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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.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

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

September 2008 through June 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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		January 2009
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
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		July 2009
25:21	June 3, 2009	June 22, 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 1. Administration			
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	24:25 VA.R. 3449-3506	10/1/08
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	24:25 VA.R. 3506-3523	10/1/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
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 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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 20-10-80	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-100	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-110	Amended	24:24 VA.R. 3331	9/18/08
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-40-30	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-70	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-190	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-210	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-71	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-260-140	Amended	24:24 VA.R. 3333	7/8/08
4 VAC 15-270-50	Repealed	24:24 VA.R. 3334	7/8/08
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
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 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
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 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
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 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
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 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
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 20-700-15	Added	24:21 VA.R. 2918	6/1/08
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 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
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
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
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 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
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 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
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 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
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 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
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 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
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	--
6 VAC 20-80-10 through 6 VAC 20-80-90	Amended	24:23 VA.R. 3127-3132	9/1/08
6 VAC 20-80-100	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-80-110	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-171-10 emer	Amended	24:23 VA.R. 3134	7/1/08 - 6/30/09
6 VAC 20-171-50 emer	Amended	24:23 VA.R. 3137	7/1/08 - 6/30/09
6 VAC 20-171-120 emer	Amended	24:23 VA.R. 3138	7/1/08 - 6/30/09
6 VAC 20-171-230 emer	Amended	24:23 VA.R. 3139	7/1/08 - 6/30/09
6 VAC 20-171-320 emer	Amended	24:23 VA.R. 3141	7/1/08 - 6/30/09
6 VAC 20-171-350 emer	Amended	24:23 VA.R. 3142	7/1/08 - 6/30/09
6 VAC 20-171-360 emer	Amended	24:23 VA.R. 3145	7/1/08 - 6/30/09
6 VAC 20-250-10 through 6 VAC 20-250-380	Added	24:23 VA.R. 3146-3161	8/20/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
Title 8. Education			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
Title 9. Environment			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
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

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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 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
Title 10. Finance and Financial Institutions			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08
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
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

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

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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 5-481-451	Added	24:25 VA.R. 3612	10/3/08
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
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

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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
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

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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 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-70 emer	Amended	24:23 VA.R. 3168	7/1/08 - 6/30/09
12 VAC 30-120-90 emer	Amended	24:23 VA.R. 3169	7/1/08 - 6/30/09
12 VAC 30-120-140 emer	Amended	24:23 VA.R. 3171	7/1/08 - 6/30/09
12 VAC 30-120-211 emer	Amended	24:23 VA.R. 3174	7/1/08 - 6/30/09
12 VAC 30-120-213 emer	Amended	24:23 VA.R. 3177	7/1/08 - 6/30/09
12 VAC 30-120-225 emer	Amended	24:23 VA.R. 3178	7/1/08 - 6/30/09
12 VAC 30-120-229 emer	Amended	24:23 VA.R. 3181	7/1/08 - 6/30/09
12 VAC 30-120-237 emer	Amended	24:23 VA.R. 3182	7/1/08 - 6/30/09
12 VAC 30-120-247 emer	Amended	24:23 VA.R. 3184	7/1/08 - 6/30/09
12 VAC 30-120-700 emer	Amended	24:23 VA.R. 3185	7/1/08 - 6/30/09
12 VAC 30-120-710 emer	Amended	24:23 VA.R. 3189	7/1/08 - 6/30/09
12 VAC 30-120-754 emer	Amended	24:23 VA.R. 3190	7/1/08 - 6/30/09
12 VAC 30-120-758 emer	Amended	24:23 VA.R. 3191	7/1/08 - 6/30/09

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12 VAC 30-120-762 emer	Amended	24:23 VA.R. 3192	7/1/08 - 6/30/09
12 VAC 30-120-770 emer	Amended	24:23 VA.R. 3193	7/1/08 - 6/30/09
12 VAC 30-120-900 emer	Amended	24:23 VA.R. 3195	7/1/08 - 6/30/09
12 VAC 30-120-910 emer	Amended	24:23 VA.R. 3197	7/1/08 - 6/30/09
12 VAC 30-120-920 emer	Amended	24:23 VA.R. 3198	7/1/08 - 6/30/09
12 VAC 30-120-970 emer	Amended	24:23 VA.R. 3200	7/1/08 - 6/30/09
12 VAC 30-120-1500 emer	Amended	24:23 VA.R. 3202	7/1/08 - 6/30/09
12 VAC 30-120-1550 emer	Amended	24:23 VA.R. 3204	7/1/08 - 6/30/09
12 VAC 30-120-2000 emer	Added	24:23 VA.R. 3206	7/1/08 - 6/30/09
12 VAC 30-120-2010 emer	Added	24:23 VA.R. 3207	7/1/08 - 6/30/09
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 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
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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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
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 15. Judicial			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 15-30-190	Amended	24:23 VA.R. 3214	8/21/08
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08

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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
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 65-20-10	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-15	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-60	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-120	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-130	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 65-20-153	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-170	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-171	Added	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-240	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-350	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-420	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-440	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-500	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-510	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-590	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-700	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
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

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18 VAC 85-20-225	Amended	24:24 VA.R. 3367	9/3/08
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 85-40-55	Amended	24:24 VA.R. 3368	9/3/08
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 85-50-59	Amended	24:24 VA.R. 3368	9/3/08
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 85-80-65	Amended	24:24 VA.R. 3368	9/3/08
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 85-101-145	Amended	24:24 VA.R. 3368	9/3/08
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 85-110-145	Amended	24:24 VA.R. 3369	9/3/08
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 85-120-85	Amended	24:24 VA.R. 3369	9/3/08
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 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
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
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 90-20-271	Amended	24:21 VA.R. 2969	7/23/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 90-30-80	Amended	24:24 VA.R. 3369	9/3/08
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 90-30-160	Amended	24:24 VA.R. 3370	9/3/08
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
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 95-30-95	Amended	24:23 VA.R. 3219	9/4/08
18 VAC 95-30-150	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 95-30-180	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
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 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
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 115-20-10	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-45	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-49	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-51	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-52	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-120	Repealed	24:24 VA.R. 3390	9/3/08
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 115-50-10	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-40	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-55	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-50-60	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-60-10	Amended	24:24 VA.R. 3392	9/3/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-60-50	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-70	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-80	Amended	24:24 VA.R. 3394	9/3/08
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 130-20-10	Amended	24:23 VA.R. 3225	9/1/08
18 VAC 130-20-70	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-180	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-200	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 130-20-230	Amended	24:23 VA.R. 3231	9/1/08
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
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 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-70	Amended	24:23 VA.R. 3235	9/4/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
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 21. Securities and Retail Franchising			
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
Title 22. Social Services			
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
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 40-690-20	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-30	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-40	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-55	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-65	Amended	24:24 VA.R. 3421	10/1/08
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
23 VAC 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-500-10 through 23 VAC 10-500-820	Added	24:23 VA.R. 3253-3289	10/6/08
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	--
24 VAC 30-155-10	Amended	24:23 VA.R. 3290	7/1/08
24 VAC 30-155-40	Amended	24:23 VA.R. 3291	7/1/08
24 VAC 30-155-50	Amended	24:23 VA.R. 3292	7/1/08
24 VAC 30-155-60	Amended	24:23 VA.R. 3294	7/1/08
24 VAC 30-155-70	Amended	24:23 VA.R. 3303	7/1/08
24 VAC 30-155-80	Amended	24:23 VA.R. 3303	7/1/08

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R08-1571; Filed August 13, 2008, 8:04 a.m.

