protection Regulation Fee Schedule to adopt a fee structure to support the radioactive materials licensing and inspection program for those materials the NRC intends to transfer to the Commonwealth by agreement. The proposed regulations will supersede the Radiation Protection Regulation Fee Schedule which became effective January 1, 1989.

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

Estimated Economic Impact. Under current regulation, there are two programs for regulating nuclear materials: one for by-product, source, and special nuclear materials that is operated by the U.S. Nuclear Regulatory Commission (NRC) and one for naturally-occurring and accelerator-produced radioactive materials (NARM) that is operated by the Virginia Department of Health. In 2005, Congress approved the Energy Policy Act of 2005, which moved jurisdiction over the latter program to the NRC. The NRC, then, gave all states a waiver until 2009. In other words, under current regulation the NRC will operate both programs for regulating nuclear and radioactive materials beginning in 2009.

A state can take over full regulatory control of radioactive material by entering into an agreement with the NRC. The

Governor of Virginia sent a letter of intent in December 2005 to the NRC requesting such an agreement. (Currently, 34 states have become "Agreement States" and Pennsylvania, New Jersey, and Virginia have signed letters of intent to become Agreement States.) The NRC will not enter into an agreement until the state demonstrates that it is able to fiscally support the program. During the 1999 session of the General Assembly, legislation was passed that authorized implementation of a fee schedule to support a radioactive materials licensing and inspections program, and set up a special fund for the fees collected.

Under current regulation, the program for by-product, source, and special nuclear materials that is operated out of the NRC is funded by license fees set up by the NRC. (Congress requires the NRC to recover 90 percent of its expenses.) The NARM program was funded from the general fund, is currently funded out of a special fund within the Virginia Department of Health that also supports the effort to become an Agreement state (the funding source is still a general funding source, however), and if Virginia does not become an Agreement state, starting in 2009 the NARM program will be funded through fees paid to the NRC.

One benefit of the proposed amendment is that the NARM program will no longer be financed from the general fund (or a general funding source); however, starting in 2009 the NARM program will be funded through the NRC out of licensing fees, so this benefit is only a short-term benefit of the proposed amendment. In the short term, funding a program using a fee rather than using general funding is economically beneficial to the citizens of Virginia because it requires only those businesses that benefit from the use of radiation to pay the fees. In the longer-term, there is a benefit to NRC and NARM licensees in the form of lower fees. Because states can implement these programs within state more cheaply than the federal government[1], the cost of the program will be reduced with its move from federal to state control. This will allow the Board to lower the fees charged to licensees. The smallest fee reduction (8 percent) is for licenses for commercial facilities involving waste compaction, repackaging, storage, or transfer. The largest fee reduction (91 percent) is in the licenses of portable x-ray fluorescence analyzers, dewpointers, or gas chromatographs. The average reduction in the 36 license fees from the NRC fees to the proposed fees is a 58 percent reduction and the median reduction is 62 percent.[2] In other words, for most licensees, the fees are substantially reduced. In its proposed fees, the Board includes some licenses that the NRC has never issued and licenses for activities that the NRC has not yet regulated (such as the NARM program). Although for these activities, we do not know that the license fees suggested in the proposed amendments are less than what federal fees would be, given the existing differences, it seems safe to assume that the fees in the proposed amendments are likely to be lower.

Another benefit of the proposed fee structure is that it allows the Commonwealth to enter into an agreement with the NRC to regulate radioactive materials. Once Virginia is granted Agreement state status by the NRC, the proposed fee structure will enable the program to be self-sufficient.

There is a short-term cost to NARM licensees in that they currently do not pay license fees. However, because Virginia must finish the process of becoming an Agreement state before these fees are implemented and NARM licensees will anyway have to pay fees starting in 2009, and because all Virginia residents—including NARM licensees—pay for the NARM program now, the proposed amendment is not likely to increase costs significantly, if at all, for NARM licensees. In addition, the Department estimates that the annual cost of the proposed amendment for a licensee includes the cost of generating a check to VDH and postage in response to a VDH invoice, which would probably be less than $5.00. The cost of submitting an application will vary depending upon the proposed licensing activity. There is no reason to think, however, that licensees will have any more cost than that which they are currently paying to comply with NRC requirements.

In sum, the benefits clearly outweigh the costs for the proposed amendment.

Businesses and Entities Affected. Currently, there are approximately 350 NRC licensees that will become Virginia licensees after the agreement is approved. Currently, there are 228 NARM licensees, of which approximately 75 do not possess an NRC license. In sum, the proposed amendment will affect approximately 425 separate entities.

Localities Particularly Affected. The proposed amendments will affect localities with entities that engage in activities involving nuclear or radioactive materials. The proposed amendments do not disproportionately affect particular localities, as the businesses and entities that deal with nuclear and regulatory materials are spread across the Commonwealth.

Projected Impact on Employment. The proposed amendments will enable Virginia to become an Agreement state which will allow Virginia to implement the radiation protection programs and therefore add a few jobs to the Virginia Department of Health (in place of federal employees who may reside out of state). The proposed amendments are not anticipated to impact employment in any other manner.

Effects on the Use and Value of Private Property. The proposed amendments will lower the license fees for the relevant entities and therefore increase the value of their businesses.

Small Businesses: Costs and Other Effects. Of the 350 NRC licensees that will become Virginia licensees after the agreement is approved, 25 are considered small entities by the NRC.[3]

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no apparent alternative method that minimizes adverse impact while still accomplishing the intended positive policy goals.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

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

[1] Source: Virginia Department of Health. State programs do not have to fund airplane flights, rental cars, or extensive lodging, and federal government workers are usually paid more than state workers.

[2] Source: Virginia Department of Health

[3] All small businesses would qualify as "small entities". For more information, see 10 CFR 171.16.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department concurs generally with the economic impact analysis performed by the Department of Planning and Bugdet.

Summary:

The proposed amendments establish a fee structure to support the radioactive materials licensing and inspection program for those materials the U.S. Nuclear Regulatory Commission intends to transfer to the Commonwealth by agreement.

12VAC5-490-30. Application and licensing fees for naturally occurring and accelerator-produced radioactive materials.

The application and licensing fees to receive, possess, use, transfer, own or acquire naturally occurring and accelerator-produced radioactive materials license pursuant to 12VAC5-481 are listed in 12VAC5-490-40.

12VAC5-490-40. Application and licensing fees for byproduct, source, and special nuclear materials.

The application and licensing fees to receive, possess, use, transfer, own or acquire byproduct materials, source and special nuclear materials shall not become effective until 30 days after publication in the Virginia Register of a notice of an agreement executed by the Commonwealth of Virginia and the federal government under the provisions of §274b of the Atomic Energy Act of 1954, as amended (73 Statute 689). Application for a radioactive materials license and annual fees for persons issued a radioactive materials license pursuant to 12VAC5-481 are listed in the following table:

Category		Specific License Type	Application & Annual Fee
1		Special Nuclear Material (SNM)	
	A.	License for possession and use of SNM in sealed sources contained in devices used in measuring systems	$1,000
	B.	License for use of SNM to be used as calibration and reference sources	$500
	C.	SNM - all other, except license authorizing special nuclear material in unsealed form that would constitute a critical mass (fee waived if facility holds additional license category)	$2,000
2		Source Material	
	A.	Source material processing and distribution	$3,000
	B.	Source material in shielding (fee waived if facility holds additional license category)	$200
	C.	Source material - all other, excluding depleted uranium used as shielding or counterweights	$2,000
3		Byproduct, NARM	
	A.	License of broad scope for processing or manufacturing of items for commercial distribution	$15,000
	B.	License for processing or manufacturing and commercial distribution of radiopharmaceuticals, generators, reagent kits and sources or devices	$8,000

	C.	License for commercial distribution or redistribution of radiopharmaceuticals, generators, reagent kits and sources or devices	$4,000
	D.	Other licenses for processing or manufacturing of items for commercial distribution	$4,000
	E.	License for industrial radiography operations performed only in a shielded radiography installation	$3,000
	F.	License for industrial radiography performed only at the address indicated on the license, and at temporary job sites	$4,000
	G.	License for possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is not removed from the shield (fee waived if facility holds additional irradiator license category)	$3,000
	H.	License for possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes. The category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation	$3,000
	I.	License for possession and use of at least 370 TBq (10,000 curies) and less than 3.7 PBq (100,000 curies) of radioactive material in sealed sources for irradiation of materials)	$5,000
	J.	License for possession and use of 3.7 PBq (100,000 curies) or more of radioactive material in sealed sources for irradiation of materials	$15,000
	K.	License to distribute items containing radioactive materials to persons under a general license	$2,000
	L.	License to possess radioactive materials intended for distribution to persons exempt from licensing	$1,000
	M.	License of broad scope for research and development that does not authorize commercial distribution	$7,500
	N.	Other licenses for research and development that do not authorize commercial distribution	$1,500
	O.	License for installation, repair, maintenance or other service of devices or items containing radioactive material, excluding waste transportation or broker services	$1,500
	P.	License for portable gauges	$1,000
	Q.	License for portable X-ray fluorescence analyzer, dewpointer or gas chromatograph	$250
	R.	Leak testing services	$500
	S.	Instrument calibration services	$1,000
	T.	Fixed gauges	$1,000
	U.	All other byproduct, naturally occurring or accelerator-produced material licenses, except as otherwise noted	$1,500
4		Waste Processing	
	A.	Commercial waste treatment facilities, including incineration	$200,000
	B.	All other commercial facilities involving waste compaction, repackaging, storage or transfer	$11,000
	C.	Waste processing - all other, including decontamination service	$5,000
5		Well Logging	
	A.	License for well logging using sealed sources or subsurface tracer studies	$3,000
	B.	License for well logging using sealed sources and subsurface tracer studies	$4,000
6		Nuclear Laundry	
	A.	License for commercial collection and laundry of items contaminated with radioactive material	$10,000
7		Medical/Veterinary	
	A.	License for human use of byproduct, source, special nuclear or NARM material in sealed sources contained in teletherapy or stereotactic radiosurgery devices, including mobile therapy	$10,000
	B.	License of broad scope for human use of byproduct, source, special nuclear or NARM materials used in medical diagnosis, treatment, research and development (excluding teletherapy or stereotactic radiosurgery devices)	$15,000
	C.	License for mobile nuclear medicine	$2,000
	D.	Medical - all others, including SNM pacemakers and high dose rate remote afterloading devices	$4,000
	E.	License for veterinary use of radioactive materials	$2,000
	F.	In-vitro	$1,000

8		Academic	
	A.	License for possession and use of byproduct, naturally occurring or accelerator-produced radioactive material for educational use or academic research and development that does not authorize commercial distribution, excluding broad scope or human use licenses	$1,000
9		Accelerator	
	A.	License for accelerator production of radioisotopes with commercial distribution	$4,000
	B.	Accelerator isotope production - all other (fee waived if facility holds medical broad scope license with no commercial distribution)	$2,000
10		Reciprocity	
	A.	Reciprocity recognition of an out-of-state specific license	50% of annual fee of applicable category
11		Amendments	
	A.	Request to amend specific license - no license review	$0
	B.	Request to amend specific license - license review required	$100
	C.	Request to terminate license	$200

VA.R. Doc. No. R07-114; Filed June 2, 2008, 2:47 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-221).**

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: July 23, 2008.

Agency Contact: William Lessard, Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804)225-4593, FAX (804)786-1680, or email william.lessard@dmas.virginia.gov.

Summary:

The amendments provide that the definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. Additionally, the amendments state that the definition of Medicaid days does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

Changes from the proposed include clarifying the definition of Medicaid utilization percentage and adding a document incorporated by reference.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Article 2
Prospective (DRG-Based) Payment Methodology

12VAC30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12VAC30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12VAC30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12VAC30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12VAC30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12VAC30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12VAC30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. Payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full time equivalent (FTE) interns and residents as reported on the cost report.

7. As stipulated in 12VAC30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12VAC30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. ~~In subsequent rebasing, the Commonwealth shall notify affected providers of the base year to be used in this calculation.~~ In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" reflects the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" reflects the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. <u>This definition includes all paid Medicaid days</u> [<u>(from DMAS MR reports for fee-for-service days and managed care organization or hospital reports for HMO days)</u>] <u>and nonpaid/denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits</u> [<u>(with appropriate documentation)</u>]<u>. The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.</u>

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The operating cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and include (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12VAC30-50-95 through 12VAC30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" occur when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new case. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Type One" hospitals means those hospitals that were state-owned teaching hospitals on January 1, 1996. "Type Two" hospitals means all other hospitals.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. Until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology	
Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file

Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

DOCUMENTS INCORPORATED BY REFERENCE

All Patient Diagnosis Related Groups (AP-DRG) Grouper, DRG and MDC Code Listings, Version 12, January 1995.

Health Care Cost Review, Second Quarter 2000, copyright 2001, DRI-WEFA, Inc.

[International Classification of Diseases (ICD-9-CM), Physician, Volumes 1 and 2, American Medical Association, 2007.]

VA.R. Doc. No. R06-317; Filed May 27, 2008, 3:24 p.m.

Final Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-75).**

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: July 23, 2008.

Agency Contact: Mike Lupien, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23238, telephone (804)786-3673, FAX (804)786-1680, or email michael.lupien@dmas.virginia.gov.

Summary:

The amendments change reimbursement for school divisions from statewide fee-for-service to a cost settlement process. School division providers shall file annual cost reports for these services and the department shall settle reimbursement to actual costs. Reimbursement to school divisions shall continue to be subject to the provisions of §32.1-326.3 A 1 of the Code of Virginia that only the federal share shall be reimbursed for special education health services and that local governments fund the state match for special education health services provided by school divisions. This reimbursement methodology change is required by the Centers for Medicare and Medicaid Services (CMS), the federal funding agency for the Medicaid program.

The changes made to the text between the proposed and final regulation stipulate that in order for the Local Education Agency providers to be reimbursed by DMAS, they must provide the services now listed in 12VAC30-80-75 A. The reimbursement method provides that the first rate year costs will be reported on a cash basis and for the subsequent years on an accrual basis under this methodology. There were numerous other clarifying changes based upon review of the regulation language by the CMS. Without the changes noted, CMS would not have approved the underlying state plan amendment providing the federal financial participation for the Medicaid School Health Services described in the regulation.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule

(12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12VAC30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

d. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services~~, including services paid to local school districts~~.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at

least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 17 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-80-75. Local Education Agency (LEA) providers.

A. Definitions. The following words are terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"CMS" means Centers for Medicare and Medicaid Services.

"DMAS" means Department of Medical Assistance Services.

"FAMIS" means Family Access to Medical Insurance Security Plan.

"FFP" means Federal Financial Participation.

"IDEA" means Individuals with Disabilities Education Act.

"IEP" means Individual Education Plan.

"LEA" means Local Education Agency.

"MMIS" means Medicaid Management Information System.

[B. Effective for services on or after July 1, 2006, the following methodology will determine the reimbursement for Local Education Agency (LEA) providers. The methodology described below applies to reimbursement for the following services delivered by LEA providers. These services are described in 12VAC30-50-135.

1. Speech therapy;

2. Audiology and hearing services;

3. Physician services for medical evaluation services;

4. Occupational therapy;

5. Physical therapy;

6. Psychiatric and psychological services;

7. Personal care services;

8. Skilled nursing services; and

9. Special transportation.]

[~~B.~~ C.] Medical services provided by LEA providers for special education students. The following methodology will determine the reimbursement for (LEA) providers.

1. For each of the IDEA-related school-based medical services covered under the State Plan other than specialized transportation services, the LEA provider's actual cost of providing the services shall be certified and the FFP shall be paid to LEA providers based on the methodology described in subdivisions 2 through 7 of this subsection. [For the rate year ending June 30, 2007, cost will be reported on a cash basis; for all succeeding years cost will be reported on an accrual basis.] All costs to be certified and used subsequently to determine reconciliation and final settlement amounts as well as interim rates are identified on the CMS-approved Medical Services Cost Report. Final payment for each school year is based on actual costs as determined by desk review [~~or~~ and/or] audit for each LEA provider.

2. Step 1: Develop the personnel cost base for medical services. Total [~~annual~~] salaries and benefits paid as well as contracted (vendor) payments shall be obtained initially from each LEA's payroll/benefits and financial system [for each quarter of the fiscal year]. This data shall be reported on the DMAS Medical Services Cost Report form for all direct service personnel (i.e., all personnel providing medical services covered under the State Plan). [~~Personnel~~ Total computable personnel] costs are reduced by any reimbursement that is not from state or local funding sources. The personnel cost base does not include any amounts for staff whose compensation is 100% reimbursed by a funding source other than state or local funds. The application of Step 1 results in total adjusted salary cost.