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending the following regulations: **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is to conduct a general review of the regulations including, but not limited to, the definitions, entry requirements, renewal and reinstatement requirements, and standards of practice and conduct. The proposed amendments will respond to changes in the industry and address concerns brought to the board by its regulants and the public.

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

Statutory Authority: §54.1-201 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on October 1, 2008.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R08-1340; Filed August 13, 2008, 8:04 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending the following regulations: **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to conduct a review of the current regulations including, but not limited to, the definitions, entry requirements, renewal and reinstatement requirements, standards of practice and conduct, and vocational training and continuing education providers. The proposed amendments will respond to changes in the industry and address concerns brought to the board by its regulants and the public. With the exception of a fee increase, the regulations have not been amended or reviewed since August 1, 2005.

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

Statutory Authority: §54.1-201 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on October 1, 2008.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Richmond, VA 23233,

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: 2VAC5-100. Rules and Regulations Governing the Qualifications for Humane Investigators (repealing 2VAC5-100-10 through 2VAC5-100-40).

Statutory Authority: §3.1-796.106 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until October 2, 2008.

Effective Date: October 18, 2008.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Basis: Humane investigators are volunteer animal welfare investigators. On November 27, 1985, 2 VAC 5-100, Rules and Regulations Governing the Qualifications for Humane Investigators became effective. These regulations were promulgated in order to fulfill the statutory requirements of the State Veterinarian as listed in §§3.1-796.106, 3.1-796.106:1, and 3.1-796.106:2 of the Code of Virginia.

In 2003, these sections of the Code of Virginia were amended and reenacted in Chapter 858 of the 2003 Acts of Assembly, to limit humane investigator positions, remove the authority of the State Veterinarian over humane investigators, remove the authority of the Board of Agriculture to establish by regulation the qualifications for humane investigators, and remove the requirement for the State Veterinarian to maintain a current list of persons meeting the qualifications for humane investigators. Since 2003, the Code of Virginia has required that humane investigators report to the local animal control administrative agency instead of the State Veterinarian.

Since these sections of the Code were amended, the Code no longer provides authority to the VDACS board to establish these regulations, or to the agency to administer these regulations.

Purpose: VDACS' Office of the State Veterinarian proposes to repeal the regulation governing the qualifications for

humane investigators because the regulation is no longer authorized by law.

Rationale for Using Fast-Track Process: This regulation is no longer authorized by law. Additionally, authority over humane investigators is now granted to local governing authorities. Utilizing the fast-track process to repeal the regulation will quickly remove the unauthorized regulation from the books, which is necessary to eliminate confusion over the requirements of the regulation. There are citizens within Virginia who still refer to the requirements of this regulation, and they do not understand that these requirements no longer have any legal standing.

Substance: In 2003, the humane investigator program was limited to the existing localities with humane investigators and to the existing numbers of positions. The localities have been allowed to reappoint for three-year terms those humane investigators that were appointed prior to July 1, 2003, and have been allowed to fill vacancies created when those humane investigators that were appointed prior to July 1, 2003, are no longer willing or eligible to continue serving. The number of humane investigators has been dwindling as existing positions were vacated and not filled. VDACS estimates there may be less than a dozen and possibly as few as six humane investigators with current appointments.

The qualifications for humane investigators were added into the statute in 2003, alleviating the need for a regulation on the prescribed training program (2VAC5-100-20) and a written examination (2VAC5-100-30). The local animal control administrative agency now has oversight over humane investigators and the circuit court appoints or reappoints humane investigators, thus removing the authority and need for the State Veterinarian to verify training, review applications (2VAC5-100-10) or maintain a list of humane investigators (2VAC5-100-40). If an individual private citizen desires any information on a particular humane investigator or a particular position, the information is available from the animal control administrative agency in that locality.

Issues: There are no disadvantages to the public or the Commonwealth associated with the repeal of this regulation. The local animal control administrative agency and the circuit court currently have authority and oversight over the humane investigator appointments and reappointments in that jurisdiction, not the State Veterinarian. The humane investigators and the localities with current appointments would benefit from the repeal of the regulation because it

Regulations

would eliminate confusion regarding which entity has authority over humane investigators.

The primary advantage of the proposed action is that a regulation with no legal standing will be repealed.

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

Summary of the Proposed Regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes to repeal the Rules and Regulations Governing the Qualifications for Humane Investigators because its authority to establish and to administer this regulation was removed by the 2003 Acts of Assembly.

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

Estimated Economic Impact. Humane investigators are volunteer animal welfare investigators. The current Rules and Regulations Governing the Qualifications for Humane Investigators (regulation) was adopted in 1985. The 2003 Acts of Assembly removed the direct authority of the State Veterinarian over humane investigators, removed the authority of the Board of Agriculture to establish by regulation the qualifications for humane investigators, and removed the requirement for the State Veterinarian to maintain a current list of persons meeting the qualifications for humane investigators. The qualifications for humane investigators were added into the Code of Virginia (Code). Since 2003, the local animal control administrative agencies have had oversight over humane investigators and the circuit courts appoint or reappoint humane investigators.¹

Repealing this regulation will likely not have any adverse impact because the Code applies when there is a conflict between the Code and the regulation. Instead, the proposed repeal will likely eliminate any confusion regarding which entity has authority over humane investigators. VDACS reports that currently there are citizens within Virginia who still refer to the requirements of this regulation without knowing that the regulations no longer have any legal standing. The proposed action will likely benefit the current humane investigators, localities with current appointments, and citizens of interest.

Businesses and Entities Affected. VDACS estimates that currently there are about 6 to 12 humane investigators in the Commonwealth.

Localities Particularly Affected. The proposed regulations will particularly affect the 6 to 12 localities with current humane investigator appointments.

Projected Impact on Employment. The proposed repeal will likely not have any adverse effect on employment.

Effects on the Use and Value of Private Property. The proposed repeal will likely not have any adverse effect on the use and value of private properties.

Small Businesses: Costs and Other Effects. The proposed repeal will likely not have any adverse impact on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses will likely not be adversely affected by the proposed action.

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 The humane investigator program has been limited to the existing localities with humane investigators and to the existing numbers of positions after 2003.

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

Summary:

The amendment repeals 2VAC5-100, Rules and Regulations Governing the Qualifications for Humane Investigators. Humane investigators are volunteer animal welfare investigators. The regulation was promulgated in order to fulfill the statutory requirements

of the State Veterinarian as listed in §§3.1-796.106, 3.1-796.106:1, and 3.1-796.106:2 of the Code of Virginia. In 2003, these sections of the Code were amended and reenacted in Chapter 858 of the 2003 Acts of Assembly, removing the direct authority of the State Veterinarian over humane investigators. VDACS' Office of the State Veterinarian proposes to repeal the regulation governing the qualifications for humane investigators because the regulation is no longer authorized by law.

V.A.R. Doc. No. R08-1268; Filed August 5, 2008, 9:13 a.m.

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Proposed 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: **5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-10, 5VAC5-20-20 5VAC5-20-90, 5VAC5-20-100, 5VAC5-20-120 through 5VAC5-20-150, 5VAC5-20-170, 5VAC5-20-180, 5VAC5-20-240, 5VAC5-20-250, 5VAC5-20-260, 5VAC5-20-280).**

Statutory Authority: §§12.1-13 and 12.1-25 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comments: Public comments may be submitted until October 3, 2008.

Agency Contact: William H. Chambliss, General Counsel, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email william.chambliss@scc.virginia.gov.

Summary:

The proposed amendments modify and clarify the operation of the rules of practice before the State Corporation Commission relating to pleadings, discovery, and the treatment of confidential information in regulatory, adjudicatory, and other proceedings before the commission. Minor edits to form and structure of the rules are also made.

AT RICHMOND, AUGUST 7, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2008-00002

Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure

ORDER FOR NOTICE OF PROCEEDING TO CONSIDER REVISIONS TO COMMISSION'S RULES OF PRACTICE AND PROCEDURE

The Commission's Rules of Practice and Procedure, now codified at 5 VAC 5-10-10 et seq. ("Rules"), were last revised in Case No. CLK-2007-00005,¹ in which the Commission incorporated procedures for electronic filing. Prior to Case No. CLK-2007-00005, the Rules were last revised in 2001 in Case No. CLK-2000-00311.²

The Commission has concluded that it is appropriate to revisit our Rules generally and allow parties an opportunity to suggest revisions to any aspect of the Rules. Accordingly, the Commission Staff has prepared a proposed revision of the Rules of Practice and Procedure ("Proposed Rules"). While a number of changes are suggested, the most substantial changes relate to 5 VAC 5-20-170 ("Rule 170"). The proposed changes to Rule 170 are intended to represent a codification of current practice, rather than a departure therefrom. Additionally, the proposed changes to Rule 170 provide more detailed instructions for the submission, marking, and use of confidential information, including for confidential information deemed "extraordinarily sensitive information." A copy of the Proposed Rules is attached hereto. Interested parties are invited to comment upon and suggest modifications or supplements to, or request hearing on, the Proposed Rules. The Commission's Division of Information Resources is directed to cause the Proposed Rules to be published in the Virginia Register of Regulations and to make the Proposed Rules available for inspection on the Commission's Internet website.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. CLK-2008-00002.

(2) The Commission's Division of Information Resources shall forward the Proposed Rules to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>. The Clerk of the Commission shall make a copy of the Proposed Rules

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available, free of charge, in response to any written request for one.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules shall file an original and fifteen (15) copies of such comments, proposals, or request with the Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before October 3, 2008, making reference to Case No. CLK-2008-00002. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(5) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all public utilities providing service within the Commonwealth of Virginia and to representatives of the insurance industry as shown on the attached appendices and to the individuals and organizations on the service list attached hereto.

¹ Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the Matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2007-00005 (Final Order, January 15, 2008).

² Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the Matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2000-00311, 2001 S.C.C. Ann. Rpt. 55 (Final Order, April 30, 2001).

Part I General Provisions

5VAC5-20-10. Applicability.

The State Corporation Commission Rules of Practice and Procedure are promulgated pursuant to the authority of §12.1-25 of the Code of Virginia and are applicable to the regulatory and adjudicatory proceedings of the State Corporation Commission except where superseded by more specific rules for particular types of cases or proceedings. When necessary to serve the ends of justice in a particular case, the commission may grant, upon motion or its own initiative, a waiver or modification of any of the provisions of ~~the~~ these rules, except 5VAC5-20-220, under terms and conditions and to the extent it deems appropriate. These rules do not apply to the internal administration or organization of the commission in matters such as the procurement of goods and services, personnel actions, and similar issues, nor to matters that are being handled administratively by a division or bureau of the commission.

5VAC5-20-20. Good faith pleading and practice.

Every pleading, written motion, or other document presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's mailing address and

telephone number, and where available, telefax number and email address, shall be stated. An individual not represented by an attorney shall sign the individual's pleading, motion, or other document, and shall state the individual's mailing address and telephone number. A partnership not represented by an attorney shall have a partner sign the partnership's pleading, motion, or other document, and shall state the partnership's mailing address and telephone number. A nonlawyer may only represent the interests of another before the commission in the presentation of facts, figures, or factual conclusions, as distinguished from legal arguments or conclusions. In the case of an individual or entity not represented by counsel, each signature shall be that of the individual or a qualified officer or agent of the entity. The pleadings document need not be under oath unless so required by statute.

The commission allows electronic filing. Before filing electronically, the filer shall complete an electronic document filing authorization form, establish a filer authentication password with the Clerk of the State Corporation Commission and otherwise comply with the electronic filing procedures adopted by the commission. Upon establishment of a filer authentication password, a filer may make electronic filings in any case. All documents submitted electronically must be capable of being printed as paper documents without loss of content or appearance.

The signature of an attorney or party constitutes a certification that (i) the attorney or party has read the pleading, motion, or other document; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, ~~it~~ the pleading, motion or other document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) ~~it~~ the pleading, motion or other document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other document will not be accepted for filing by the Clerk of the Commission if it is not signed.

An oral motion made by an attorney or party in a commission proceeding constitutes a representation that the motion (i) is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

5VAC5-20-90. Adjudicatory proceedings.

A. Initiation of proceedings. Investigative, disciplinary, penal, and other adjudicatory proceedings may be initiated by motion of the commission staff or upon the commission's own motion. Further proceedings shall be controlled by the issuance of a rule to show cause, which shall give notice to

the defendant, state the allegations against the defendant, provide for a response from the defendant and, where appropriate, set the matter for hearing. A rule to show cause shall be served in the manner provided by §12.1-19.1 or §12.1-29 of the Code of Virginia. The commission staff shall prove the case by clear and convincing evidence.

B. Answer. ~~An answer is the proper initial responsive pleading to a rule to show cause.~~ An answer or other responsive pleading shall be filed within 21 days of service of the rule to show cause, unless the commission shall order otherwise. The answer shall state, in narrative form, each defendant's responses to the allegations in the rule to show cause and any affirmative defenses asserted by the defendant. Failure to file a timely answer or other responsive pleading may result in the entry of judgment by default against the party failing to respond.

5VAC5-20-100. Other proceedings.

A. Promulgation of general orders, rules, or regulations. Before promulgating a general order, rule, or regulation, the commission shall, by order upon an application or upon its own motion, require reasonable notice of the contents of the proposed general order, rule, or regulation, including publication in the Virginia Register of Regulations, and afford interested persons an opportunity to comment, present evidence, and be heard. A copy of each general order, rule, and regulation adopted in final form by the commission shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations.