3. Step 2: Determine medical services personnel cost using a time study. A time study that incorporates the CMS-approved time study methodology shall be used to determine the percentage of time medical service personnel spend on [IEP-related] medical services and general and administrative (G&A) time. This time study shall assure that there shall be no duplicate claiming relative to claiming for administrative costs [and no more than 100% of practitioner time is reported]. G&A time shall be allocated to medical services based on the percentage of time spent on medical services. To reallocate G&A time to medical services, the percentage of time spent on medical services shall be divided by 100% minus the percentage of time spent on G&A. This shall result in a percentage that represents the medical services with appropriate allocation of G&A. This percentage [, which shall be determined quarterly,] shall be multiplied by the personnel cost base as determined in Step 1 to allocate personnel cost to medical services. The product represents medical services personnel cost [for all payers and not just Medicaid]. A sufficient number of medical service personnel shall be sampled to ensure time study results that will have a confidence level of at least 95% with a precision of plus or minus 5.0% overall. [The time study is CMS-approved and may not be modified unless prior approval is received from CMS. Quarterly personnel costs are summed for the fiscal year and reported on the DMAS Medical Services Cost Report.

For claims submitted after the effective date of July 1, 2006, and prior to the implementation of the CMS-approved time study only, cost will be identified in accordance with a methodology developed by the department and approved by CMS that utilizes the quarterly results of the prospectively approved time study and applies them to the prior period claims.]

4. Step 3: Develop medical services nonpersonnel costs. [~~Costs for materials and supplies, employee travel, and capital used in the delivery of medical services~~ Nonpersonnel costs used in the delivery of medical services, detailed as line items on the CMS-approved cost report,] shall be obtained from each LEA's financial system. Capital costs must [be equal to or] exceed $5,000 and have a useful life greater than two years. The straight line method of depreciation is used for capital costs. [~~Nonpersonnel~~ Total computable nonpersonnel] costs shall be reduced by any reimbursement that is not from state or local funding sources.

5. Step 4: Determine indirect costs. Indirect costs shall be determined by multiplying each LEA's [unrestricted] indirect rate assigned by the cognizant agency (the Department of Education) by total direct costs as determined under Steps 2 and 3. No additional indirect costs shall be recognized outside of the indirect costs determined by Step 4.

6. Step 5: Total medical services costs. Total medical services costs shall be determined by adding costs from Steps 2, 3 and 4.

7. Step 6: Allocate total medical services costs to Medicaid, Medicaid expansion and FAMIS. To determine the Medicaid, Medicaid expansion, and FAMIS medical services costs to be certified, total medical services costs shall be multiplied by the ratios of Medicaid, Medicaid expansion and FAMIS recipients with an IEP to all students with an IEP.

[~~C.~~ D.] Special transportation services provided by LEA providers for special education students.

1. The participating LEA's actual cost of providing special transportation services shall be claimed for Medicaid FFP based on the methodology described in subdivisions 2 through 6 of this subsection. Special transportation refers to transportation on buses modified and dedicated for special education. All costs to be certified and used subsequently to determine the reconciliation and final settlement amounts as well as interim rates shall be identified on the CMS-approved Special Transportation Cost Report. Final payment for each school year shall be based on actual costs as determined by desk review or audit for each LEA provider.

2. Step 1: Develop special transportation nonpersonnel costs. The costs for special transportation [includes] fuel, repairs and maintenance, rentals, contract vehicle use costs, [~~insurance~~ and other costs as approved by CMS] and [~~capital~~] shall be obtained from the LEA's [~~accounts payable system~~ general ledger] and reported on the Special Transportation Cost Report form. Nonpersonnel costs shall be reduced by any reimbursement that is not from state or local funding sources. [All costs shall be reported on an accrual basis.]

3. Step 2: Develop special transportation personnel costs. Total annual salaries and benefits paid as well as contract costs (vendor payments) for special transportation services shall be obtained from each LEA's payroll/benefits and financial systems. This data shall be reported on the Special Transportation Cost Report form for all direct service personnel. [The included personnel are specified on the approved CMS cost report.

To the extent that any allowed cost for transportation is reported as shared between regular and specialized transportation, there must be an allocation of cost between the programs. For example, a mechanic may work on buses for both programs but his salary may not be reported as such in the accounting records. In these instances, the provider should allocate cost using the ratio of specialized buses/vehicles owned by the provider to total regular transportation buses/vehicles owned by the provider.]

4. Step 3: Determine indirect costs. Indirect cost shall be determined by multiplying each LEA's unrestricted indirect rate assigned by the cognizant agency (the Department of Education) by total special transportation costs as determined under Steps 1 and 2. No additional indirect costs shall be recognized outside of the indirect costs determined by Step 3.

5. Step 4: Total special transportation costs. Total special transportation services costs shall be determined by adding costs from Steps 1, 2 and 3.

6. Step 5: Allocate total special transportation services cost to Medicaid, Medicaid expansion, and FAMIS. Special transportation drivers or other school personnel shall maintain logs of all students transported on each one-way trip. These logs shall be used to calculate reimbursable percentages for Medicaid, Medicaid expansion and FAMIS. The denominator shall be the total annual one-way trips on special buses. The numerator shall be Medicaid, Medicaid expansion or FAMIS special transportation one-way trips. To qualify as a special transportation trip, the student must be eligible for Medicaid, Medicaid expansion or FAMIS; transportation must be included in the IEP; and the student must have received a covered medical service on the day of the special transportation. To allocate special transportation costs to Medicaid, Medicaid expansion and FAMIS, total special transportation cost as determined under Step 4 shall be multiplied by the reimbursable percentages described above.

[~~D.~~ E.] Reconciliation of the [~~federal share of LEA certified costs and MMIS paid claims~~ total computable interim payment for medical costs to total incurred cost].

1. Each LEA provider will complete the Medical Services and Special Transportation Cost [~~Reports~~ reports] and submit the cost reports no later than five months after the end of the LEA's fiscal year. All cost reports shall be reviewed and [~~the total certified expenditures shall be initially settled~~ reconciled to final costs] within 180 days [(11 months from the end of the rate year)] of the receipt of a completed cost report [~~based on a desk review by the agency's audit contractor~~]. DMAS may conduct additional desk or field audits up to two years after the fiscal year-end based on risk assessment developed by DMAS. LEA providers may appeal audit findings in accordance with DMAS appeal procedures.

2. [~~The agency's audit contractor shall reconcile the FFP from the Medical Services and Special Transportation Cost Reports against the MMIS paid claims data and~~] DMAS shall issue a [settlement] notice [~~of~~ at the time of the] reconciliation that denotes the amount due to or from the LEA provider. This reconciliation shall be inclusive of both medical services and special transportation services provided by the LEA provider. [The state will settle with each provider, using one of the methods described below for either under- or overpayment associated with school-based services. Settlement will be limited to recovery or payment of only the federal financial participation associated with total computable cost.]

a. If the interim payments exceed the FFP of the certified costs of an LEA's Medicaid, Medicaid expansion or FAMIS services, DMAS shall recoup the overpayment in one of the following methods:

(1) Offset all future claim payments from the affected LEA until the amount of the overpayment is recovered;

(2) Recoup an agreed upon percentage from future claims payments to the LEA to ensure recovery of the overpayment within one year; or

(3) Recoup an agreed upon dollar amount from future claims payments to the LEA to ensure recovery of the overpayment within one year.

b. If the FFP of the certified costs exceed interim payments, DMAS shall pay the difference to the LEA provider.

[~~E.~~ F.] Interim rates. At the end of each settlement, interim rates for each LEA provider shall be determined by dividing total medical services cost and special transportation services cost by an estimate of the number of units of service. For the initial interim rates or for new providers, interim rates shall be based on pro forma cost data. Interim rates shall be provisional in nature pending completion of the cost report.

[~~F.~~ G.] Billing. Each LEA provider shall submit claims in accordance with the school division manual and shall be paid an interim rate for approved claims.

[~~G.~~ H.] State monitoring. If DMAS becomes aware of potential instances of fraud, misuse or abuse of services and funds, it shall perform timely audits and investigations to identify and take the necessary actions to remedy and resolve the problems.

[~~H.~~ I.] Other services. [~~Other covered services provided to Medicaid, Medicaid expansion, and FAMIS recipients~~ EPSDT well child screenings provided to Medicaid, Medicaid expansion, and FAMIS recipients and described in 12VAC30-50-130] shall be reimbursed according to the agency fee schedule for all providers. These costs shall not be [~~included on~~ reimbursed through] the cost report.

NOTICE: The forms used in administering 12VAC30-80, Methods and Standards for Establishing Payment Rates: Other Types of Care, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Pharmacy Claim Form (3/96).

[CMS Noninstitutional Services Cost Report Certification Statement (10/07).]

Compound Prescription Pharmacy Claim Form (3/96).

I.V. Therapy Implementation Form, DMAS-354 (eff. 6/98).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/01).

DD Medicaid Waiver -- Level of Functioning Survey -- Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

DOCUMENTS INCORPORATED BY REFERENCE

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, 2005, U.S. Department of Health and Human Services.

[Healthcare Common Procedure Coding System (HCPCS), National Level II Codes, 2001, Medicode.

International Classification of Diseases, ICD-9-CM 2007, Physician, Volumes 1 and 2, 9th Revision-Clinical Modification, American Medical Association.]

VA.R. Doc. No. R07-50; Filed May 27, 2008, 3:24 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Nursing will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-271).**

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

Effective Date: July 23, 2008.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Chapter 674 of the 2008 Acts of Assembly amended §54.1-3001 of the Code of Virginia, which sets out exemptions for which the requirement for licensure as a nurse does not apply. The legislation deleted the requirement that the volunteer, nonprofit organization have no paid employees and the requirement that it sponsor health care to populations of underserved people throughout the world. It also changed the requirement that the board be notified of the dates and location of services from 15 days to five business days. The regulations are amended accordingly.

18VAC90-20-271. Registration for voluntary practice by out-of-state licensees.

Any licensed nurse who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~15~~ five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of every current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 11 of §54.1-3001 of the Code of Virginia.

VA.R. Doc. No. R08-1257; Filed May 27, 2008, 8:57 a.m.

BOARD OF VETERINARY MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Veterinary Medicine has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Veterinary Medicine will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-135).**

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

Effective Date: July 23, 2008.

Agency Contact: Elizabeth Carter, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 662-4426, FAX (804) 527-4471, or email elizabeth.carter@dhp.virginia.gov.

Summary:

Chapter 674 of the 2008 Acts of Assembly amended §54.1-3801 of the Code of Virginia, which sets out exemptions for which the requirement for licensure as a veterinarian does not apply. The legislation deleted the requirement that the volunteer, nonprofit organization have no paid employees and the requirement that it sponsor health care to populations of underserved people throughout the world. It also changed the requirement that the board be notified of the dates and location of services from 15 days to five business days. The regulations are amended accordingly.

18VAC150-20-135. Voluntary practice by out-of-state practitioners.

Any veterinarian who seeks registration to practice on a voluntary basis under the auspices of a publicly supported all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~15~~ five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of every current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 4 of §54.1-3801 of the Code of Virginia.

VA.R. Doc. No. R08-1256; Filed May 27, 2008, 8:58 a.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-280).**

21VAC5-80. Investment Advisors (amending 21VAC5-80-10, 21VAC5-80-200).

Statutory Authority: §§12.1-13, 13.1-523 and 13.1-523.1 of the Code of Virginia.

Effective Date: July 1, 2008.

Agency Contact: Don Gouldin, Deputy Director, Division of Securities, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9755, FAX (804) 371-9911, or email don.gouldin@scc.virginia.gov.

Summary:

The amendments (i) make available to the public all registration information with regard to investment advisors by requiring electronic filing of two additional pieces of the current form used by investment advisors to register with the federal Securities and Exchange Commission and the state regulatory authorities, and (ii) address identified abusive practices that affect senior citizens and retirees by adding language to the unethical practices sections of the investment advisor regulations and to the prohibited business conduct sections of the broker-dealer securities rules to prevent the use of misleading certifications or designations.

Changes from the proposed regulations include clarifying that designations and certifications primarily for sales and marketing are disallowed and providing blanket exclusion for advanced degrees offered by regionally accredited academic institutions.

AT RICHMOND, MAY 23, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2008-00026

Ex Parte: In the matter of Adopting a
Revision to the Rules Governing
the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order entered on March 7, 2008, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 20 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On March 28, 2008, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed Regulations to all registrants and applicants as of March 24, 2008, and to all interested parties pursuant to the Virginia Securities Act, § 13.1501 et seq. of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file comments.

The Division received three comments. Each comment was received via e-mail correspondence. No hearing was requested and none was conducted. As a result of the comments, the Commission issued an Order Directing Response to Comments on April 22, 2008, directing the Division to respond to each commenter and address their concerns.

The Division sent a response to each commenter. The first commenter disagreed with the mandatory implementation of electronic filing of Part II of Form ADV for state registered investment advisors on the Investment Advisory Registration Depository ("IARD") operated through the Financial Industry Regulatory Authority (FINRA). The Division noted that the IARD filing requirements did not apply to the commenter's firm since it was a federally covered advisor and not subject to state registration requirements. Further, the Division stated that the enhancement to the IARD had been pending since April 2007.

The second commenter indicated that their association was concerned about the adoption of the proposed Regulations in 21 VAC 5-80-200 and 21 VAC 20-280 covering the abuse of professional designations. The third commenter supported the second commenter's comments. As a result of the second commenter, the Division added some clarifying language to the proposed regulations in order to make the language conform with the proposed language being adopted in other state jurisdictions covering the same issue. The Division notified the third commenter that the Division had addressed the second commenter's comments and that its constituency was not subject to the jurisdiction of the securities regulations.

NOW THE COMMISSION, upon consideration of the proposed amendments to the Regulations, as modified, the recommendation of the Division, and the record in this case,

finds that the proposed amendments to the Regulations, as modified, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Regulations, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective July 1, 2008.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by regular mail by the Division to: the North American Securities Administrators Association, Inc., 750 First Street, N.E., Suite 1140, Washington, D.C. 20002; the Commission's Division of Information Resources; the Commission's Office of General Counsel; and such other persons as the Division deems appropriate.

CHAPTER 20
BROKER-DEALERS, BROKER-DEALER AGENTS AND AGENTS OF THE ISSUER~~: REGISTRATION, EXPIRATION, RENEWAL, UPDATES AND AMENDMENTS, TERMINATION, CHANGING CONNECTION, MERGER OR CONSOLIDATION, EXAMINATIONS/QUALIFICATION, FINANCIAL STATEMENTS AND REPORTS~~

21VAC5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;

2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by NASD Rule 2341;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under §13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect

to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of §13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or

confusing to customers as to the nature of securities products or risks; or

25. In transactions subject to breakpoints, fail to:

a. Utilize advantageous breakpoints without reasonable basis for their exclusion;

b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or

c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction, and apprise the customer of the breakpoint opportunities.

26. [~~In~~ Use a certification or professional designation in] connection with the offer, sale, or purchase of securities, [~~use a certification or professional designation~~] that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) An organization that is on the United States Department of Education’s list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under §3 (a)(1) of the Investment Company Act of 1940 (15 USC §80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

B. No agent shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

6. Engage in conduct specified in ~~subdivisions~~ subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24~~,~~ ~~or~~ 25 or 26 of this section.

C. It shall be deemed a demonstration of a lack of business knowledge by an agent insofar as business knowledge is required for registration by §13.1-505 A 3 of the Act, if an agent fails to comply with any of the applicable continuing education requirements set forth in any of the following and such failure has resulted in an agent's denial, suspension, or revocation of a license, registration, or membership with a self-regulatory organization.

1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;

2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;

3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;

4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;

5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995;

6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;

7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or

8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.

Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if the change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by the requirements.

D. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:

a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction

to be paid to the agent including commissions, sales charges, or concessions.

b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

c. Conducting sales contests in a particular security.

d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under §13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is $5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be $5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of $5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of $4,000,000 as demonstrated by financial statements dated within no less than 15 months that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 241.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

IMPORTANT CUSTOMER NOTICE-READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of $1.00, you would pay $100 (100 shares X $1.00 = $100). If the BID price at the time you purchased your stock was $.50, you could sell the stock back to the broker-dealer for $50 (100 shares X $.50 = $50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.

G. Engaging in or having engaged in conduct specified in subsection A, B, C, D, or E of this section, or other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration.

21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor unless

the following executed forms, fee and information are submitted:

1. Form ADV Parts I and II submitted to the IARD system.

~~a. Part 1A and 1B filed with the IARD system.~~

~~b. Part II filed with the commission at its Division of Securities and Retail Franchising.~~

2. The statutory fee in the amount of $200 submitted to the IARD system. ~~The check must be made payable to the NASD.~~

3. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the following executed forms, fee and information are submitted:

1. Form ADV.

2. The statutory fee in the amount of $200 submitted to the IARD system. ~~The check must be made payable to the NASD.~~

21VAC5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to

impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; or

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person’s own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-140.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide

Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. [~~In~~ Using a certification or professional designation in] connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) An organization that is on the United States Department of Education’s list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual’s area of specialization within the organization.

For purposes of this subdivision d, [~~:~~"] financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under §3(a)(1) of the Investment Company Act of 1940 (15 USC §80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission’s authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without

first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-140.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. [~~In~~ Using a certification or professional designation in] connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under §3(a)(1) of the Investment Company Act of 1940 (15 USC §80a-3(a)(1).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. ~~104-290~~ 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. ~~104-290~~ 104-290 (96)).

VA.R. Doc. No. R08-1153; Filed June 4, 2008, 11:55 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **21VAC5-110. Retail Franchising Act Rules (amending 21VAC5-110-10, 21VAC5-110-20, 21VAC5-110-30, 21VAC5-110-40, 21VAC5-110-50, 21VAC5-110-60, 21VAC5-110-65, 21VAC5-110-70, 21VAC5-110-75, 21VAC5-110-80; adding 21VAC5-110-55, 21VAC5-110-95; repealing 21VAC5-110-90).**

Statutory Authority: §§12.1-13 and 13.1-572 of the Code of Virginia.

Effective Date: July 1, 2008.

Agency Contact: Don Gouldin, Deputy Director, Division of Securities, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9755, FAX (804) 371-9911, or email don.gouldin@scc.virginia.gov.

Summary:

On January 23, 2007, the Federal Trade Commission (FTC) adopted a final amended Franchise Rule, 16 CFR Part 436, which provides that, as of July 1, 2008, all franchisors must prepare and distribute disclosure documents that, at a minimum, comply with the disclosure format of the amended FTC Franchise Rule. The proposed amendments to the Virginia franchise regulations (i) incorporate the minimum presale franchise disclosures required by the amended FTC Franchise Rule; (ii) adopt in substantial part the disclosure format of the amended FTC Franchise Rule, except with respect to the financial statement required for start-up franchisors and a state cover page; (iii) add certain definitions found in the amended FTC Franchise Rule; (iv) replace obsolete terms and references; and (v) repeal the Uniform Franchise Offering Circular Guidelines.

The amendments also (i) make changes to the general requirements for preparing disclosure documents and filing registration applications; (ii) provide for registrations applications to be filed on a CD-ROM, in addition to paper copies; (iii) specify procedures to follow for making disclosure via electronic means; and (iv) make housekeeping changes.

After receipt of public comments, the following changes were made to the proposed regulation: the instructions contained in subdivision C 7 of 21VAC5-110-55 were renumbered for clarity and form; new subsection D was added to 21VAC5-110-55 to provide guidance to applicants on how to conform mandatory language of the Franchise Disclosure Document cover page statement to the applicable terms contained in the Va. Retail Franchising Act; new subsection E was added to 21VAC5-110-55 to provide guidance to applicants on how to conform mandatory language of the Franchise Disclosure Document receipt page statement to the applicable terms contained in the Va. Retail Franchising Act; for purposes of clarity and to correct the structure of the regulation, subsection A of 21VAC5-110-95 was redesignated and more descriptive instructional language was added to 21VAC5-110-95 B; and various typographical and style changes were made.

AT RICHMOND, MAY 21, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2008-00027

Ex Parte: In the matter of Adopting a
Revision to the Rules Governing
the Virginia Retail Franchising Act

as he may designate.

ORDER ADOPTING AMENDED RULES

By Order entered on March 7, 2008, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 110 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Virginia Retail Franchising Act Rules and Forms." On March 28, 2008, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed Regulations to all registrants and applicants as of March 24, 2008, and to all interested parties pursuant to the Virginia Retail Franchising Act, § 13.1-557 *et seq*. of the Code of Virginia. The Order to Take Notice describes the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by April 16, 2008.

One comment letter was filed. Although the comment was filed late, the filer requested that the Commission grant him leave to comment. The Commission granted leave to file the comment and the Division responded to the comment letter by letter to the commenter and filing a copy of said letter with the Commission's Document Control Center.

The commenter requested that certain typographical errors be addressed, and the Division did so. The commenter also questioned the need for using the term "grant" instead of "sale" as required in the Federal Trade Commission Rule ("FTC Rule"). As indicated in the Division's response to the commenter, on file in the Commission's Document Control Center, the use of the term "grant" rather than "sale" or "sell" tracks the Virginia Retail Franchising Act and is not preempted by the FTC Rule. The FTC Rule only preempts state law if state law creates a lesser standard. The Division also added clarifying language to proposed Rule 21 VAC 5-110-55 and corrected a couple of typographical errors pointed out by the commenter.

The Division also corrected its forms, attached to the proposed amended Regulations, to conform to the new FTC Rule and other states using the same forms.

The Commission, upon consideration of the proposed amendments to the Regulations, as modified, the recommendation of the Division, and the record in this case, finds that the proposed amendments to the Regulations, as modified, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Regulations, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective July 1, 2008.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by regular mail by the Division to: David French, Vice President, Government Relations, International Franchise Association, 1501 K Street, N.W., Suite 350, Washington, D.C. 20005; the North American Securities Administrators Association, 750 First Street, N.E., Suite 1140, Washington, D.C. 20002; Robert S. Burstein, Esquire, Wiggin and Dana, LLP, One Liberty Place, 1650 Market Street, 36th Floor, Philadelphia, Pennsylvania 19103; the Commission's Division of Information Resources; the Commission's Office of General Counsel; and such other persons as the Division deems appropriate.

21VAC5-110-10. Definitions.

"Action" includes complaints, cross claims, counterclaims, and third-party complaints in a judicial action or proceeding, and their equivalents in an administrative action or arbitration.

"Affiliate" means an entity controlled by, controlling, or under common control with, another entity.

"Commission" means Virginia State Corporation Commission.

"Confidentiality clause" means any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his personal experience as a franchisee in the franchisor's system with any prospective franchisee. It does not include clauses that protect franchisor's trademarks or other proprietary information.

"Disclose," "state," ["] describe," and "list" each mean to present all material facts accurately, clearly, concisely, and legibly in plain English.

"Effective date" means the date on which the franchise becomes registered under the provisions of §13.1-561 of the Code of Virginia.

"Effective registration" means authorization to offer and grant one or more franchises provided that the initial contracts or agreements are substantially identical in their terms or provisions. Whenever the franchisor offers or grants more than one franchise and the resulting contracts or agreements vary substantially in their terms or provisions, separate franchises will be deemed to have been offered or granted and separate registration will be required. For the purpose of this rule, substantial variation in the contract will relate without limitation to different products, services, fees charged, dues imposed, obligations incurred or investments required to be made by contract or agreement.

"FDD" means Franchise Disclosure Document.

"Financial performance representation" means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.

"Fiscal year" refers to the franchisor's fiscal year.

~~"Franchise broker" means a person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience are otherwise required to be disclosed in Item 11 in the body of the disclosure document.~~

"Franchise seller" means a person that offers to grant, grants, or arranges for the grant or sale of a franchise. It includes the franchisor and the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.

"Grant" or "sale" of a franchise includes an agreement whereby a person obtains a franchise from a franchise seller for value by purchase, license, or otherwise. It does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement.

"Material change" includes a fact, circumstance, or condition which would have a substantial likelihood of influencing a reasonable prospective franchisee in the making of a decision relating to the purchase of a franchise.

"Parent" means an entity that controls another entity directly or indirectly through one or more subsidiaries.

"Person" means any individual, group, association, limited or general partnership, corporation, or any other entity.

"Plain English" means the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates short sentences, definite, concrete, everyday language, active voice, and tabular presentation of information where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.

"Predecessor" means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.

"Principal business address" means the street address of a person's home office in the United States. A principal

business address cannot be a post office box or private mail drop.

"Prospective franchisee" means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

"Signature" means a person's affirmative step to authenticate his identity. It includes a person's handwritten signature, as well as a person's use of security codes, passwords, electronic signatures, and similar devices to authenticate his identity.

"Trademark" includes trademarks, service marks, names, logos, and other commercial symbols.

~~"UFOC" means Uniform Franchise Offering Circular.~~

"Virginia Retail Franchising Act" means §13.1-557 et seq. of the Code of Virginia.

21VAC5-110-20. Preliminary statement.

Follow these rules for each item in franchise applications and disclosures in the ~~UFOC~~ FDD.

The following rules shall be adhered to with respect to applications for registration or exemption of a franchise, and applications for renewal or amendment of a franchise registration or exemption, ~~and amendments~~ filed pursuant to Chapter 8 (§13.1-557 et seq.) of Title 13.1 of the Code of Virginia. These applications shall be submitted to Virginia's state administrator: State Corporation Commission, Division of Securities and Retail Franchising, P.O. Box 1197, 1300 East Main Street, 9th Floor, Richmond, Virginia ~~23219~~ 23218.

21VAC5-110-30. Registration application; documents to file.

A. An application for registration of a franchise is made by filing with the commission the following completed forms and other material:

1. Uniform Franchise Registration Application page ~~(also known as "Facing Page")~~, Form A;

2. ~~Supplemental Information page(s)~~ Total Costs and Sources of Funds for Establishing New Franchises, Form B;

~~3. Certification page, Form C;~~

~~4.~~ 3. Uniform Consent to Service of Process, Form ~~D~~ C;

~~5.~~ 4. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;

~~6.~~ 5. ~~Uniform Franchise Offering Circular~~ Franchise Disclosure Document;

~~7.~~ 6. Application fee (payable to the "Treasurer of Virginia"); and

~~8.~~ 7. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the ~~offering circular~~ Franchise Disclosure Document.

B. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the registration application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the registration application.

C. In addition to paper copies of the materials required by subsection A of this section, the franchisor may file one copy of the complete franchise registration application, including the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~B.~~ D. Examples of Forms A through ~~D~~ C are printed at the end of ~~these rules~~ this chapter.

21VAC5-110-40. Pre-effective and post-effective amendments to the registration.

A. Upon the occurrence of a material change, the franchisor shall amend the effective registration filed at the commission. An amendment to an application filed either before or after the effective date of registration may include only the pages containing the information being amended if pagination is not disturbed. ~~The information being amended shall be identified by item, shall be underscored in red or highlighted in some other appropriate manner.~~ The amended pages must be black-lined to show all additions, deletions, and other changes from the franchisor's previous submission. The franchisor may not use margin balloons or color highlights to show changes.

B. An application to amend a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page ~~(also known as "Facing Page")~~, Form A;

~~2. Certification page, Form C;~~

~~3.~~ 2. One clean copy of the updated ~~Uniform Franchise Offering Circular~~ Franchise Disclosure Document pages;

~~4.~~ 3. One copy of the amended ~~Uniform Franchise Offering Circular~~ Franchise Disclosure Document pages ~~underscored in red or highlighted in some other appropriate manner~~ marked in black; and

~~5.~~ 4. Application fee (payable to the "Treasurer of Virginia"). The fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.

C. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the amendment application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the amendment application.

D. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise amendment application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~Examples~~ E. An example of ~~Forms~~ Form A ~~and C are~~ is printed at the end of ~~these regulations~~ this chapter.

21VAC5-110-50. Expiration; application to renew the registration.

A. A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute.

B. An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page ~~(also known as "Facing Page")~~, Form A;

~~2. Certification page, Form C;~~

~~3.~~ 2. Updated ~~Uniform Franchise Offering Circular~~ Franchise Disclosure Document;

~~4.~~ 3. One copy of the amended ~~Uniform Franchise Offering Circular~~ Franchise Disclosure Document pages ~~underscored in red or highlighted in some other appropriate manner~~ marked in black, using no margin balloons or color highlights; and

~~5.~~ 4. Application fee (payable to the "Treasurer of Virginia").

C. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the renewal application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the renewal application.

D. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise renewal application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~Examples~~ E. An example of ~~Forms~~ Form A ~~and C are~~ is printed at the end of ~~these regulations~~ this chapter.

21VAC5-110-55. The Franchise Disclosure Document.

A. Format. The Franchise Disclosure Document must be prepared in accordance with §§436.3-436.5 of the Federal Trade Commission Franchise Rule (16 CFR 436.3-436.5), subject to the modifications set forth in subsections B [~~and C~~ through E] of this section.

B. Financial statements. Notwithstanding §436.5 (u)(2) of the Federal Trade Commission Franchise Rule (16 CFR 436.5), a start-up franchisor in its first partial or full fiscal

year selling franchises shall provide an opening balance sheet that has been audited by an independent certified public accountant using generally accepted United States auditing standards.

C. State cover page. The Franchise Disclosure Document shall include the following state cover page prepared in accordance with this subsection, which must immediately follow the Federal Trade Commission required cover page:

1. State the following legend:

STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit ___ for information about the franchisor or about franchising in your state.

2. State the following:

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

3. If any of the following apply, state the following, using capital letters as shown:

Please consider the following RISK FACTORS before you buy this franchise:

THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY [LITIGATION/ARBITRATION/MEDIATION] ONLY IN [STATE]. OUT-OF-STATE [LITIGATION/ARBITRATION/MEDIATION] MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO [LITIGATE/ARBITRATE/MEDIATE] WITH US IN [STATE] THAN IN YOUR OWN STATE.

THE FRANCHISE AGREEMENT STATES THAT [STATE] LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.

4. In addition to the above, disclose other risk factors required by the state administrator.

5. If one or more risk factors applies, also state:

THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

6. If you use the services of a franchise broker or referral source, state the following:

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

7. State the following:

[~~a.~~] Effective Date:

[~~(1)~~ a.] Leave the effective date blank until notified of effectiveness by the state administrator.

[~~(2)~~ b.] If an applicant is using a multistate disclosure document, the applicant may list multiple state effective dates together on a separate page that is to be inserted immediately following the state cover page.

[D. To conform language to the Virginia Retail Franchising Act, 21VAC5-110-95 A 5 b adds certain terms to the Franchise Disclosure Document cover page statement mandated by §436.3(e)(2) of the Federal Trade Commission Franchise Rule. The franchisor may comply with this requirement of 21VAC5-110-95 by including the required statement in the text of the Franchise Disclosure Document cover page or in an additional cover page attached as part of a Virginia addendum to the Franchise Disclosure Document.

E. To conform language to the Virginia Retail Franchising Act, 21VAC5-110-95 B 23 a adds certain terms to the Franchise Disclosure Document receipt page statement mandated by §436.5(w)(1) of the Federal Trade Commission Franchise Rule. The franchisor may comply with this requirement of 21VAC5-110-95 by including the required statement in the text of the Franchise Disclosure Document or in an additional receipt page attached as part of a Virginia addendum to the Franchise Disclosure Document.]

21VAC5-110-60. Automatic effectiveness (optional).

If the registrant desires, an application to amend or renew an effective registration may be accompanied by an executed Affidavit of Compliance on Form E and filed in accordance with 21VAC5-110-40 or 21VAC5-110-50. The application shall become effective immediately upon receipt by the commission (or upon such later date as the applicant indicates in writing to the commission) unless one or more of the following is applicable:

1. The franchisor has, since the effective date of its most recent application, been convicted of any crime or been held liable in any civil action by final judgment (if such crime or civil action involved a felony, an act of fraud, a misdemeanor involving a franchise, or a violation of the Virginia Retail Franchising Act).

2. The franchisor is insolvent or in danger of becoming insolvent, either in the sense that its liabilities exceed its assets (determined in accordance with "generally accepted accounting principles") or in the sense that it cannot meet its obligations as they mature.

3. The revised disclosure document submitted in connection with the application to amend/renew is not in compliance with the requirements of 21VAC5-110-55, 21VAC5-110-80 and ~~21VAC5-110-90~~ 21VAC5-110-95.

If the application does not qualify for automatic effectiveness, it shall become effective as of the date it is granted by the commission.

21VAC5-110-65. Escrow and deferral.