B. Petitions in other matters. Persons having a cause before the commission, whether by statute, rule, regulation, or otherwise, against a defendant, including the commission, a commission bureau, or a commission division, shall proceed by filing a written petition containing (i) the identity of the parties; (ii) a statement of the action sought and the legal basis for the commission's jurisdiction to take the action sought; (iii) a statement of the facts, proof of which would warrant the action sought; (iv) a statement of the legal basis for the action; and (v) a certificate showing service upon the defendant.

Within 21 days of service of a petition under this rule, the defendant shall file an answer or other responsive pleading containing, in narrative form, (i) a response to each allegation of the petition and (ii) a statement of each affirmative defense asserted by the defendant. Failure to file a timely answer may result in entry of judgment by default against the defendant failing to respond. Upon order of the commission, the commission staff may participate in any proceeding under this rule in which it is not a defendant to the same extent as permitted by 5VAC5-20-80 D.

C. Declaratory judgments. Persons having no other adequate remedy may petition the commission for a declaratory judgment. The petition shall meet the requirements of

subsection B of this section and, in addition, contain a statement of the basis for concluding that an actual controversy exists. In the proceeding, the commission shall by order provide for the necessary notice, responsive pleadings, and participation by interested parties and the commission staff.

5VAC5-20-120. Procedure before hearing examiners.

A. Assignment. The commission may, by order, assign a matter pending before it to a hearing examiner. Unless otherwise ordered, the hearing examiner shall conduct all further proceedings in the matter on behalf of the commission in accordance with ~~the~~ these rules. In the discharge of his duties, the hearing examiner shall exercise all the adjudicatory powers possessed by the commission including, inter alia, the power to administer oaths; require the attendance of witnesses and parties; require the production of documents; schedule and conduct pre-hearing conferences; admit or exclude evidence; grant or deny continuances; and rule on motions, matters of law, and procedural questions. The hearing examiner shall, upon conclusion of all assigned duties, issue a written final report and recommendation to the commission at the conclusion of the proceedings.

B. Objections and certification of issues. An objection to a ruling by the hearing examiner shall be stated with the reasons therefor at the time of the ruling, and the objection may be argued to the commission as part of a response to the hearing examiner's report. A ruling by the hearing examiner that denies further participation by a party in interest or the commission staff in a proceeding that has not been concluded may be immediately appealed to the commission by filing a written motion with the commission for review. Upon the motion of any party or the staff, or upon the hearing examiner's own initiative, the hearing examiner may certify any other material issue to the commission for its consideration and resolution. Pending resolution by the commission of a ruling appealed or certified, the hearing examiner shall retain procedural control of the proceeding.

C. Responses to hearing examiner reports. Unless otherwise ordered by the hearing examiner, responses supporting or objecting to the hearing examiner's final report must be filed within 21 days of the issuance of the report. A reply to a response to the hearing examiner's report may only be filed with leave of the commission. The commission may accept, modify, or reject the hearing examiner's recommendations in any manner consistent with law and the evidence, notwithstanding an absence of objections to the hearing examiner's report.

5VAC5-20-130. Amendment of pleadings.

No amendment shall be made to any ~~formal~~ pleading after it is filed except by leave of the commission, which leave shall be liberally granted in the furtherance of justice. The commission shall make such provision for notice and for

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opportunity to respond to the amended pleadings as it may deem necessary and proper.

5VAC5-20-140. Filing and service.

A ~~formal~~ pleading or other ~~related~~ document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the Clerk to show the time and date of receipt.

Electronic filings may be submitted at any time and will be deemed filed on the date and at the time the electronic document is received by the commission's database; provided, that if a document is received when the clerk's office is not open for public business, the document shall be deemed filed on the next regular business day. A filer will receive an electronic notification identifying the date and time the document ~~is~~ was received by the commission's database. An electronic document may be rejected if it is not submitted in compliance with these rules.

When a filing would otherwise be due on a day when the clerk's office is not open for public business, the filing will be timely if made on the next regular business day ~~when that~~ the office is open to the public. When a period of 15 days or fewer is permitted to make a filing or take other action pursuant to commission rule or order, intervening weekends or holidays shall not be counted in determining the due date.

Service of a ~~formal~~ pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail properly addressed and stamped, on or before the date of filing. Service on a party may be made by service on the party's counsel. Alternatively, electronic service shall be permitted on parties or staff in cases where all parties and staff have agreed to such service, or where the commission has provided for such service by order. At the foot of a formal pleading, brief, or other document required to be served, the party making service shall append a certificate of counsel of record that copies were mailed or delivered as required. Notices, findings of fact, opinions, decisions, orders, or other documents to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with §12.1-27 of the Code of Virginia, shall be attested by the Clerk of the Commission and served in compliance with §12.1-19.1 or 12.1-29 of the Code of Virginia.

5VAC5-20-150. Copies and format.

Applications, petitions, motions, responsive pleadings, briefs, and other documents filed by parties must be filed in an original and 15 copies unless otherwise directed by the

commission. Except as otherwise stated in these rules, submissions filed electronically are exempt from the copy requirement. One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the general counsel.

Each document must be filed on standard size white opaque paper, 8-1/2 by 11 inches in dimension, ~~and~~ must be capable of being reproduced in copies of archival quality, and only one side of the paper may be used. Submissions filed electronically shall be made in portable document format (PDF).

Pleadings Each document shall be bound or attached on the left side and contain adequate margins. Each page following the first page shall be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Submissions filed electronically may not exceed 100 pages of printed text of 8-1/2 by 11 inches.

Pleadings Each document containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. Submissions filed electronically that otherwise would incorporate large exhibits impractical for conversion to electronic format shall be identified in the filing and include a statement that the exhibit was filed in hardcopy and is available for viewing at the commission or that a copy may be obtained from the filing party. Such exhibit shall be filed in an original and 15 copies.

All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting, or rearrangement.

The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this rule.

5VAC5-20-170. Confidential information.

A person who proposes in good faith in a formal proceeding that information to be filed with or ~~submitted~~ delivered to the commission, or to be supplied to a party under Part IV (5VAC5-20-240 et seq.) of these rules, be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with the Clerk of the Commission, or otherwise ~~submit~~ deliver the information under seal to the commission staff, requesting party, or both, as may be required. Items filed or delivered under seal shall be securely sealed in an opaque container that is clearly labeled "UNDER SEAL," and, if filed, shall meet the other requirements for filing contained in these rules. An original and 15 copies of all such information shall be filed with the clerk. One additional copy of all such information

also shall ~~also~~ be ~~submitted~~ delivered under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the general counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

On every document filed or delivered under seal, the producing party shall mark each individual page of the document that contains confidential information, and on each such page shall clearly indicate the specific information requested to be treated as confidential by use of highlighting, underscoring, bracketing or other appropriate marking. All remaining materials on each page of the document shall be treated as nonconfidential and available for public use and review. If an entire document is confidential, or if all information provided electronically under Part IV of these rules is confidential, a marking prominently displayed on the first page of such document or at the beginning of any information provided electronically, indicating that the entire document is confidential shall suffice. No document containing any confidential material may be filed electronically with the Clerk of the Commission.