A. Escrow requirement. The commission may require a franchisor to escrow franchise fees and other payments made by a franchisee to the franchisor until the franchisor's pre-opening obligations under the franchise agreement have been satisfied. The commission may require escrow at any time after the submission of a registration or renewal application and upon a finding that the grounds enumerated in clause (i) of subdivision A 2 of §13.1-562 of the Act as provided in Chapter 668 of the 2007 Acts of Assembly exist.

B. Depository. Funds subject to an escrow condition shall be placed in a separate trust account with a national bank or a state chartered bank or trust company transacting business in the Commonwealth of Virginia.

C. Compliance with escrow requirement. The franchisor shall file with the commission the following to comply with the commission's escrow requirement:

1. An original, fully executed copy of the Escrow Agreement, Form K;

2. A written consent from the depository agreeing to operate the escrow account under this regulation;

3. The name and address of the depository and the account number of the escrow account;

4. The name, address, telephone number and email address of an individual or individuals at the depository who may be contacted by the commission regarding the escrow account; and

5. An amended franchise application reflecting, in Item 5 of the ~~offering circular~~ Franchise Disclosure Document or in a Virginia Addendum to the ~~offering circular~~ Franchise Disclosure Document, that the commission has imposed the escrow requirement and the material terms of that escrow condition, including the name of the depository.

D. Operation of escrow account. After the commission imposes an escrow requirement upon the franchisor, the franchisor shall:

1. Make franchisee checks for franchise fees or other payments for the franchisor payable to the depository; and

2. Deposit with the depository, within two business days of the receipt, the funds described in subdivision 1 of this subsection;

Deposits made to the depository shall remain escrowed until the commission authorizes the release of the funds.

E. Release of escrowed funds.

1. A franchisor may apply to the commission for the release of escrowed funds together with any interest earned.

2. A franchisor's application to the commission to authorize the release of escrowed funds to the franchisor shall be in writing, verified by an authorized officer of the franchisor and shall contain:

a. The franchisor's statement that all proceeds from the grant of franchises have been placed with the depository in accordance with the terms and conditions of the escrow requirement;

b. The depository's statement, signed by an appropriate officer, setting forth the aggregate amount of escrowed funds deposited with the depository and the franchisor's account number with the depository;

c. A list of the names and addresses of each franchisee and the amount held in the escrow account for the account of each franchisee;

d. The amount of funds sought to be released;

e. A written certification from the franchisee stating the amount of funds to be released that acknowledges that the franchisor has completely performed its pre-opening obligations under the franchise agreement, including providing real estate, improvements, equipment, inventory, training, or other items as required by the franchise agreement; and

f. Other information the commission may reasonably require.

3. If the commission finds that the franchisor has fulfilled its obligations under the franchise agreement for a specified franchisee, the commission shall authorize the depository to release to the franchisor the amount held in escrow for the account of the applicable franchisee.

F. Removal of escrow requirement. The commission may remove the escrow requirement at any time, if:

1. The franchisor agrees to defer franchise fees and other initial payments; or

2. Based upon new information, the commission finds that the escrow requirement is no longer necessary and appropriate for the protection of prospective franchisees.

G. Deferral of fees in place of escrow requirement.

1. In lieu of an escrow requirement, the commission may, under appropriate circumstances, accept a franchisor's agreement to defer franchise fees and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

2. The franchisor's agreement to defer franchise fees shall be reflected in Item 5 of the ~~offering circular~~ Franchise Disclosure Document or in a Virginia Addendum to the ~~offering circular~~ Franchise Disclosure Document.

21VAC5-110-70. Consent to service of process.

If the franchisor is not a Virginia corporation, a foreign corporation or other entity authorized to transact business in the Commonwealth of Virginia, the franchisor shall execute the Consent to Service of Process on Form ~~D~~ C designating the Clerk of the State Corporation Commission, 1300 East Main Street, First Floor, Richmond, VA 23219, as the agent authorized to receive service of process for the franchisor in Virginia. If the franchisor is a Virginia corporation, a foreign corporation or other entity authorized to transact business in the Commonwealth of Virginia, a Consent to Service of Process is not necessary under this section.

The Division of Securities and Retail Franchising does not administer the qualification of foreign corporations. Qualification of foreign corporations is handled by the Clerk of the State Corporation Commission ~~(804) 371-9672~~ (804) 371-9733, P.O. Box 1197, Richmond, VA 23218. Qualification must be completed prior to the filing of the application.

21VAC5-110-75. Exemptions.

Any offer or grant of a franchise in a transaction that meets the requirements of this section is exempt from the registration requirement of §13.1-560 of the Act.

1. Sale or transfer by existing franchisee. The sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt if:

a. The franchisee's entire franchise is sold or transferred and the sale or transfer is not effected by or through the franchisor.

b. The sale or transfer is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or transfer or requires payment of a reasonable transfer fee.

2. Offers and grants to existing franchisees. The offer or grant of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account is exempt if the franchise being sold is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or grant of the franchise, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered or exempt pursuant to the requirements of the Act.

3. Seasoned franchisor.

a. The offer or grant of a franchise by a franchisor is exempt if:

(1) The franchisor has a net equity, according to its most recently audited financial statements, of not less than $15,000,000 on a consolidated basis, or $1,000,000 on an unaudited basis and is at least 80% owned by a corporation or entity that has a net equity, on a consolidated basis, according to its most recently audited financial statements, of not less than $15,000,000, and the 80% owner guarantees the performance of the franchisor's obligations; and

(2) The franchisor or any 80% owner of the franchisor or the franchisor's predecessor, or any combination thereof, has had at least 25 franchisees conducting the same franchise business to be offered or granted for the entire five-year period immediately preceding the offer or grant;

b. The exemption set forth in subdivision 3 of this section may be claimed only if the franchisor:

(1) Files a Form H Notice of Claim of Exemption and other material as set forth in subdivision 6 of this section no later than 10 business days before the offer or grant of any franchise; and

(2) Submits financial statements demonstrating compliance with the conditions set forth in subdivision 3 a (1) of this section.

c. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or grant franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

4. Institutional franchisee.

a. The offer or grant of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other

financial institution, or to a broker-dealer is exempt when the:

(1) Purchaser is acting for itself or in a fiduciary capacity; and

(2) Franchise is not being purchased for the purpose of resale to an individual not exempt under this regulation.

b. The exemption set forth in subdivision 4 a of this section may be claimed only if the franchisor files an initial filing Form H, Notice of Claim of Exemption, and other material as set forth in subdivision 6 a of this section, at least 10 business days before each offer or grant of each franchise.

5. Disclosure requirements.

a. If a franchisor relies upon any of the exemptions set forth in subdivision 2, 3 or 4 of this section, the franchisor shall provide ~~an offering circular~~ a disclosure document complying with ~~21VAC5-110-90, or Federal Trade Commission (FTC) disclosure document pursuant to 16 CFR Part 436~~ 21VAC5-110-55 and 21VAC5-110-95 together with all proposed agreements relating to the grant of the franchise to a prospective franchisee 14 calendar days before the signing of the agreement or the payment of any consideration.

b. Franchisors filing a claim of exemption under subdivisions 3 or 4 of this section shall include a self-addressed stamped envelope by which the commission may return to the franchisor a confirmation of receipt of the filing and the exemption file number assigned. Correspondence shall refer to the assigned file number in all subsequent related filings and correspondence with the commission.

6. Filing requirements for exemptions set forth in subdivisions 3 and 4 of this section.

a. Initial exemption filing.

(1) The initial exemption period shall expire after a period of one year.

(2) Franchisor files an application for exemption of a franchise by filing with the commission no later than 10 business days before the offer or grant of any franchise, the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) Uniform Consent to Service of Process, Form ~~D~~ C;

(c) If the applicant is a corporation or partnership, an authorizing resolution is required if the application is verified by a person other than applicant's officer or general partner;

(d) ~~Uniform Franchise Offering Circular or FTC disclosure document pursuant to 16 CFR Part 436~~ Franchise Disclosure Document;

(e) Files an undertaking by which it agrees to supply any additional information the commission may reasonably request; and

(f) Application fee of $500 (payable to the Treasurer of Virginia).

b. Amendment to exemption filing.

(1) Upon the occurrence of a material change, the franchisor shall amend the effective exemption filed at the commission.

(2) An application to amend a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the amended ~~Uniform Franchise Offering Circular or FTC disclosure document pursuant to 16 CFR Part 436~~ Franchise Disclosure Document; and

(c) Application fee of $100 (payable to the Treasurer of Virginia).

c. Renewal exemption filing.

(1) A franchise exemption expires at midnight on the annual exemption effective date. An application to renew the franchise exemption shall be filed 10 days prior to the expiration date in order to prevent a lapse of exemption under the Act.

(2) An application for renewal of a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the ~~Uniform Franchise Offering Circular or FTC disclosure document pursuant to 16 CFR Part 436~~ Franchise Disclosure Document; and

(c) Application fee of $250 (payable to the Treasurer of Virginia).

21VAC5-110-80. ~~Disclosure~~ General requirements for preparation of disclosure documents; ~~definition of disclose~~ master franchises; electronic disclosure.

A. ~~"Disclose" means to state the material facts in an accurate and unambiguous manner. Disclosure shall be clear, concise and in a narrative form that is understandable by a person unfamiliar with the franchise business. For clear and concise disclosure avoid legal antiques[1] and repetitive phrases.[2] When possible, use active, not passive voice.[3] Limit the length and complexity of disclosure through careful organization of information in the disclosure. Avoid technical language and~~

~~unnecessary detail. Make the format and chronological order consistent within each Item.~~ Disclosure instructions.

1. Disclose all required information clearly, legibly, and concisely in a single document using plain English.

~~B. Since prospective franchisees shall have sufficient disclosure to understand economic commitments and to develop a business plan, Items 5, 6, 7, and 8 of the UFOC shall disclose the minimum and maximum franchisee cost. The franchisor shall provide reasonably available information to allow franchisees to forecast future charges listed in these Items and to be paid to persons who are independent of the franchisor. Future payments to the franchisor shall be specific as is required by individual Items.~~

~~C.~~ 2. The disclosure for each ~~UFOC~~ FDD item shall be separately titled and in the required order. Do not repeat the ~~UFOC~~ question in the ~~offering circular~~ FDD. Respond to each question fully. If the disclosure is not applicable, respond in the negative, but if an answer is required "if applicable," respond only if the requested information applies. Do not qualify a response with a reference to another document unless permitted by the instructions to that Item.

3. For each Item in the ~~UFOC~~ FDD, type the requirement's Arabic number and item title ~~and number~~. ~~Sub-items may be designated by descriptive headings, but do not use sub-item letters and numbers.~~ Exhibits should be identified by a letter of the alphabet.

~~D. Additional requirements for disclosure are:~~

~~1. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the offering circular.~~

~~2. Use 8½ by 11 inch paper for the entire application.~~

~~3. When the applicant is a master franchisor seeking to sell subfranchises, references in these requirements and instructions to "franchisee" include the subfranchisor unless the language context requires a different meaning.~~

~~4. The offer of subfranchises is an offer separate from the offer of franchises and usually requires a separate registration. A single application may register the sale of single unit and multi-unit franchises if the offering circular is not confusing.~~

~~5. When the applicant is a subfranchisor, disclose to the extent applicable the same information concerning the subfranchisor that is required about the franchisor.~~

~~6. In offerings by a subfranchisor, "franchisor" means both the franchisor and subfranchisor.~~

~~7. The commission may modify or waive these rules or may require additional documentation or information.~~

~~8. Grossly deficient applications may be rejected summarily by the commission as incomplete for filing.~~

~~E. The instructions on the preparation of the UFOC that continue after these provisions use the following format:~~

~~1. The title of the item follows the item number. It is capitalized and centered on the page.~~

~~2. The "Item" is a restatement of the UFOC item requirement. It is capitalized and follows the title of the item.~~

~~3. The "Instruction" appears beneath the item. It explains portions of the item requirements.~~

~~4. The "Sample Answer" at the end of each item provides sample disclosures. Double horizontal lines divide the Sample Answer from the Instructions.~~

4. The disclosure must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the disclosure document for future reference.

5. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the FDD.

6. Use 8-1/2 by 11 inch paper for the FDD and other forms. All documents and disclosures must be readable, using not less than 11-point type.

7. Franchisors may prepare multistate disclosure documents by including nonpreempted, state-specific information in the text of the FDD or in a Virginia Addendum attached to the FDD. The Virginia Addendum may be included in an exhibit to the FDD. Any amendments to the franchise agreement may be included in the Virginia Addendum or in a separate exhibit immediately following the franchise agreement.

8. The two copies of the Item 23 receipt pages should be the last two pages of the FDD and should be attached after all exhibits.

9. Before furnishing a FDD, the franchisor must advise the prospective franchisee of the formats in which the FDD is made available, any prerequisites for obtaining the FDD in a particular format, and any conditions necessary for reviewing the FDD in a particular format.

10. Grossly deficient applications may be rejected summarily by the commission as incomplete for filing.

B. Master franchises.

1. When the applicant is a master franchisor seeking to grant master franchises (subfranchises), references in these regulations to "franchisee" include the master franchisee (subfranchisor).

2. The offer of master franchises (subfranchises) is an offer separate from the offer of franchises and usually requires a separate registration or exemption. A single application may register the grant of a single unit and multiunit franchises if the FDD is not confusing.

3. In an offering by a master franchisee (subfranchisor), "franchisor" means both the master franchisor and master franchisee.

4. Master franchisees (subfranchisors) must disclose the required information about the master franchisor, and to the extent applicable, the same information concerning the master franchisee.

C. Electronic disclosure.

1. A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided:

a. The disclosure document is delivered as a single, integrated document or file;

b. The disclosure document has no extraneous content beyond what is required or permitted by law or regulation, but which may include customary devices for manipulating electronic documents in machine-readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;

c. The disclosure document has no links to or from external documents or content;

d. The disclosure document is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document;

e. The disclosure document conforms as to its content and format to the requirements of applicable law or regulation;

f. The franchisor can prove that it delivered the disclosure document electronically in compliance with this subsection, and that it did so at or before the time required by applicable law or regulation; and

g. The franchisor keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the commission.

2. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features such as audio, video, animation, pop-up screens or links to external information are prohibited.

3. "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure is stored be physically delivered to the prospective franchisee in accordance with subdivision 1 a of this subsection.

4. This subsection does not change or waive any other requirement of law or regulation concerning registration or presale disclosure of franchise offerings.

D. Other requirements.

1. If the franchise agreement requires a franchisee to sign a release or waiver as a condition of consenting to some future action, such as a transfer or assignment of the franchise, include a sample copy of the document the franchisee will be asked to sign. This requirement does not apply to negotiated releases or waivers that a franchisee may sign to resolve a dispute with the franchisor.

2. The commission may modify or waive the provisions of this chapter or may require additional documentation or information.

~~[1] Avoid these legal antiques. Preferred substitutes are in parentheses; aforesaid; arising from (from); as between; as an inducement for; as part of the consideration; as set forth in (in); as the case may be; at a later point in time; binding upon and inure; commerce (begin); condition precedent (before); condition subsequent (after); consist of (are); engaged in the business of offering (offers); for and in consideration of the grant of the franchise; for a period of (for); foregoing; forthwith; from time to time; further; hereby; herein; hereinafter; hereto; heretofore; if necessary; in the event (if); including but not limited to (including); in any manner whatsoever; including without limitation (including); in conjunction with; in no event; in the event of (if); in whole or in part; it will be specifically understood that; manner in which; not later than (within, by); not less than (at least); notwithstanding; offers to an individual, corporation or partnership (offer); on behalf of (for); precedent (before); prescribed (required); prior to (before); provided however (but, unless); provided that (if, unless); purporting to; relating to (under); subsequent (after); such (this); so as to (to); so long as (while); thereafter; therefrom; thereof; thereunder; without limiting the foregoing; whatsoever; with respect to.~~

~~[2] Avoid repetitive phrases. Preferred substitutes are in parentheses; agrees, acknowledges and recognizes; any and all; are and remain; based upon, related to, or growing out of (because); certified as true and correct (certified); consultation, assistance and guidance (guidance); each and every; equipment, furniture, supplies and inventory; set forth on the equipment list attached as Exhibit __ (items on Exhibit __); necessary and appropriate; sample, test and review (test); and twenty-three (23)(write as 23).~~

~~[3] The preferred phrase is in parentheses. As the franchisor prescribes (you must); being offered (offers); consist of (is); engaged in the business of offering (offer); giving rise to; if it~~

~~becomes necessary; for (if); inure to the benefit of (benefits); is granted the right to (can); is given an opportunity to (can); is required to (must); shall be no less than (a minimum of); shall continue in effect (continues); with the exception of (except).~~

21VAC5-110-90. ~~Requirements for UFOC preparation.~~ (Repealed.)

21VAC5-110-95. Requirements for Franchise Disclosure Document preparation.

[A.] Applications for registration of a franchise, or applications for renewal or amendment of an existing franchise registration, must comply with the following requirements for preparing the contents of a Franchise Disclosure Document. Except for financial statement requirements for start-up franchise systems, as further discussed in Item 21, these requirements are substantively equivalent to the requirements adopted under the Federal Trade Commission Franchise Rule, 16 CFR 436.3 through 16 CFR 436.5, effective July 1, 2007.

Contents of the Franchise Disclosure Document

The Cover Page

Begin the disclosure document with a cover page, in the order and form as follows:

1. The title "**FRANCHISE DISCLOSURE DOCUMENT**" in capital letters and bold type.

2. The franchisor's name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary home page address.

3. A sample of the primary business trademark that the franchisee will use in its business.

4. A brief description of the franchised business.

5. The following statements:

a. The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7]. This includes [the total amount in Item 5] that must be paid to the franchisor or affiliate.

b. This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale or grant. [The following sentence in bold type] Note, however, that no governmental agency has verified the information contained in this document.

c. The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, such as a lawyer or an accountant.

d. Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

e. There may also be laws on franchising in your state. Ask your state agencies about them.

f. [The issuance date].

6. A franchisor may include the following statement between the statements set out at subdivisions b and c of the cover page: "You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact [name or office] at [address] and [telephone number]."

7. Franchisors may include additional disclosures on the cover page, on a separate cover page, or addendum to comply with state presale disclosure laws.

The Table of Contents

Include the following table of contents. State the page where each disclosure item begins. List all exhibits by letter, as shown in the following example.

Table of Contents

1. The Franchisor and any Parents, Predecessors, and Affiliates

2. Business Experience

3. Litigation

4. Bankruptcy

5. Initial Fees

6. Other Fees

7. Estimated Initial Investment

8. Restrictions on Sources of Products and Services

9. Franchisee's Obligations

10. Financing

11. Franchisor's Assistance, Advertising, Computer Systems, and Training

12. Territory

13. Trademarks

14. Patents, Copyrights, and Proprietary Information

15. Obligation to Participate in the Actual Operation of the Franchise Business

16. Restrictions on What the Franchisee May Sell

17. Renewal, Termination, Transfer, and Dispute Resolution

18. Public Figures

19. Financial Performance Representations

20. Outlets and Franchisee Information

21. Financial Statements

22. Contracts

23. Receipts

Exhibits

A. Franchise Agreement

[B. Additional exhibits as applicable]

B. The [~~Disclosure Items~~ additional requirements for preparation of the Franchise Disclosure Document are contained below:]

1. Item 1: The Franchisor, and any Parents, Predecessors, and Affiliates.

Disclose:

a. The name and principal business address of the franchisor; any parents; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor.

b. The name and principal business address of any predecessors during the 10-year period immediately before the close of the franchisor's most recent fiscal year.

c. The name that the franchisor uses and any names it intends to use to conduct business.

d. The identity and principal business address of the franchisor's agent for service of process.

e. The type of business organization used by the franchisor (for example, corporation, partnership) and the state in which it was organized.

f. The following information about the franchisor's business and the franchises offered:

(1) Whether the franchisor operates businesses of the type being franchised.

(2) The franchisor's other business activities.

(3) The business the franchisee will conduct.

(4) The general market for the product or service the franchisee will offer. In describing the general market, consider factors such as whether the market is developed or developing, whether the goods will be sold primarily to a certain group, and whether sales are seasonal.

(5) In general terms, any laws or regulations specific to the industry in which the franchise business operates.

(6) A general description of the competition.

g. The prior business experience of the franchisor; any predecessors listed in Item 1 b; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor, including:

(1) The length of time each has conducted the type of business the franchisee will operate.

(2) The length of time each has offered franchises providing the type of business the franchisee will operate.

(3) Whether each has offered franchises in other lines of business. If so, include:

(a) A description of each other line of business.

(b) The number of franchises sold in each other line of business.

(c) The length of time each has offered franchises in each other line of business.

2. Item 2: Business Experience.

Disclose by name and position the franchisor's directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale, grant or operation of franchises offered by this document. For each person listed in this section, state his principal positions and employers during the past five years, including each position's starting date, ending date, and location.

3. Item 3: Litigation.

a. Disclose whether the franchisor; a predecessor; a parent or affiliate who induces franchise sales or grants by promising to back the franchisor financially or otherwise guarantees the franchisor's performance; an

affiliate who offers franchises under the franchisor's principal trademark; and any person identified in Item 2:

(1) Has pending against that person:

(a) An administrative, criminal, or material civil action alleging a violation of a franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable allegations.

(b) Civil actions, other than ordinary routine litigation incidental to the business, which are material in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.

(2) Was a party to any material civil action involving the franchise relationship in the last fiscal year. For purposes of this item, "franchise relationship" means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (such as royalty payment and training obligations). It does not include actions involving suppliers or other third parties, or indemnification for tort liability.

(3) Has in the 10-year period immediately before the disclosure document's issuance date:

(a) Been convicted of or pleaded nolo contendere to a felony charge.

(b) Been held liable in a civil action involving an alleged violation of a franchise, antitrust, or securities law, or involving allegations of fraud, unfair or deceptive practices, or comparable allegations. "Held liable" means that, as a result of claims or counterclaims, the person must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.

b. Disclose whether the franchisor; a predecessor; a parent or affiliate who guarantees the franchisor's performance; an affiliate who has offered, sold or granted franchises in any line of business within the last 10 years; or any other person identified in Item 2 is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a federal, state, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

c. For each action identified in subdivision a and b of Item 3, state the title, case number or citation, the initial filing date, the names of the parties, the forum, and the relationship of the opposing party to the franchisor (for example, competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees). Except as provided in subdivision d of Item 3, summarize the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusions of law or fact.[1] In addition, state:

(1) For pending actions, the status of the action.

(2) For prior actions, the date when the judgment was entered and any damages or settlement terms.[2]

(3) For injunctive or restrictive orders, the nature, terms, and conditions of the order or decree.

(4) For convictions or pleas, the crime or violation, the date of conviction, and the sentence or penalty imposed.

d. For any other franchisor-initiated suit identified in subdivision a (2) of Item 3, the franchisor may comply with the requirements of subdivision c (1) through (4) of Item 3 by listing individual suits under one common heading that will serve as the case summary (for example, "royalty collection suits").

4. Item 4: Bankruptcy.

a. Disclose whether the franchisor; any parent; predecessor; affiliate; officer, or general partner of the franchisor, or any other individual who will have management responsibility relating to the sale, grant or operation of franchises offered by this document, has, during the 10-year period immediately before the date of this disclosure document:

(1) Filed as debtor (or had filed against it) a petition under the United States Bankruptcy Code (Bankruptcy Code).

(2) Obtained a discharge of its debts under the Bankruptcy Code.

(3) Been a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition under the Bankruptcy Code, or that obtained a discharge of its debts under the Bankruptcy Code while, or within one year after, the officer or general partner held the position in the company.

b. For each bankruptcy, state:

(1) The current name, address, and principal place of business of the debtor.

(2) Whether the debtor is the franchisor. If not, state the relationship of the debtor to the franchisor (for example, affiliate, officer).

(3) The date of the original filing and the material facts, including the bankruptcy court, and the case name and number. If applicable, state the debtor's discharge date, including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the Bankruptcy Code.

c. Disclose cases, actions, and other proceedings under the laws of foreign nations relating to bankruptcy.

5. Item 5: Initial Fees.

Disclose the initial fees and any conditions under which these fees are refundable. If the initial fees are not uniform, disclose the range or formula used to calculate the initial fees paid in the fiscal year before the issuance date and the factors that determined the amount. For this item, "initial fees" means all fees and payments, or commitments to pay, for services or goods received from the franchisor or any affiliate before the franchisee's business opens, whether payable in lump sum or installments. Disclose installment payment terms in this section or in Item 10.

6. Item 6: Other Fees.

Disclose, in the following tabular form, all other fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part for a third party. State the title "OTHER FEES" in capital letters using bold type. Include any formula used to compute the fees.[3]

Item 6 Table

OTHER FEES

Column 1 Type of fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks

a. In column 1, list the type of fee (for example, royalties, and fees for lease negotiations, construction, remodeling, additional training or assistance, advertising, advertising cooperatives, purchasing cooperatives, audits, accounting, inventory, transfers, and renewals).

b. In column 2, state the amount of the fee.

c. In column 3, state the due date for each fee.

d. In column 4, include remarks, definitions, or caveats that elaborate on the information in the table. If remarks are long, franchisors may use footnotes instead of the remarks column. If applicable, include the following information in the remarks column or in a footnote:

(1) Whether the fees are payable only to the franchisor.

(2) Whether the fees are imposed and collected by the franchisor.

(3) Whether the fees are nonrefundable or describe the circumstances when the fees are refundable.

(4) Whether the fees are uniformly imposed.

(5) The voting power of franchisor-owned outlets on any fees imposed by cooperatives. If franchisor-owned outlets have controlling voting power, disclose the maximum and minimum fees that may be imposed.

7. Item 7: Estimated Initial Investment.

Disclose, in the following tabular form, the franchisee's estimated initial investment. State the title "YOUR ESTIMATED INITIAL INVESTMENT" in capital letters using bold type. Franchisors may include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size.

Item 7 Table

YOUR ESTIMATED INITIAL INVESTMENT

Column 1	Column 2	Column 3	Column 4	Column 5
Type of expenditure	Amount	Method of payment	When due	To whom payment is to be made
Total				

a. In column 1:

(1) List each type of expense, beginning with pre-opening expenses. Include the following expenses, if applicable. Use footnotes to include remarks, definitions, or caveats that elaborate on the information in the table.

(a) The initial franchise fee.

(b) Training expenses.

(c) Real property, whether purchased or leased.

(d) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased.

(e) Inventory to begin operating.

(f) Security deposits, utility deposits, business licenses, and other prepaid expenses.

(2) List separately and by name any other specific required payments (for example, additional training, travel, or advertising expenses) that the franchisee must make to begin operations.

(3) Include a category titled "Additional funds – [initial period]" for any other required expenses the franchisee will incur before operations begin and during the initial period of operations. State the initial period. A reasonable initial period is at least three months or a reasonable period for the industry. Describe in general

terms the factors, basis, and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.

b. In column 2, state the amount of the payment. If the amount is unknown, use a low-high range based on the franchisor's current experience. If real property costs cannot be estimated in a low-high range, describe the approximate size of the property and building and the probable location of the building (for example, strip shopping center, mall, downtown, rural, or highway).

c. In column 3, state the method of payment.

d. In column 4, state the due date.

e. In column 5, state to whom payment will be made.

f. Total the initial investment, incorporating ranges of fees, if used.

g. In a footnote, state:

(1) Whether each payment is nonrefundable, or describe the circumstances when each payment is refundable.

(2) If the franchisor or an affiliate finances part of the initial investment, the amount that it will finance, the required down payment, the annual interest rate, rate factors, and the estimated loan repayments. Franchisors may refer to Item 10 for additional details.

8. Item 8: Restrictions on Sources of Products and Services.

Disclose the franchisee's obligations to purchase or lease goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the franchised business either from the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor's specifications. Include obligations to purchase imposed by the franchisor's written agreement or by the franchisor's practice.[4] For each applicable obligation, state:

a. The good or service required to be purchased or leased.

b. Whether the franchisor or its affiliates are approved suppliers or the only approved suppliers of that good or service.

c. Any supplier in which an officer of the franchisor owns an interest.

d. How the franchisor grants and revokes approval of alternative suppliers, including:

(1) Whether the franchisor's criteria for approving suppliers are available to franchisees.

(2) Whether the franchisor permits franchisees to contract with alternative suppliers who meet the franchisor's criteria.

(3) Any fees and procedures to secure approval to purchase from alternative suppliers.

(4) The time period in which the franchisee will be notified of approval or disapproval.

(5) How approvals are revoked.

e. Whether the franchisor issues specifications and standards to franchisees, subfranchisees, or approved suppliers. If so, describe how the franchisor issues and modifies specifications.

f. Whether the franchisor or its affiliates will or may derive revenue or other material consideration from required purchases or leases by franchisees. If so, describe the precise basis by which the franchisor or its affiliates will or may derive that consideration by stating:

(1) The franchisor's total revenue.[5]

(2) The franchisor's revenues from all required purchases and leases of products and services.

(3) The percentage of the franchisor's total revenues that are from required purchases or leases.

(4) If the franchisor's affiliates also sell or lease products or services to franchisees, the affiliates' revenues from those sales or leases.

g. The estimated proportion of these required purchases and leases by the franchisee to all purchases and leases by the franchisee of goods and services in establishing and operating the franchised businesses.

h. If a designated supplier will make payments to the franchisor from franchisee purchases, disclose the basis for the payment (for example, specify a percentage or a flat amount). For purposes of this disclosure, a "payment" includes the sale of similar goods or services to the franchisor at a lower price than to franchisees.

i. The existence of purchasing or distribution cooperatives.

j. Whether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.

k. Whether the franchisor provides material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

9. Item 9: Franchisee's Obligations.

Disclose, in the following tabular form, a list of the franchisee's principal obligations. State the title "FRANCHISEE'S OBLIGATIONS" in capital letters using bold type. Cross-reference each listed obligation with any applicable section of the franchise or other agreement and with the relevant disclosure document provision. If a

particular obligation is not applicable, state "Not Applicable." Include additional obligations, as warranted.

Item 9 Table FRANCHISEE'S OBLIGATIONS		
[In bold] This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.		
Obligation	Section in agreement	Disclosure document item
a. Site selection and acquisition/lease		
b. Pre-opening purchase/leases		
c. Site development and other pre-opening requirements		
d. Initial and ongoing training		
e. Opening		
f. Fees		
g. Compliance with standards and policies/operating manual		
h. Trademarks and proprietary information		
i. Restrictions on products/services offered		
j. Warranty and customer service requirements		
k. Territorial development and sales quotas		
l. Ongoing product/service purchases		
m. Maintenance, appearance, and remodeling requirements		
n. Insurance		
o. Advertising		
p. Indemnification		
q. Owner's participation/management/staffing		
r. Records and reports		
s. Inspections and audits		
t. Transfer		
u. Renewal		
v. Posttermination obligations		
w. Noncompetition covenants		
x. Dispute resolution		
y. Other (describe)		

10. Item 10: Financing.

a. Disclose the terms of each financing arrangement, including leases and installment contracts, that the franchisor, its agent, or affiliates offer directly or indirectly to the franchisee.[6] The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information. For a sample Item 10 table, see Appendix A. For each financing arrangement, state:

(1) What the financing covers (for example, the initial franchise fee, site acquisition, construction or remodeling, initial or replacement equipment or fixtures, opening or ongoing inventory or supplies, or other continuing expenses).[7]

(2) The identity of each lender providing financing and their relationship to the franchisor (for example, affiliate).

(3) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed.

(4) The rate of interest, plus finance charges, expressed on an annual basis. If the rate of interest, plus finance charges, expressed on an annual basis, may differ depending on when the financing is issued, state what that rate was on a specified recent date.

(5) The number of payments or the period of repayment.

(6) The nature of any security interest required by the lender.

(7) Whether a person other than the franchisee must personally guarantee the debt.

(8) Whether the debt can be prepaid and the nature of any prepayment penalty.

(9) The franchisee's potential liabilities upon default, including any:

(a) Accelerated obligation to pay the entire amount due;

(b) Obligations to pay court costs and attorney's fees incurred in collecting the debt;

(c) Termination of the franchise; and

(d) Liabilities from cross defaults such as those resulting directly from nonpayment, or indirectly from the loss of business property.

(10) Other material financing terms.

b. Disclose whether the loan agreement requires franchisees to waive defenses or other legal rights (for example, confession of judgment), or bars franchisees from asserting a defense against the lender, the lender's assignee or the franchisor. If so, describe the relevant provisions.

c. Disclose whether the franchisor's practice or intent is to sell, assign, or discount to a third party all or part of the financing arrangement. If so, state:

(1) The assignment terms, including whether the franchisor will remain primarily obligated to provide the financed goods or services; and

(2) That the franchisee may lose all its defenses against the lender as a result of the sale or assignment.

d. Disclose whether the franchisor or an affiliate receives any consideration for placing financing with the lender. If such payments exist:

(1) Disclose the amount or the method of determining the payment; and

(2) Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

11. Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training.