Upon challenge, ~~the filing party shall demonstrate to the satisfaction of the commission that the information should be withheld from public disclosure~~ information shall be treated as confidential pursuant to these rules only where the party requesting confidential treatment can prove it is more likely than not that public disclosure of the information will result in unreasonable harm. If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order.

Whenever a document is filed with the clerk under seal, an original and 15 copies of an expurgated or redacted version of the document deemed by the filing party or determined by the commission to be confidential shall be filed with the clerk for use and review by the public. A document containing confidential information shall not be submitted electronically. An expurgated or redacted version of the document may be filed electronically. Documents containing confidential information must be filed in hardcopy and in accordance with all requirements of these rules.

When the information at issue is not required to be filed or made a part of the record, a party who wishes to withhold confidential information from filing or production may move the commission for a protective order without filing the

materials. In considering such a motion, the commission may require production of the confidential materials for inspection in camera, if necessary.

A party may request additional protection for extraordinarily sensitive information by motion filed pursuant to 5VAC5-20-110, and filing the information with the Clerk of the Commission under seal and delivering a copy of the information to commission staff counsel under seal as directed above. Whenever such treatment has been requested under Part IV of these rules, the commission may make such orders as necessary to permit parties to challenge the requested additional protection.

The commission, hearing examiners, any party and the commission staff may make use of confidential material in orders, filing pleadings or testimony as directed by order of the commission. When a party or commission staff uses confidential material in a filed pleading or testimony, the party or commission staff must file both confidential and nonconfidential versions of the pleading or testimony. Confidential versions of filed pleadings or testimony shall clearly indicate the confidential material contained within by highlighting, underscoring, bracketing or other appropriate marking. When filing confidential pleadings or testimony, parties must submit the confidential pleadings or testimony to the Clerk of the Commission securely sealed in an opaque container that is clearly labeled "UNDER SEAL." Nonconfidential versions of filed pleadings or testimony shall omit all references to confidential material.

The commission may issue such order as it deems necessary to prevent the use of confidentiality claims for the purpose of delay or obstruction of the proceeding.

5VAC5-20-180. Official transcript of hearing.

The official transcript of a hearing before the commission or a hearing examiner shall be that prepared by the court reporters retained by the commission and certified by the court reporter as a true and correct transcript of the proceeding. Transcripts of proceedings shall not be prepared except in cases assigned to a hearing examiner, when directed by the commission, or when requested by a party desiring to purchase a copy. Parties desiring to purchase copies of the transcript shall make arrangement for purchase with the court reporter. When a transcript is prepared, a copy thereof shall be made available for public inspection in the ~~Clerk of the Commission's~~ clerk's office. By agreement of the parties, or as the commission may by order provide, corrections may be made to the transcript.

Part IV

Discovery and Hearing Preparation Procedures

5VAC5-20-240. Prepared testimony and exhibits.

Following the filing of an application dependent upon complicated or technical proof, the commission may direct

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the applicant to prepare and file the testimony and exhibits by which the applicant expects to establish its case. In all proceedings in which an applicant is required to file testimony, respondents shall be permitted and may be directed by the commission or hearing examiner to file, on or before a date certain, testimony and exhibits by which they expect to establish their case. Any respondent that chooses not to file testimony and exhibits by that date may not thereafter present testimony or exhibits except by leave of the commission, but may otherwise fully participate in the proceeding and engage in cross-examination of the testimony and exhibits of commission staff and other parties. The commission staff also shall file testimony and exhibits when directed to do so by the commission. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony and exhibits by the commission. With leave of the commission and unless a timely objection is made, the commission staff or a party may correct or supplement any prepared testimony and exhibits before or during the hearing. In all proceedings, all evidence must be verified by the witness before introduction into the record, and the admissibility of the evidence shall be subject to the same standards as if the testimony were offered orally at hearing, unless, with the consent of the commission, the staff and all parties stipulate the introduction of testimony without need for verification. An original and 15 copies of prepared testimony and exhibits shall be filed unless otherwise specified in the commission's scheduling order and public notice, or unless the testimony and exhibits are filed electronically and otherwise comply with these rules. Documents of unusual bulk or weight and physical exhibits other than documents need not be filed in advance, but shall be described and made available for pretrial examination.

5VAC5-20-250. Process, witnesses, and production of documents and things.

A. Subpoenas. Commission staff and a any party to a proceeding shall be entitled to process, to convene parties, to compel the attendance of witnesses, and to compel the production of books, papers, documents, or things provided in this rule.

B. Commission issuance and enforcement of other regulatory agency subpoenas. Upon motion by commission staff counsel, the commission may issue and enforce subpoenas at the request of a regulatory agency of another jurisdiction if the activity for which the information is sought by the other agency, if occurring in the Commonwealth, would be a violation of the laws of the Commonwealth that are administered by the commission.

A motion requesting the issuance of a commission subpoena shall include:

1. A copy of the original subpoena issued by the regulatory agency to the named defendant;

2. An affidavit of the requesting agency administrator stating the basis for the issuance of the subpoena under that state's laws; and

3. A memorandum from the commission's corresponding division director providing the basis for the issuance of the commission subpoena.

C. ~~Documents~~ Document subpoenas. In a pending ~~case~~ proceeding, at the request of commission staff or any party, the Clerk of the Commission shall issue a subpoena. When a matter is under investigation by commission staff, before a formal proceeding has been established, whenever it appears to the commission by affidavit filed with the Clerk of the Commission by the commission staff or an individual, that a book, writing, document, or thing sufficiently described in the affidavit, is in the possession, or under the control, of an identified person and is material and proper to be produced, the commission may order the Clerk of the Commission to issue a subpoena and to have the subpoena duly served, together with an attested copy of the commission's order compelling production at a reasonable place and time as described in the commission's order.

D. ~~Witnesses~~ Witness subpoenas. In a pending ~~case~~ proceeding, at the request of commission staff or any party, the Clerk of the Commission shall issue a subpoena.

5VAC5-20-260. Interrogatories to parties or requests for production of documents and things.

The commission staff and a any party in a formal proceeding before the commission, other than a proceeding under 5VAC5-20-100 A and C, may serve written interrogatories or requests for production of documents upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the staff or requesting party information as is known. Interrogatories or requests for production of documents that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. No interrogatories or requests for production of documents may be served upon a member of the commission staff, except to discover factual information that supports the workpapers submitted by the staff to the Clerk of the Commission pursuant to 5VAC5-20-270. All interrogatories and requests for production of documents shall be filed with the Clerk of the Commission. Responses to interrogatories and requests for production of documents shall not be filed with the Clerk of the Commission.

The response to each interrogatory or document request shall identify by name the person making the response. Any objection to an interrogatory or document request shall identify the interrogatory or document request to which the objection is raised, and shall state with specificity the basis and supporting legal theory for the objection. Objections, ~~if~~

~~any, to specified questions shall be stated with specificity, citing appropriate legal authority, and shall be served with the list of responses or in such manner as the commission may designate by order.~~ Responses and objections to interrogatories or requests for production of documents shall be served within ~~14~~ 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory or document request and the response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

Where the response to an interrogatory or document request may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

5VAC5-20-280. Discovery ~~is~~ applicable only to 5VAC5-20-90 proceedings.