Disclose the franchisor's principal assistance and related obligations of both the franchisor and franchisee as follows. For each obligation, cite the section number of the franchise agreement imposing the obligation. Begin by stating the following sentence in bold type: "Except as listed below, [the franchisor] is not required to provide you with any assistance."

a. Disclose the franchisor's pre-opening obligations to the franchisee, including any assistance in:

(1) Locating a site and negotiating the purchase or lease of the site. If such assistance is provided, state:

(a) Whether the franchisor generally owns the premises and leases it to the franchisee.

(b) Whether the franchisor selects the site or approves an area in which the franchisee selects a site. If so, state further whether and how the franchisor must approve a franchisee-selected site.

(c) The factors that the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings, and lease terms).

(d) The time limit for the franchisor to locate or approve or disapprove the site and the consequences if the franchisor and franchisee cannot agree on a site.

(2) Conforming the premises to local ordinances and building codes and obtaining any required permits.

(3) Constructing, remodeling, or decorating the premises.

(4) Hiring and training employees.

(5) Providing for necessary equipment, signs, fixtures, opening inventory, and supplies. If any such assistance is provided, state:

(a) Whether the franchisor provides these items directly or only provides the names of approved suppliers.

(b) Whether the franchisor provides written specifications for these items.

(c) Whether the franchisor delivers or installs these items.

b. Disclose the typical length of time between the earlier of the signing of the franchise agreement or the first payment of consideration for the franchise and the opening of the franchisee's business. Describe the factors that may affect the time period, such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures, and signs.

c. Disclose the franchisor's obligations to the franchisee during the operation of the franchise, including any assistance in:

(1) Developing products or services the franchisee will offer to its customers.

(2) Hiring and training employees.

(3) Improving and developing the franchised business.

(4) Establishing prices.

(5) Establishing and using administrative, bookkeeping, accounting, and inventory control procedures.

(6) Resolving operating problems encountered by the franchisee.

d. Describe the advertising program for the franchise system, including the following:

(1) The franchisor's obligation to conduct advertising, including:

(a) The media the franchisor may use.

(b) Whether media coverage is local, regional, or national.

(c) The source of the advertising (for example, an in-house advertising department or a national or regional advertising agency).

(d) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(2) The circumstances when the franchisor will permit franchisees to use their own advertising material.

(3) Whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

(a) How members of the council are selected.

(b) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(c) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(4) Whether the franchisee must participate in a local or regional advertising cooperative. If so, state:

(a) How the area or membership of the cooperative is defined.

(b) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(c) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether those contributions are on the same basis as those for franchisees.

(d) Who is responsible for administering the cooperative (for example, franchisor, franchisees, or advertising agency).

(e) Whether cooperatives must operate from written governing documents and whether the documents are available for the franchisee to review.

(f) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(g) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(5) Whether the franchisee must participate in any other advertising fund. If so, state:

(a) Who contributes to the fund.

(b) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(c) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees.

(d) Who administers the fund.

(e) Whether the fund is audited and when it is audited.

(f) Whether financial statements of the fund are available for review by the franchisee.

(g) How the funds were used in the most recently concluded fiscal year, including the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(6) If not all advertising funds are spent in the fiscal year in which they accrue, how the franchisor uses the remaining amount, including whether franchisees receive a periodic accounting of how advertising fees are spent.

(7) The percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales or grants.

e. Disclose whether the franchisor requires the franchisee to buy or use electronic cash registers or computer systems. If so, describe the systems generally in nontechnical language, including the types of data to be generated or stored in these systems, and state the following:

(1) The cost of purchasing or leasing the systems.

(2) Any obligation of the franchisor, any affiliate, or third party to provide ongoing maintenance, repairs, upgrades, or updates.

(3) Any obligations of the franchisee to upgrade or update any system during the term of the franchise, and, if so, any contractual limitations on the frequency and cost of the obligation.

(4) The annual cost of any optional or required maintenance, updating, upgrading, or support contracts.

(5) Whether the franchisor will have independent access to the information that will be generated or stored in any electronic cash register or computer system. If so, describe the information that the franchisor may access and whether there are any contractual limitations on the franchisor's right to access the information.

f. Disclose the table of contents of the franchisor's operating manual provided to franchisees as of the franchisor's last fiscal year-end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. This disclosure may be omitted if the franchisor offers the prospective franchisee the opportunity to view the manual before buying the franchise.

g. Disclose the franchisor's training program as of the franchisor's last fiscal year-end or a more recent date.

(1) Describe the training program in the following tabular form. Title the table "TRAINING PROGRAM" in capital letters and bold type.

Item 11 Table TRAINING PROGRAM			
Column 1	Column 2	Column 3	Column 4
Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location

(a) In column 1, state the subjects taught.

(b) In column 2, state the hours of classroom training for each subject.

(c) In column 3, state the hours of on-the-job training for each subject.

(d) In column 4, state the location of the training for each subject.

(2) State further:

(a) How often training classes are held and the nature of the location or facility where training is held (for example, company, home, office, franchisor-owned store).

(b) The nature of instructional materials and the instructor's experience, including the instructor's length of experience in the field and with the franchisor. State only experience relevant to the subject taught and the franchisor's operations.

(c) Any charges franchisees must pay for training and who must pay travel and living expenses of the training program enrollees.

(d) Who may and who must attend training. State whether the franchisee or other persons must complete the program to the franchisor's satisfaction. If successful completion is required, state how long after signing the agreement or before opening the business the training must be completed. If training is not mandatory, state the percentage of new franchisees that enrolled in the training program during the preceding 12 months.

(e) Whether additional training programs or refresher courses are required.

12. Item 12: Territory.

Disclose:

a. Whether the franchise is for a specific location or a location to be approved by the franchisor.

b. Any minimum territory granted to the franchisee (for example, a specific radius, a distance sufficient to encompass a specified population, or another specific designation).

c. The conditions under which the franchisor will approve the relocation of the franchised business or the franchisee's establishment of additional franchised outlets.

d. Franchisee options, rights of first refusal, or similar rights to acquire additional franchises.

e. Whether the franchisor grants an exclusive territory.

(1) If the franchisor does not grant an exclusive territory, state: "You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control."

(2) If the franchisor grants an exclusive territory, disclose:

(a) Whether continuation of territorial exclusivity depends on achieving a certain sales volume, market penetration, or other contingency, and the circumstances when the franchisee's territory may be altered. Describe any sales or other conditions. State the franchisor's rights if the franchisee fails to meet the requirements.

(b) Any other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise in the area) and the effect of such modifications on the franchisee's rights.

f. For all territories (exclusive and nonexclusive):

(1) Any restrictions on the franchisor from soliciting or accepting orders from consumers inside the franchisee's territory, including:

(a) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution such as the Internet, catalog sales, telemarketing, or other direct marketing sales to make sales within the franchisee's territory using the franchisor's principal trademarks.

(b) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution such as the Internet, catalog sales, telemarketing, or other direct marketing to make sales within the franchisee's territory of products or services under trademarks different from the ones the franchisee will use under the franchise agreement.

(c) Any compensation that the franchisor must pay for soliciting or accepting orders from inside the franchisee's territory.

(2) Any restrictions on the franchisee from soliciting or accepting orders from consumers outside of his territory, including whether the franchisee has the right to use other channels of distribution such as the Internet, catalog sales, telemarketing, or other direct marketing to make sales outside of his territory.

(3) If the franchisor or an affiliate operates, franchises, or has plans to operate or franchise a business under a different trademark and that business sells or will sell goods or services similar to those the franchisee will offer, describe:

(a) The similar goods and services.

(b) The different trademark.

(c) Whether outlets will be franchisor-owned or -operated.

(d) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory.

(e) The timetable for the plan.

(f) How the franchisor will resolve conflicts between the franchisor and franchisees and between the franchisees of each system regarding territory, customers, and franchisor support.

(g) The principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address stated in Item 1, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

13. Item 13: Trademarks.

a. Disclose each principal trademark to be licensed to the franchisee. For this item, "principal trademark" means the primary trademarks, service marks, names, logos, and commercial symbols the franchisee will use to identify the franchised business. It may not include every trademark the franchisor owns.

b. Disclose whether each principal trademark is registered with the United States Patent and Trademark Office. If so, state:

(1) The date and identification number of each trademark registration.

(2) Whether the franchisor has filed all required affidavits.

(3) Whether any registration has been renewed.

(4) Whether the principal trademarks are registered on the Principal or Supplemental Register of the United States Patent and Trademark Office.

c. If the principal trademark is not registered with the United States Patent and Trademark Office, state whether the franchisor has filed any trademark application, including any "intent to use" application or an application based on actual use. If so, state the date and identification number of the application.

d. If the trademark is not registered on the Principal Register of the United States Patent and Trademark Office, state: "We do not have a federal registration for our principal trademark. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses."

e. Disclose any currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, or any state trademark administrator or court; and any pending infringement, opposition, or cancellation proceeding. Include infringement, opposition, or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor. Describe how the determination affects the ownership, use, or licensing of the trademark.

f. Disclose any pending material federal or state court litigation regarding the franchisor's use or ownership rights in a trademark. For each pending action, disclose:[8]

(1) The forum and case number.

(2) The nature of claims made opposing the franchisor's use of the trademark or by the franchisor opposing another person's use of the trademark.

(3) Any effective court or administrative agency ruling in the matter.

g. Disclose any currently effective agreements that significantly limit the franchisor's rights to use or license the use of trademarks listed in this section in a manner material to the franchise. For each agreement, disclose:

(1) The manner and extent of the limitation or grant.

(2) The extent to which the agreement may affect the franchisee.

(3) The agreement's duration.

(4) The parties to the agreement.

(5) The circumstances when the agreement may be canceled or modified.

(6) All other material terms.

h. Disclose:

(1) Whether the franchisor must protect the franchisee's right to use the principal trademarks listed in this section, and must protect the franchisee against claims of infringement or unfair competition arising out of the franchisee's use of the trademarks.

(2) The franchisee's obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to or confusingly similar to a trademark licensed to the franchisee.

(3) Whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims.

(4) Whether the franchisor or franchisee has the right to control any administrative proceedings or litigation involving a trademark licensed by the franchisor to the franchisee.

(5) Whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.

(6) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using a trademark.

i. Disclose whether the franchisor knows of either superior prior rights or infringing uses that could materially affect the franchisee's use of the principal trademarks in the state where the franchised business will be located. For each use of a principal trademark that the franchisor believes is an infringement that could materially affect the franchisee's use of a trademark, disclose:

(1) The nature of the infringement.

(2) The locations where the infringement is occurring.

(3) The length of time of the infringement (to the extent known).

(4) Any action taken or anticipated by the franchisor.

14. Item 14: Patents, Copyrights, and Proprietary Information.

a. Disclose whether the franchisor owns rights in, or licenses to, patents or copyrights that are material to the franchise. Also, disclose whether the franchisor has any pending patent applications that are material to the franchise. If so, state:

(1) The nature of the patent, patent application, or copyright and its relationship to the franchise.

(2) For each patent:

(a) The duration of the patent.

(b) The type of patent (for example, mechanical, process, or design).

(c) The patent number, issuance date, and title.

(3) For each patent application:

(a) The type of patent application (for example, mechanical, process, or design).

(b) The serial number, filing date, and title.

(4) For each copyright:

(a) The duration of the copyright.

(b) The registration number and date.

(c) Whether the franchisor can and intends to renew the copyright.

b. Describe any current material determination of the United States Patent and Trademark Office, the United States Copyright Office, or a court regarding the patent or copyright. Include the forum and matter number. Describe how the determination affects the franchised business.

c. State the forum, case number, claims asserted, issues involved, and effective determinations for any material proceeding pending in the United States Patent and Trademark Office or any court.[9]

d. If an agreement limits the use of the patent, patent application, or copyright, state the parties to and duration of the agreement, the extent to which the agreement may affect the franchisee, and other material terms of the agreement.

e. Disclose the franchisor's obligation to protect the patent, patent application, or copyright; and to defend the franchisee against claims arising from the franchisee's use of patented or copyrighted items, including:

(1) Whether the franchisor's obligation is contingent upon the franchisee notifying the franchisor of any infringement claims or whether the franchisee's notification is discretionary.

(2) Whether the franchise agreement requires the franchisor to take affirmative action when notified of infringement.

(3) Who has the right to control any litigation.

(4) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to the franchisee.

(5) Whether the franchisor's obligation is contingent upon the franchisee modifying or discontinuing the use of the subject matter covered by the patent or copyright.

(6) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using the subject matter covered by the patent or copyright.

f. If the franchisor knows of any patent or copyright infringement that could materially affect the franchisee, disclose:

(1) The nature of the infringement.

(2) The locations where the infringement is occurring.

(3) The length of time of the infringement (to the extent known).

(4) Any action taken or anticipated by the franchisor.

g. If the franchisor claims proprietary rights in other confidential information or trade secrets, describe in general terms the proprietary information communicated to the franchisee and the terms for use by the franchisee. The franchisor need only describe the general nature of the proprietary information, such as whether a formula or recipe is considered to be a trade secret.

15. Item 15: Obligation to Participate in the Actual Operation of the Franchise Business.

a. Disclose the franchisee's obligation to participate personally in the direct operation of the franchisee's business and whether the franchisor recommends participation. Include obligations arising from any written agreement or from the franchisor's practice.

b. If personal "on-premises" supervision is not required, disclose the following:

(1) If the franchisee is an individual, whether the franchisor recommends on-premises supervision by the franchisee.

(2) Limits on whom the franchisee can hire as an on-premises supervisor.

(3) Whether an on-premises supervisor must successfully complete the franchisor's training program.

(4) If the franchisee is a business entity, the amount of equity interest, if any, that the on-premises supervisor must have in the franchisee's business.

c. Disclose any restrictions that the franchisee must place on its manager (for example, maintain trade secrets, covenants not to compete).

16. Item 16: Restrictions on What the Franchisee May Sell.

Disclose any franchisor-imposed restrictions or conditions on the goods or services that the franchisee may sell or that limit access to customers, including:

a. Any obligation on the franchisee to sell only goods or services approved by the franchisor.

b. Any obligation on the franchisee to sell all goods or services authorized by the franchisor.

c. Whether the franchisor has the right to change the types of authorized goods or services and whether there are limits on the franchisor's right to make changes.

[~~(c)~~17.] Item 17: Renewal, Termination, Transfer, and Dispute Resolution.

Disclose, in the following tabular form, a table that cross-references each enumerated franchise relationship item with the applicable provision in the franchise or related agreement. Title the table "THE FRANCHISE RELATIONSHIP" in capital letters and bold type.

a. Describe briefly each contractual provision. If a particular item is not applicable, state "Not Applicable."

b. If the agreement is silent about one of the listed provisions, but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, use a footnote to describe the policy and state whether the policy is subject to change.

c. In the summary column for Item 17 c, state what the term "renewal" means for your franchise system, including, if applicable, a statement that franchisees may be asked to sign a contract with materially different terms and conditions than their original contract.

Item 17 Table

THE FRANCHISE RELATIONSHIP

[In bold] This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section in franchise or other agreement	Summary
a. Length of the franchise term		
b. Renewal or extension of the term		
c. Requirements for franchisee to renew or extend		

d. Termination by franchisee		
e. Termination by franchisor without cause		
f. Termination by franchisor with cause		
g. "Cause" defined - curable defaults		
h. "Cause" defined - noncurable defaults		
i. Franchisee's obligations on termination/nonrenewal		
j. Assignment of contract by franchisor		
k. "Transfer" by franchisee – defined		
l. Franchisor approval of transfer by franchisee		
m. Conditions for franchisor approval of transfer		
n. Franchisor's right of first refusal to acquire franchisee's business		
o. Franchisor's option to purchase franchisee's business		
p. Death or disability of franchisee		
q. Noncompetition covenants during the term of the franchise		
r. Noncompetition covenants after the franchise is terminated or expires		
s. Modification of the agreement		
t. Integration/merger clause		
u. Dispute resolution by arbitration or mediation		
v. Choice of forum		
w. Choice of law		

18. Item 18: Public Figures.

Disclose:

a. Any compensation or other benefit given or promised to a public figure arising from either the use of the public figure in the franchise name or symbol, or the public figure's endorsement or recommendation of the franchise to prospective franchisees.

b. The extent to which the public figure is involved in the management or control of the franchisor. Describe the public figure's position and duties in the franchisor's business structure.

c. The public figure's total investment in the franchisor, including the amount the public figure contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

d. For purposes of this section, a public figure means a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

19. Item 19: Financial Performance Representations.

a. Begin by stating the following:

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (i) a franchisor provides the actual records of an existing outlet you are considering buying; or (ii) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

b. If a franchisor does not provide any financial performance representation in Item 19, also state:

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's

management by contacting [name, address, and telephone number], the Federal Trade Commission, and the appropriate state regulatory agencies.

c. If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure. The franchisor must also disclose the following:

(1) Whether the representation is an historic financial performance representation about the franchise system's existing outlets, or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.

(2) If the representation relates to past performance of the franchise system's existing outlets, the material basis for the representation, including:

(a) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (for example, geographic location, type of location such as free standing vs. shopping center, degree of competition, length of time the outlets have operated, services or goods sold, services supplied by the franchisor, and whether the outlets are franchised or franchisor-owned or -operated).

(b) The dates when the reported level of financial performance was achieved.

(c) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics.

(d) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.

(e) Of those outlets whose data were used in arriving at the representation, the number and percent that actually attained or surpassed the stated results.

(f) Characteristics of the included outlets, such as those characteristics noted in subdivision c (2)(a) of Item 19, that may differ materially from those of the outlet that may be offered to a prospective franchisee.

(3) If the representation is a forecast of future financial performance, state the material basis and assumptions on which the projection is based. The material assumptions underlying a forecast include significant factors upon which a franchisee's future results are expected to depend. These factors include, for example, economic or market conditions that are basic to a franchisee's operation, and encompass matters affecting, among other things, a franchisee's sales, the cost of goods or services sold, and operating expenses.

(4) A clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(5) A statement that written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

d. If a franchisor wishes to disclose only the actual operating results for a specific outlet being offered for sale, it need not comply with this section, provided the information is given only to potential purchasers of that outlet.

e. If a franchisor furnishes financial performance information according to this section, the franchisor may deliver to a prospective franchisee a supplemental financial performance representation about a particular location or variation, apart from the disclosure document. The supplemental representation must:

(1) Be in writing.

(2) Explain the departure from the financial performance representation in the disclosure document.

(3) Be prepared in accordance with the requirements of subdivision c (1) through (4) of this item.

(4) Be furnished to the prospective franchisee.

20. Item 20: Outlets and Franchisee Information.

a. Disclose, in the following tabular form, the total number of franchised and company-owned outlets for each of the franchisor's last three fiscal years. For this item, "outlet" includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20a table is attached as Appendix B.

Table No. 1

Systemwide Outlet Summary

For years [ ] to [ ]

Column 1	Column 2	Column 3	Column 4	Column 5
Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2004			
	2005			
	2006			

Company-Owned	2004			
	2005			
	2006			
Total Outlets	2004			
	2005			
	2006			

(1) In column 1, include three outlet categories titled "franchised," "company-owned," and "total outlets."

(2) In column 2, state the last three fiscal years.

(3) In column 3, state the total number of each type of outlet operating at the beginning of each fiscal year.

(4) In column 4, state the total number of each type of outlet operating at the end of each fiscal year.

(5) In column 5, state the net change, and indicate whether the change is positive or negative, for each type of outlet during each fiscal year.

b. Disclose, in the following tabular form, the number of franchised and company-owned outlets and changes in the number and ownership of outlets located in each state during each of the last three fiscal years. Except as noted, each change in ownership shall be reported only once in the following tables. If multiple events occurred in the process of transferring ownership of an outlet, report the event that occurred last in time. If a single outlet changed ownership two or more times during the same fiscal year, use footnotes to describe the types of changes involved and the order in which the changes occurred.

(1) Disclose, in the following tabular form, the total number of franchised outlets transferred in each state during each of the franchisor's last three fiscal years. For this item, "transfer" means the acquisition of a controlling interest in a franchised outlet, during its term, by a person other than the franchisor or an affiliate. A sample Item 20 b Table is attached as Appendix C.

Table No. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)

For years [ ] to [ ]

Column 1 State	Column 2 Year	Column 3 Number of Transfers
	2004	
	2005	
	2006	
	2004	
	2005	
	2006	
Total	2004	
	2005	
	2006	

(a) In column 1, list each state with one or more franchised outlets.

(b) In column 2, state the last three fiscal years.

(c) In column 3, state the total number of completed transfers in each state during each fiscal year.

(2) Disclose, in the following tabular form, the status of franchisee-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20 c table is attached as Appendix D.

Table No. 3

Status of Franchised Outlets

For years [ ] to [ ]

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Terminations	Col. 6 Nonrenewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Operations-Other Reasons	Col. 9 Outlets at End of the Year
	2004							
	2005							
	2006							

	2004							
	2005							
	2006							
Totals								

(a) In column 1, list each state with one or more franchised outlets.

(b) In column 2, state the last three fiscal years.

(c) In column 3, state the total number of franchised outlets in each state at the start of each fiscal year.

(d) In column 4, state the total number of franchised outlets opened in each state during each fiscal year. Include both new outlets and existing company-owned outlets that a franchisee purchased from the franchisor. (Also report the number of existing company-owned outlets that are sold or granted to a franchisee in Column 7 of Table 4).

(e) In column 5, state the total number of franchised outlets that were terminated in each state during each fiscal year. For purposes of this item, "termination" means the franchisor's termination of a franchise agreement prior to the end of its term and without providing any consideration to the franchisee (whether by payment or forgiveness or assumption of debt).

(f) In column 6, state the total number of nonrenewals in each state during each fiscal year. For purposes of this item, "nonrenewal" occurs when the franchise agreement for a franchised outlet is not renewed at the end of its term.

(g) In column 7, state the total number of franchised outlets reacquired by the franchisor in each state during each fiscal year. For purposes of this item, a "reacquisition" means the franchisor's acquisition for consideration (whether by payment or forgiveness or assumption of debt) of a franchised outlet during its term. (Also report franchised outlets reacquired by the franchisor in column 5 of Table 4).

(h) In column 8, state the total number of outlets in each state not operating as one of the franchisor's outlets at the end of each fiscal year for reasons other than termination, nonrenewal, or reacquisition by the franchisor.

(i) In column 9, state the total number of franchised outlets in each state at the end of the fiscal year.

(3) Disclose, in the following tabular form, the status of company-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20 d table is attached as Appendix E.

Table No. 4

Status of Company-Owned Outlets

For years [ ] to [ ]

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
	2004						
	2005						
	2006						
	2004						
	2005						
	2006						
Totals	2004						
	2005						
	2006						

(a) In column 1, list each state with one or more company-owned outlets.

(b) In column 2, state the last three fiscal years.

(c) In column 3, state the total number of company-owned outlets in each state at the start of the fiscal year.

(d) In column 4, state the total number of company-owned outlets opened in each state during each fiscal year.

(e) In column 5, state the total number of franchised outlets reacquired from franchisees in each state during each fiscal year.

(f) In column 6, state the total number of company-owned outlets closed in each state during each fiscal year. Include both actual closures and instances when an outlet ceases to operate under the franchisor's trademark.

(g) In column 7, state the total number of company-owned outlets sold or granted to franchisees in each state during each fiscal year.

(h) In column 8, state the total number of company-owned outlets operating in each state at the end of each fiscal year.

c. Disclose, in the following tabular form, projected new franchised and company-owned outlets. A sample Item 20 e table is attached as Appendix F.

Table No. 5

Projected Openings As Of [Last Day of Last Fiscal Year]

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet In The Next Fiscal Year	Column 4 Projected New Company-Owned Outlet In the Next Fiscal Year
Total			

(1) In column 1, list each state where one or more franchised or company-owned outlets are located or are projected to be located.

(2) In column 2, state the total number franchise agreements that had been signed for new outlets to be located in each state as of the end of the previous fiscal year where the outlet had not yet opened.

(3) In column 3, state the total number of new franchised outlets in each state projected to be opened during the next fiscal year.

(4) In column 4, state the total number of new company-owned outlets in each state that are projected to be opened during the next fiscal year.

d. Disclose the names of all current franchisees and the address and telephone number of each of their outlets. Alternatively, disclose this information for all franchised outlets in the state, but if these franchised outlets total fewer than 100, disclose this information for franchised outlets from contiguous states and then the next closest states until at least 100 franchised outlets are listed.

e. Disclose the name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date.[10] State in immediate conjunction with this information: "If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system."

f. If a franchisor is selling or granting a previously-owned franchised outlet now under its control, disclose the following additional information for that outlet for the last five fiscal years. This information may be attached as an addendum to a disclosure document, or, if disclosure has already been made, then in a supplement to the previously furnished disclosure document.

(1) The name, city and state, current business telephone number, or if unknown, last known home telephone number of each previous owner of the outlet;

(2) The time period when each previous owner controlled the outlet;

(3) The reason for each previous change in ownership (for example, termination, nonrenewal, voluntary transfer, ceased operations); and

(4) The time period(s) when the franchisor retained control of the outlet (for example, after termination, nonrenewal, or reacquisition).

g. Disclose whether franchisees signed confidentiality clauses during the last three fiscal years. If so, state the

following: "In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you." Franchisors may also disclose the number and percentage of current and former franchisees who during each of the last three fiscal years signed agreements that include confidentiality clauses and may disclose the circumstances under which such clauses were signed.

h. Disclose, to the extent known, the name, address, telephone number, email address, and website address (to the extent known) of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(1) Has been created, sponsored, or endorsed by the franchisor. If so, state the relationship between the organization and the franchisor (for example, the organization was created by the franchisor, sponsored by the franchisor, or endorsed by the franchisor).

(2) Is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close of the franchisor's fiscal year. The franchisor has no obligation to verify the organization's continued existence at the end of each fiscal year. Franchisors may also include the following statement: "The following independent franchisee organizations have asked to be included in this disclosure document."

21. Item 21: Financial Statements.

a. Include the following financial statements prepared according to United States generally accepted accounting principles, as revised by any future United States government mandated accounting principles, or as permitted by the Securities and Exchange Commission. Except as provided in subdivision b of this item, these financial statements must be audited by an independent certified public accountant using generally accepted United States auditing standards. Present the required financial statements in a tabular form that compares at least two fiscal years.

(1) The franchisor's balance sheet for the previous two fiscal year-ends before the disclosure document issuance date.

(2) Statements of operations, stockholders equity, and cash flows for each of the franchisor's previous three fiscal years.

(3) Instead of the financial disclosures required by subdivisions a (1) and (2) of this item, the franchisor may include financial statements of any of its affiliates if the affiliate's financial statements satisfy subdivisions a (1) and (2) of this item and the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate's guarantee must cover all of the franchisor's obligations to the franchisee, but need not extend to third parties. If this alternative is used, attach a copy of the guarantee to the disclosure document.

(4) When a franchisor owns a direct or beneficial controlling financial interest in a subsidiary, its financial statements should reflect the financial condition of the franchisor and its subsidiary.

(5) Include separate financial statements for the franchisor and any subfranchisor, as well as for any parent that commits to perform postsale obligations for the franchisor or guarantees the franchisor's obligations. Attach a copy of any guarantee to the disclosure document.

b. A start-up franchise system may phase-in the use of the financial statements specified in subdivisions a (1) and (2) of this item by providing, at a minimum, the following statements at the indicated times:

(1) The franchisor's first partial or full fiscal year selling or granting franchises.	An audited opening balance sheet.
(2) The franchisor's second fiscal year selling or granting franchises.	Audited balance sheet opinion as of the end of the first partial or full fiscal year selling or granting franchises.
(3) The franchisor's third and subsequent fiscal years selling or granting franchises.	All required financial statements for the previous fiscal year, plus any previously disclosed audited statements that still must be disclosed according to subdivisions a (1) and (2) of this item.

(4) Start-up franchisors may phase-in the disclosure of all financial statements required in subdivisions a (1) and (2) of this item, provided the franchisor:

(a) Prepares audited statements of operations, stockholders equity, and cash flows as soon as practicable.

(b) Prepares all unaudited statements in a format that conforms as closely as possible to audited statements.

(c) Includes one or more years of unaudited statements of operations or clearly and conspicuously discloses in this section that the franchisor has not been in business for three years or more, and cannot include all financial statements required in subdivisions a (1) and (2) of this item.

22. Item 22: Contracts.

Attach a copy of all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements.

23. Item 23: Receipts.

Include two copies of the following detachable acknowledgment of receipt in the following form as the last pages of the disclosure document:

a. State the following:

Receipt

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If [name of franchisor] offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale or grant.

If [name of franchisor] does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and [state agency].

b. Disclose the name, principal business address, and telephone number of each franchise seller offering the franchise.

c. State the issuance date.

d. If not disclosed in Item 1, state the name and address of the franchisor's registered agent authorized to receive service of process.

e. State the following:

I received a disclosure document dated ____that included the following Exhibits:

f. List the title(s) of all attached Exhibits.

g. Provide space for the prospective franchisee's signature and date.

h. Franchisors may include any specific instructions for returning the receipt (for example, street address, email address, facsimile telephone number).

Appendix A: Sample Item 10 Table

Summary of Financing Offered

Item Financed	Source of Financing	Down Payment	Amount Financed	Term (Yrs)	Interest Rate	Monthly Payment	Prepay Penalty	Security Required	Liability Upon Default	Loss of Legal Right on Default
Initial Fee										
Land/ Constr										
Leased Space										
Equip. Lease										
Equip. Purchase										
Opening Inventory										
Other Financing										

Appendix B: Sample Item 20(1) Table – Systemwide Outlet Summary Systemwide Outlet Summary For years 2004 to 2006				
Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004	859	1,062	+203
	2005	1,062	1,296	+234
	2006	1,296	2,720	+1,424
Company Owned	2004	125	145	+20
	2005	145	76	-69
	2006	76	141	+65
Total Outlets	2004	984	1,207	+223
	2005	1,207	1,372	+165
	2006	1,372	2,861	+1,489

Appendix C: Sample Item 20(2) Table – Transfers of Franchised Outlets Transfers of Outlets from Franchisees to New Owners (other than the Franchisor) For years 2004 to 2006		
Column 1 State	Column 2 Year	Column 3 Number of Transfers
NC	2004	1
	2005	0
	2006	2
SC	2004	0
	2005	0
	2006	2
Total	2004	1
	2005	0
	2006	4

Appendix D: Sample Item 20(3) Table – Status of Franchise Outlets

Status of Franchise Outlets

For years 2004 to 2006

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Terminations	Col. 6 Non-Renewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Operations-Other Reasons	Col. 9 Outlets at End of the Year
AL	2004	10	2	1	0	0	1	10
	2005	11	5	0	1	0	0	15
	2006	15	4	1	0	1	2	15
AZ	2004	20	5	0	0	0	0	25
	2005	25	4	1	0	0	2	26
	2006	26	4	0	0	0	0	30
Totals	2004	30	7	1	0	0	1	35
	2005	36	9	1	1	0	2	41
	2006	41	8	1	0	1	2	45

Appendix E: Sample Item 20(4) Table – Status of Company-Owned Outlets

Status of Company-Owned Outlets

For years 2004 to 2006

Col. 1 State	Col 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisees	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisees	Col. 8 Outlets at End of the Year
NY	2004	1	0	1	0	0	2
	2005	2	2	0	1	0	3
	2006	3	0	0	3	0	0
OR	2004	4	0	1	0	0	5
	2005	5	0	0	2	0	3
	2006	3	0	0	0	1	2
Totals	2004	5	0	2	0	0	7
	2005	7	2	0	3	0	6
	2006	6	0	0	3	1	2

Appendix F: Sample Item 20(5) Table – Projected New Franchised Outlets Projected New Franchised Outlets As of December 31, 2006			
Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet in the Next Fiscal Year	Column 4 Projected New Company-Owned Outlets in the [~~Current~~ Next] Fiscal Year
CO	2	3	1
NM	0	4	2
Total	2	7	3

[1] Franchisors may include a summary opinion of counsel concerning any action if counsel consent to use the summary opinion and the full opinion is attached to the disclosure document.

[2] If a settlement agreement must be disclosed in this item, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, franchisors need not disclose the terms of confidential settlements entered into before commencing franchise sales.

[3] If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example, a percentage of gross sales is acceptable if the franchisor defines the term "gross sales."