~~The following~~ This rule applies only to ~~proceedings a proceeding~~ in which a defendant is subject to a monetary penalty or injunctive penalties injunction, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant:

1. Discovery of material in possession of the commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph any relevant written or recorded statements, the existence of which is known, after reasonable inquiry, by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by the defendant, or representatives, or agents of the defendant if

the defendant is other than an individual, to a commission staff member or law enforcement officer.

A motion by the defendant under this rule shall be filed and served at least 10 days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order granting relief under this ~~section~~ rule shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute. The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

2. Depositions. After commencement of ~~an action a proceeding~~ to which this rule applies, the commission staff or a party may take the testimony of a party or ~~another a person or entity not a party~~, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the Commonwealth. Except where the commission or hearing examiner finds that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed ~~party person~~ resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

3. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written

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requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the ~~matter~~ proceeding.

VA.R. Doc. No. R08-1540; Filed August 8, 2008, 1:54 p.m.

◆ ————— ◆

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Fast-Track Regulation

Title of Regulation: **6VAC40-20. Regulations for Breath Alcohol Testing (amending 6VAC40-20-30, 6VAC40-20-120, 6VAC40-20-130, 6VAC40-20-160).**

Statutory Authority: §9.1-1110 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 October 1, 2008.

Effective Date: October 16, 2008.

Agency Contact: Michele M. Gowdy, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, or email michele.gowdy@dfs.virginia.gov.

Basis: The Code of Virginia directs the Department of Forensic Science to establish a training program, approve equipment, and establish methods to conduct chemical analyses of a person's breath, either to obtain a preliminary analysis of alcoholic content for the purposes of §§18.2-267, 29.1-738.1 and 46.2-341.25 of the Code of Virginia pursuant to §§18.2-268.9, 29.1-738.2 and 46.2-341.26:9, to obtain an analysis that can be considered valid as evidence in a prosecution under §§18.2-266, 18.2-266.1, 29.1-738 or 46.2-341.24. These regulations describe the process for approval of breath test devices, general methods of conducting breath tests, training and licensing procedures for operators, required forms and records, and the use of preliminary breath test devices.

Section 9.1-1110 of the Code of Virginia authorizes the board to adopt regulations pursuant to the Administrative Process Act (§2.2-4000 et seq.) for the administration of (i) Chapter 11 (§9.1-1100 et seq.) of Title 9.1 of the Code of Virginia or (ii) §§18.2-268.6, 18.2-268.9, 19.2-188.1, and 19.2-310.5 and for any provisions of the Code as they relate to the responsibilities of the Department of Forensic Science.

Section 18.2-267 of the Code of Virginia provides that the Department of Forensic Science shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

Purpose: The Department of Forensic Science has contracted to purchase new breath alcohol instrumentation and these amendments are necessary for the implementation of this instrumentation.

The new instrumentation and the amended regulations are necessary to protect the health, safety or welfare of citizens in the Commonwealth by assisting in the detection and prosecution of drunk drivers. The amended regulations will further this protection by only having instrumentation repaired by the manufacturer and by allowing the Department of Forensic Science to revoke or deny an instructor certificate upon good cause shown.

Rationale for Using Fast-Track Process: The amendments proposed by the Department of Forensic Science will be noncontroversial because they will refine the repair process of the breath alcohol instrumentation and the proposed amendments discuss the denial and/or termination of instructor certificates upon good cause shown. In addition, these amendments will allow the Department of Forensic Science the discretion of a preventive maintenance checklist that may or may not be necessary with the new instrumentation. The Department of Forensic Science has terminated and denied licenses previously for these reasons and, therefore, they should be noncontroversial.

These amendments are a result of the contract to purchase new breath alcohol instrumentation and will further improve the health, safety and welfare of the citizens of the Commonwealth.

Substance: There are no new substantive provisions in these proposed amendments.

Issues: These proposed amendments will assist the Commonwealth in the detection and prosecution of persons driving while under the influence of drugs or alcohol by allowing for the Department of Forensic Science to revoke or deny instructor certificates upon good cause shown and having only the manufacturer of the new breath alcohol instrumentation conduct repairs.

The advantages of these proposals is to clarify who can repair the new breath alcohol instrumentation other than the

Department of Forensic Science. In addition, instructors of the breath alcohol classes will have a documented protocol for the revocation or denial of a certificate.

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

Summary of the Proposed Amendments to Regulation. The Department of Forensic Science (DFS) proposes to amend its regulations on breath alcohol testing to accommodate newly purchased breath alcohol testing equipment and to modify rules for denial and revocation of instructor certificates.

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

Estimated Economic Impact. Currently, DFS regulations allow for breath alcohol devices to be repaired by the devices' manufacturer or by the manufacturer's authorized repair service. DFS is also currently required to produce and use a preventative maintenance checklist each month to ensure that breath alcohol devices are in proper working order.

DFS proposes to amend these rules because they have purchased new breath alcohol devices. DFS proposes to eliminate language that allows a manufacturer's repair service to repair these devices because DFS or the manufacturer will handle any repairs that become necessary. DFS also proposes to amend its rule that requires a maintenance checklist so that this checklist will be optional (the list may not be needed for the new devices). There will likely be no costs attached to changing the rules for maintenance and repair of breath alcohol devices. DFS and any other interested parties will benefit from having regulations that accurately reflect the repair and maintenance rules for new breath alcohol equipment.

Current regulations allow DFS issued breath alcohol device operator licenses, as well as breath alcohol device operation trainer certificates, to be terminated or revoked if operators or trainers "no longer meet the qualifications necessary for issuance." DFS policy, however, also allows licenses and certificates to be taken if the licensee or certificate holder violates DFS's rules of behavior. DFS proposes to amend these regulations to clarify that licenses and certificates can be suspended or revoked for "good cause shown." Because actual grounds for suspension or revocation will not change, DFS's regulated community will likely not incur any costs on account of this amendment to regulatory language. DFS regulants may slightly benefit from changing the regulatory language to reflect actual policy.

Businesses and Entities Affected. This regulatory action will affect all breath alcohol device operators that are licensed by DFS as well as all breath alcohol device operation trainers that are DFS certified. DFS currently licenses approximately 4,500 device operators and certifies 40 trainers.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 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 Department of Forensic Science agrees with the estimated economic impact stated in the economic impact analysis 6VAC40-20, Regulations for Breath Alcohol Department of Forensic Science, from June 3, 2008, with one small clarification, that the preventive maintenance checklist is not needed for the new devices.

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Summary:

These proposed amendments clarify the use of non-Department of Forensic Science repair facilities. In addition, the amendments provide that the Department of Forensic Science may revoke or deny an instructor certificate for good cause shown. Due to the nature of the new breath alcohol instrumentation, a preventive maintenance checklist may not be necessary and the changes will allow for this option.

Part II

Breath Tests Under §§18.2-268.9, 29.1-738.2, and 46.2-341.26:9 of the Code of Virginia

Article 1

Breath Test Administrative Procedures

6VAC40-20-30. Breath test devices.

Breath test devices shall be tested for accuracy by the department at least once every six months. All new breath test devices or those having been repaired by the manufacturer ~~or the manufacturer's authorized repair service~~ shall be tested for accuracy by the department before their return to service.

Article 4

Licensing Procedures

6VAC40-20-120. Licensing procedures.

A. The department shall issue, renew, terminate and revoke licenses for individuals to perform breath alcohol tests on the basis of standards set forth in this chapter.

B. Application for an initial license to perform breath tests shall be made in writing to the department. The applicant shall have the endorsement of the appropriate supervisory law-enforcement officer or designated representative unless an exception is granted by the department.

C. The initial licenses shall be granted to individuals who demonstrate the ability to perform breath tests accurately and reliably in accordance with the methods approved by the department.

D. Only individuals successfully completing a basic course of instruction shall be deemed to have demonstrated competence to qualify for the issuance of an initial license. Further instruction may be required by the department to qualify a licensee to perform tests using additional breath test devices.

E. Licenses shall be limited in scope to those breath test devices on which the individual applying for an initial or renewal license has demonstrated competence.

F. Licenses shall state the date upon which they are to expire, which date shall, in no event, be later than 24 months after the date of issuance. Licenses shall be subject to renewal at expiration or at such time prior to expiration as is convenient for the department on demonstration by the

licensee of continuing competency to perform accurate and reliable breath tests. The department may at any time examine licensees to determine such continuing competency. Licenses may be terminated or revoked by the department at any time upon ~~its finding that the licensee no longer meets the qualifications necessary for the issuance of a license~~ good cause shown.

G. Any individual whose license has expired may renew his license within one year after its expiration date by successfully completing a recertification class and by demonstrating his competence in the performance of breath tests. Any individual (i) who fails the recertification class or (ii) whose license has expired and who does not renew his license within one year after its expiration date may renew his license by again attending and successfully completing the basic course of instruction referred to in subsection D of this section and demonstrating competence in the performance of breath tests as otherwise required.

H. The failure of a licensee to comply with this chapter may be grounds for revocation of such individual's license.

6VAC40-20-130. Certificates.

The department shall issue, terminate and revoke instructor certificates for individuals to teach breath alcohol testing on the basis of the following standards:

1. The instructor certificate shall be granted only to individuals who (i) demonstrate the ability to teach the breath test method or methods approved by the department, (ii) possess a valid breath test license, and (iii) satisfactorily complete a course for Breath Alcohol Instructors. The department may issue instructor certificates to persons who have acquired the ~~necessary ability~~ knowledge, skills and abilities by past experience or formal education. DFS has the authority to deny issuance of a certificate upon good cause shown.

2. Instructor certificates shall be limited in scope to the ~~methods of breath test~~ devices for which the individual has demonstrated competence.

3. The department may at any time examine instructors to determine continuing ability.

4. Instructor certificates ~~shall~~ may be terminated or revoked by the department ~~upon its finding that the instructor no longer meets the necessary qualifications~~ upon good cause shown.

6VAC40-20-160. Checklist.

A preventive maintenance checklist, if applicable, shall be provided by the department ~~shall be~~ and completed at least once each month for each breath test device assigned to an agency. A copy of this preventive maintenance checklist shall be submitted to the department to be kept on file for at least three years.

TITLE 7. ECONOMIC DEVELOPMENT

DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

Final Regulation

REGISTRAR'S NOTICE: The Department of Minority Business Enterprise is claiming an exemption from the Administrative Process Act in accordance with §2.2-4002 B 2 of the Code of Virginia, which exempts regulations relating to the award or denial of state contracts, as well as decisions regarding compliance therewith.

Titles of Regulations: **7VAC10-20. Regulation to Govern the Certification of Minority Business Enterprises (repealing 7VAC10-20-10 through 7VAC10-20-350).**

7VAC10-21. Regulations to Govern the Certification of Small, Women-, and Minority-Owned Businesses (adding 7VAC10-21-10 through 7VAC10-21-610).

Statutory Authority: §2.2-1403 of the Code of Virginia.

Effective Date: September 1, 2008.

Agency Contact: Paula Gentius-Harris, Esq., Deputy Director, Department of Minority Business Enterprise, 1111 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-1616, FAX (804) 786-9736, or email paula.gentius-harris@dmbe.virginia.gov.

Summary:

The amendments repeal the existing regulations and establish a new regulation governing the certification of small businesses, women-owned businesses and minority-owned businesses in the Commonwealth in accordance with Chapter 14 (§2.2-1400 et seq.) of Title 2.2 of the Code of Virginia. The amendments bring the regulation into compliance with the statute, which expands the certification program and provides for a series of procedural streamlining efforts.

The regulations (i) establish minimum eligibility standards for small businesses, women-owned businesses, minority-owned businesses, and out-of-state business enterprises; (ii) establish how ownership and control of the businesses will be determined by the department; (iii) establish certification and recertification procedures; (iv) provide for evaluation of local, state, private sector and federal certification programs; (v) establish procedures for denial or revocation of certification and how a business whose application for certification has been denied may

reapply; and (vi) establish procedures for appeal of denial or revocation of certification.

CHAPTER 21

REGULATIONS TO GOVERN THE CERTIFICATION OF SMALL, WOMEN-, AND MINORITY-OWNED BUSINESSES

Part I

General Information

7VAC10-21-10. Purpose.

The purposes of this chapter are (i) to establish minimum requirements for the certification of small, women- and minority-owned businesses pursuant to Chapter 14 (§2.2-1400 et seq.) of Title 2.2 of the Code of Virginia and (ii) to provide a process for evaluating local, state, private sector, and federal certification programs that meet those requirements.

The director of the department shall have final authority on all matters pertaining to the maintenance and administration of certification programs and compliance therewith, except as provided in the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

7VAC10-21-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context requires a different meaning:

"Affiliate" means a person effectively controlled by another person or under common control with a third person, including a branch, division, or subsidiary of a business, or under the Investment Company Act (15 USCA §8a-2), a company in which there is ownership (direct or indirect) of 5.0% or more of the voting stock.

"Agent" means a person who (i) has the authority to act on behalf of a principal in transactions with third parties; (ii) is subject to the principal's control; and (iii) does not have title to the principal's property.

"Appeal" means a written request by an applicant to reconsider a denial or revocation of certification.

"Applicant" means any business that applies to the department for certification or recertification as a small, women- or minority-owned business.

"Application" means the documents the department requires the applicant to submit in the course of certification or recertification, including the application form the applicant submits under penalty of perjury, which may include any additional documentation that the department requests that the applicant submit, and any information or report that the department generates during or upon completion of an on-site visit.

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"Broker" means a person who acts as an intermediary between a buyer and seller.

"Business" means any legal entity organized in the United States or a commonwealth or territory of the United States that regularly engages in lawful commercial transactions for profit.