[4] Franchisors may include the reason for the requirement. Franchisors need not disclose in this item the purchase or lease of goods or services provided as part of the franchise without a separate charge (such as initial training, if the cost is included in the franchise fee). Describe such fees in Item 5. Do not disclose fees already described in Item 6.

[5] Take figures from the franchisor's most recent annual audited financial statement required in Item 21. If the entity deriving the income is an affiliate, disclose the sources of information used in computing revenues.

[6] Indirect offers of financing include a written arrangement between a franchisor or its affiliate and a lender, for the lender to offer financing to a franchisee; an arrangement in which a franchisor or its affiliate receives a benefit from a lender in exchange for financing a franchise purchase; and a franchisor's guarantee of a note, lease, or other obligation of the franchisee.

[7] Include sample copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms and conditions.

[8] The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

[9] If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion if the full opinion is attached.

[10] Franchisors may substitute alternative contact information at the request of the former franchisee, such as a home address, post office address, or a personal or business email address.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

FORM A, ~~"Facing Page" ——~~Uniform Franchise Registration Application (eff. 7/1/95; rev. [7/08]).

FORM B, ~~Supplemental Information~~ Franchisor's Costs and Sources of Funds (eff. 7/1/95; rev. [7/08]).

~~FORM C, Certification (rev. 7/99).~~

FORM ~~D~~ C, Uniform Consent to Service of Process (~~rev. 7/99~~ rev. [7/08]).

FORM E, Affidavit of Compliance —Franchise Amendment/Renewal (rev.~~ 7/99~~ [7/08]).

FORM F, Guarantee of Performance (rev. ~~7/99~~ [7/08]).

FORM G, Franchisor's Surety Bond (rev. 7/99).

FORM H, Notice of Claim of Exemption (eff. 7/07, rev. [7/08]).

FORM K, Escrow Agreement (eff. 7/07).

VA.R. Doc. No. R08-1123; Filed May 21, 2008, 12:36 p.m.

EXECUTIVE ORDER NUMBER 67 (2008)

DECLARATION OF A STATE OF EMERGENCY WITHIN THE COMMONWEALTH OF VIRGINIA AS A MEASURE FOR UNINTERRUPTED PETROLEUM DISTRIBUTION

On May 30, 2008, I verbally declared a state of emergency to exist for the Commonwealth of Virginia in order to ensure the uninterrupted availability of gasoline for consumers in all parts of the Commonwealth and in accordance with my authority contained in §44-146.17 of the Emergency Services and Disaster Laws.

With the rising price of fuel exceeding in many instances four dollars a gallon and the fact that many retailers of petroleum products with pumps that are mechanically unable to display accurately the current price of their petroleum product and have placed orders for upgrades to their pumps, I have taken this action in order to allow retailers the ability to display the half gallon price at the pump and make adjustment to the full price at the register.

Therefore, by virtue of the authority vested in me by §44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by §44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby order the temporary waiver by the Department of Agriculture and Consumer Services of enforcement of the provisions of §3.1-949 of the Code of Virginia for retailers of petroleum products whose pumps are mechanically unable to display accurately the current price of petroleum products. This limited waiver shall be effective for a period of 120 days from the effective date of this executive order and shall apply only to retailers whose pumps are mechanically unable to display accurately the current price of petroleum products due to the age and design of the pump. The Commissioner of Agriculture and Consumer Affairs, in consultation with the Secretary of Agriculture and Forestry, shall forthwith develop and issue guidelines allowing such retailers to use a "half pricing" technique for the sale of petroleum products. Any such retailer shall be required to display the actual price of the petroleum product on any applicable signage or advertisements in accordance with these guidelines. The Commissioner and Secretary shall consult with affected stakeholders in the development of such guidelines and shall make available appropriate technical assistance to affected retailers as well as appropriate consumer education.

This Executive Order shall be effective May 30, 2008 and shall remain in full force and effect until September 30, 2008 unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th Day of May, 2008.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 68 (2008)

DESIGNATION OF THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AS THE DELEGATE OF THE GOVERNOR TO MAKE THE CERTIFICATIONS REQUIRED BY SECTION 149(e)(2)(F) OF THE INTERNAL REVENUE CODE

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 1 of Title 2.2 of the Code of Virginia, and under Title 26 Code of Federal Regulations Section 1.149(e)-1(b)(2) and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby designate the Director of the Department of Housing and Community Development as the delegate of the Governor for the purpose of making the certifications required by Section 149(e)(2)(F) of the Internal Revenue Code of 1986, as amended (the "Code"), that private activity bonds (as defined in Section 141 of the Code) meet the requirements of Section 146 of the Code relating to the cap on private activity bonds.

This Executive Order shall be effective July 1, 2008 and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 6th day of June 2008.

/s/ Timothy M. Kaine
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Enforcement Action - New Town Associates, L.L.C. and AIG Baker Williamsburg, L.L.C.

An enforcement action has been proposed for New Town Associates, L.L.C. and AIG Baker Williamsburg, L.L.C. for alleged violations in James City County, Virginia to resolve violations of State Water Control Law. Descriptions of the proposed actions are available at the DEQ office named below or online at www.deq.virginia.gov. Daniel J. Van Orman will accept comments by email djvanorman@deq.virginia.gov, FAX (757) 518-2003 or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462 from June 23, 2008, to July 23, 2008.

Contact Information: Daniel J. Van Orman, Esquire, Regional Enforcement Specialist, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard,| Virginia Beach, VA 23462, telephone (757) 518.2014, FAX (757) 518.2003, or email djvanorman@deq.virginia.gov.

Proposed Consent Order - The Scotts Company LLC

An enforcement action has been proposed for The Scotts Company LLC of Ohio for alleged violations in Lawrenceville, Virginia. A consent order describes a settlement to resolve unauthorized discharges that occurred at 3175 Bright Leaf Road. The order requires corrective action and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email felupini@deq.virginia.gov, FAX (804) 527-5106 or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060 from June 23, 2008, to July 24, 2008.

Contact Information: Frank Lupini, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or email felupini@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on May 29, 2008.

Director's Order Number Sixteen (08)
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 May 16, 2008:

Game 606	Sapphire Blue 7's
Game 682	Treasure Chest
Game 722	Ca$h Windfall
Game 730	Best of 7's
Game 733	One-Eyed Jacks
Game 749	Casino Cash
Game 761	Aces Wild
Game 765	Big Bucks Doubler
Game 769	Super Lucky 7's
Game 776	Junior Ruby Red 7's
Game 789	Game Card Series
Game 790	Double Take
Game 793	Welcome To Fabulous Las Vegas
Game 803	Deal Or No Deal
Game 1005	Cash Flurries Doubler
Game 1007	Snowflakes & 7's
Game 1008	7 Come 11
Game 1012	Pink Panther
Game 1013	$100,000 Mega Multipler

The last day for lottery retailers to return for credit unsold tickets from any of these games will be June 27, 2008. The last day to redeem winning tickets for any of these games will be November 12, 2008, 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 November 12, 2008, or earlier, 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/ Paula I. Otto
Executive Director
May 22, 2008

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The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on May 29, 2008, and June 3, 2008. 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.

Final Rules for Game Operation:

Director's Order Number Eighteen (08)

Virginia's Instant Game Lottery 1025; "Money Money Money" (effective 5/22/08)

Director's Order Number Nineteen (08)

Virginia's Instant Game Lottery 1026; "$100,000 Casino Action" (effective 5/22/08)

Director's Order Number Twenty (08)

Virginia's Instant Game Lottery 1031; "Easy Money" (effective 5/22/08)

Director's Order Number Twenty-One (08)

Virginia's Instant Game Lottery 1033; "Harley-Davidson" (effective 5/29/08)

Director's Order Number Twenty-Two (08)

Virginia's Instant Game Lottery 1056; "Be My Boop" (effective 5/22/08)

Director's Order Number Twenty-Three (08)

Virginia's Instant Game Lottery 1059; "Sizzlin' 7's" (effective 5/22/08)

Director's Order Number Twenty-Four (08)

Virginia's Fourteenth On-Line Game Lottery; "Fast Play Dodge Ball" (effective 5/22/08)

Director's Order Number Twenty-Five (08)

"Harley-Davidson Sweepstakes" (effective 5/22/08)

Director's Order Number Twenty-Six (08)

Virginia's Instant Game Lottery 1029; "Are You In" (effective 5/22/08)

Director's Order Number Twenty-Seven (08)

Virginia's Instant Game Lottery 1035; "Pinball Wizard" (effective 5/22/08)

STATE WATER CONTROL BOARD

Proposed Consent Order - American Timberland Company

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Suffolk, Virginia.

Public comment period: June 23, 2008, to July 23, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to address alleged violations of the Virginia Water Protection Permit Regulations to American Timberland Company at property adjacent to Corinth Chapel Road in the City of Suffolk. The consent order describes a settlement to resolve unauthorized clearing and filling of approximately 1.63 acres of forested wetlands and 48 linear feet of stream and requires development and implementation of a restoration plan and includes a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2003, or email prsmith@deq.virginia.gov.

Proposed Consent Order - Associated Naval Architects, Incorporated

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Portsmouth, Virginia.

Public comment period: June 23, 2008, to July 23, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Associated Naval Architects, Incorporated, to address alleged violations of Virginia State Water Control Law. The location of the facility where the alleged violations occurred is 3400 Shipwright Street, Portsmouth. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System Permit and includes a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone

(757) 518-2020, FAX (757) 518-2003, or email prsmith@deq.virginia.gov.

Proposed Consent Order - C. W. Properties

Purpose of notice: To invite citizens to comment on a proposed consent order for C. W. Properties, LLC.

Public comment period: June 23, 2008, through July 24, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to C. W. Properties to address alleged violations of State Water Control Law. The location where the alleged violations occurred is at the Ben Leake Plaza property located off of Rt. 29 North, approximately 0.10 mile north of the Rt. 29 and Rt. 607 intersection in Green County, Virginia. The consent order describes a settlement to resolve alleged unauthorized stream disturbances on an unnamed tributary of Preddy Creek.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by close of business on the final day of the public comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ web site at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Steven W. Hetrick, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7833, FAX (540) 574-7878, or email swhetrick@deq.virginia.gov.

Proposed Consent Order - Columbia Gas Transmission Corporation

Purpose of notice: To invite citizens to comment on a proposed consent order for the Columbia Gas Transmission Corporation.

Public comment period: June 23, 2008, through July 24, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to the Columbia Gas Transmission Corporation to address alleged violations of State Water Control Law. The location where the alleged violations occurred is in Swift Run along State Rt. 634 between its intersections with Rt. 33 and Rt. 819 near Lydia in Green County, Virginia. The consent order describes a settlement to resolve alleged unauthorized discharges and stream disturbances that resulted in a fish kill in the Swift Run.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by close of business on the final day of the public comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Steven W. Hetrick, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7833, FAX (540) 574-7878, or email swhetrick@deq.virginia.gov.

Proposed Consent Order - Town of Craigsville

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility in Augusta County, Virginia.

Public comment period: June 23, 2008, to July 23, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to the Town of Craigsville to address alleged permit violations. The location of the facility where the alleged violations occurred is at the Town of Craigsville's STP in Augusta County, Virginia. The consent order describes a settlement to resolve these violations.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Steven W. Hetrick, Department of Environmental Quality, Valley Regional Office, Post Office Box 3000, Harrisonburg, VA 22801-9519, telephone (540) 574-7833, FAX (540) 574-7878, or email swhetrick@deq.virginia.gov

Proposed Consent Order - Grottoes Ganesh, Inc.

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility.

Public comment period: June 23, 2008, to July 23, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Grottoes Ganesh, Inc. to address alleged violations of the regulations. The location of the UST facility where the alleged violations occurred is in Rockingham County, Virginia. The consent order describes a settlement to resolve these violations.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person

commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: David C. Robinett, Department of Environmental Quality, Valley Regional Office, Post Office Box 3000, 4411 Early Road, Harrisonburg, VA 22801-9519, telephone (540) 574-7862, FAX (540) 574-7878, or email dcrobinett@deq.virginia.gov.

Total Maximum Daily Load - Pamunkey River Basin

Notice is hereby given that the State Water Control Board seeks comment on the proposed modifications to the bacteria total maximum daily load (TMDL) developed for the Pamunkey River Basin in Louisa, Caroline, Hanover, Orange, King William, and New Kent counties.

The total maximum daily load of E. coli was developed to address bacterial impairment in the Pamunkey River Basin. The TMDL was approved by the Environmental Protection Agency (EPA) on August 2, 2006, and can be found at the following websites:

www.deq.virginia.gov/tmdl

www.epa.gov/reg3wapd/tmdl/VA_TMDLs/PamunkeyRiverBac/PamunkeyRvBac_DR.pdf

The Virginia Department of Environmental Quality (VDEQ) seeks written comments from interested persons on the modification of this TMDL. In the Pamunkey River Basin bacterial TMDL approved by the U.S. Environmental Protection Agency and the State Water Control Board in 2006, the Missionary Learning Center Sewage Treatment Plant (STP), VA0067105, was issued a waste load allocation of 4.4E+10 cfu/year, based on the design flow (25,000 gallons per day or gpd) at the time of issuance. DEQ proposes to revise the TMDL by increasing the bacteria waste load allocation to 1.17E+11 cfu/year to accommodate this facility at a maximum design flow of 65,000 gpd and an E. coli concentration of 126 N/100mL.

This increase will neither cause nor contribute to the nonattainment of the Pamunkey River Basin, as documented in the EPA-approved TMDL report. The EPA considers a less than 1% change to the TMDL to be insignificant. The proposed increase in the waste load allocation for this facility will be 0.37% of the TMDL.

The public comment period for this modification will end on July 23, 2008. Questions or information requests should be addressed to Margaret Smigo. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804)527-5124, or email mjsmigo@deq.virginia.gov.

2008 Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Draft 2008 Water Quality Assessment Integrated Report (Integrated Report) on June 16, 2008, for public comment. The final report will be released this fall after review and approval by the United States Environmental Protection Agency.

The Integrated Report combines both the 305(b) Water Quality Assessment Report and the 303(d) List of Impaired Waters. Both are required by the federal Clean Water Act and the Virginia Water Quality Monitoring Information and Restoration Act. This report will be available for download on the DEQ website at http://www.deq.virginia.gov/wqa/ throughout the public comment period, which ends on Friday, July 25, 2008, at 5 p.m.

A CD with a copy of the final report and associated maps can be pre-ordered at no charge via the website above. CD copies may also be requested via the website above. Anyone who received the report on CD in 2006 will automatically receive a 2008 CD. Hard copies of the report will only be printed upon request, via the website. Maps will also be available when the final report is released.

A public information meeting will be held via a simultaneous teleconference at all seven DEQ regional offices and the DEQ central office on June 24, 2008, from 7 p.m. - 8:30 p.m., regarding the draft Integrated Report. The public may attend at any of the following locations:

DEQ Central Office, 629 East Main Street in Richmond. For directions please contact Harry Augustine, (804) 698-4037, hhaugustine@deq.virginia.gov.

DEQ Valley Regional Office, 4411 Early Road in Harrisonburg. For directions please contact James Shiflet, (540) 574-7828, jashiflet@deq.virginia.gov.

DEQ West Central Regional Office, 3019 Peters Creek Road in Roanoke. For directions please contact Mike McLeod, (540) 562-6721, dmmcleod@deq.virginia.gov.

DEQ Tidewater Regional Office, 5636 Southern Boulevard in Virginia Beach. For directions, please contact Steve Cioccia, (757) 518-2159, sacioccia@deq.virginia.gov.

DEQ South Central Regional Office, 7705 Timberlake Road in Lynchburg. For directions, please contact Amanda Gray, (434) 582-6227, abgray@deq.virginia.gov.

DEQ Piedmont Regional Office, 4949-A Cox Road in Glen Allen. For directions, please contact Jennifer Palmore, (804)527-5058, jvpalmore@deq.virginia.gov. (Please note that seating space is limited).

DEQ South West Regional Office, 355 Deadmore Street in Abingdon. For directions please contact Allen Newman, (276) 676-4804, ajnewman@deq.virginia.gov.

DEQ Northern Va. Regional Office, 13901 Crown Court in Woodbridge. For directions please contact Bryant Thomas, (703) 583-3848, bhthomas@deq.virginia.gov.

Written comments on the draft 2008 Integrated Report can be sent to the contact person below. Commenters should include your name, (US mail) address, telephone number, and email address.

Contact Information: Darryl M. Glover, Department of Environmental Quality, Water Quality Monitoring and Assessment Manager, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4321, FAX (804) 698-4416, or email dmglover@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.