"Certification" means the process by which a business is determined to be a small, women- or minority-owned business for the purpose of reporting small, women-owned and minority-owned business participation in state contracts and purchases pursuant to §§2.2-1404 and 2.2-1405 of the Code of Virginia.

"Certified" means the status accorded to an applicant upon the department's determination that the applicant has satisfied the requirements for certification as a small, women- or minority-owned business.

"Control" means the power to direct the operation and management of a business as evidenced through governance documents and actual day-to-day operation.

"Corporation" means a legal entity that is incorporated under the law of a state, the United States, or a commonwealth or territory of the United States.

"Day" means any day except Saturday, Sunday, and legal state holidays unless otherwise noted.

"Dealer" means a person or business that has the exclusive or nonexclusive authority to sell specified goods or services on behalf of another business.

"Department" means the Department of Minority Business Enterprise.

"Director" means the Director of the Department of Minority Business Enterprise or his designee.

"Expiration" means the date on which the director specifies that a certified business will cease to be certified.

"Franchise" means a contractual arrangement characterized by the authorization granted to someone to sell or distribute a company's goods or services in a certain area.

"Franchisee" means a business or group of businesses established or operated under a franchise agreement.

"Individual" means a natural person.

"Industry standard" or "standard in the industry" means the usual and customary practices in the delivery of products or services within a particular business sector.

"Joint venture" means a formal association of two or more persons or businesses for the purpose of carrying out a time-limited, single business enterprise for profit, in which the associated persons or businesses combine their property, capital, efforts, skills or knowledge, and in which the associated persons or businesses exercise control and

management and share in profits and losses in proportion to their contribution to the business enterprise.

"Limited liability company" means a specific type of legal entity that is in compliance with the applicable requirements of the law of its state of formation.

"Manufacturer's representative" means an agent whose principal is a manufacturer or group of manufacturers.

"Minority individual(s)" means an individual(s) who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

"African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

"Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, Sri Lanka and who is regarded as such by the community of which this person claims to be part.

"Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be part.

"Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be part or who is recognized by a tribal organization.

"On-site visit" means a visit by department representatives to the applicant's physical place(s) of business to verify the applicant's representations submitted to the department in the course of certification or recertification.

"Ownership" means an equity, partnership or membership interest in a business.

"Person" means a natural person or a business.

"Principal" means a person who contracts with another to act on the principal's behalf subject to the principal's control.

"Principal place of business" means the physical business location where natural persons who manage the business's day-to-day operations spend most working hours.

"Partnership" means an association of two or more persons to carry on, as co-owners, a business for profit.

"Recertification" means the process by which a business applies to the department for renewed or continued status as a certified business.

"Record" means the materials submitted in support of an application for certification or recertification, which may include the application, supporting documentation, and additional materials obtained by the department in the course of the application, certification, or recertification process.

"Sole proprietorship" means a business the assets of which are wholly owned by a single natural person.

"Virginia-based business" means a business that is organized in and has its principal place of business in Virginia.

7VAC10-21-30. Confidentiality.

The department shall take necessary steps to ensure the confidentiality of documents submitted in support of an application for certification that are not public records within the definition of the Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia).

Any financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or trade secrets as defined in the Uniform Trade Secrets Act (§59.1-336 et seq. of the Code of Virginia), provided to the department as part of any application for certification or recertification as a small, women-, or minority-owned business shall be excluded from the provisions of the Freedom of Information Act pursuant to §2.2-3705.6 of the Code of Virginia, but may be disclosed by the department in its discretion where such disclosure is not prohibited by law.

In order for such financial records or trade secrets to be excluded from the Freedom of Information Act, the business shall (i) invoke such exclusion upon submission of data or other materials for which protection from disclosure is sought; (ii) identify the data or other materials for which protection is sought; and (iii) state the reason why protection is necessary.

7VAC10-21-40. False or misleading information.

Any applicant that knowingly provides false or misleading information on its application for certification or recertification or in its supporting documentation shall be denied certification and shall not be permitted to reapply for certification.

In addition, the applicant may be referred to the Commonwealth's Attorney for the City of Richmond for possible criminal prosecution for a misdemeanor or a felony under §18.2-213.1 or 18.2-498.3 of the Code of Virginia.

Part II **Minimum Eligibility Standards**

7VAC10-21-100. Eligible small business.

A business may be certified as a small business if:

1. (i) It is at least 51% owned by one or more individuals who are U.S. citizens or noncitizens in full compliance with U.S. immigration law or (ii) in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by individuals who are U.S. citizens or noncitizens in full compliance with U.S. immigration law;
2. One or more of the individual owners control both the management and daily business operations;
3. It is operated independent from control by any other business; and
4. Together with its affiliates, it has 250 or fewer employees, or average gross receipts of \$10 million or less averaged over the previous three years.

7VAC10-21-110. Eligible women-owned business.

A business may be certified as a women-owned business if:

1. (i) It is at least 51% owned by one or more women who are U.S. citizens or noncitizens in full compliance with U.S. immigration law; or (ii) in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or noncitizens in full compliance with U.S. immigration law; and
2. One or more of the women owners control both the management and daily business operations.

7VAC10-21-120. Eligible minority-owned business.

A. A business may be certified as a minority-owned business if:

1. (i) It is at least 51% owned by one or more minority individuals who are U.S. citizens or noncitizens in full compliance with U.S. immigration law; or (ii) in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership or limited liability company or entity is owned by one or more minority individuals; and
2. One or more of the minority owners controls both the management and daily business operations; and
3. The minority owner(s) is regarded as such by the community of which the person claims to be a part.

B. Being born in a country does not, by itself, define an individual as a minority individual pursuant to §2.2-1401 of the Code of Virginia. In making the determination whether a

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person is a minority individual, the department may be required to determine whether the person is regarded as a minority individual by the community of which he claims to be a part. In making this determination, the department may consider whether:

1. The person regularly describes himself, in printed materials and orally, as a member of the community;
2. Whether the person historically has held himself out as a member of the community;
3. Whether the individual is a member of and actively participates in business, educational, charitable, civic or community organizations or activities made up of or traditionally identified with or attended by members of the community; and
4. Whether other members of the community describe the person as a fellow member of the community.

C. The department may request such additional information as it may reasonably need to support an individual's claim that he is a minority individual. In determining whether a minority individual is regarded as such by the community, the department shall consider all the facts in the record viewed as a whole.

7VAC10-21-130. Eligible out-of-state business enterprise.

The department may certify a non-Virginia based business if:

1. It meets the applicable eligibility standards for certification as a small, women- or minority-owned business; and
2. The state in which the business is incorporated or has its principal place of business does not deny a like certification to a Virginia-based small, women- or minority-owned business or provide a preference to small, women- or minority-owned firms that is not available to Virginia-based businesses.

Part III

Determination of Independent Operation, Ownership and Control of Small, Women- and Minority-Owned Businesses

7VAC10-21-200. General provisions.

In determining ownership and control, the department will consider all the facts in the record, viewed as a whole, as they appear at the time of the application.

An eligible applicant will not be refused certification based solely on historical information indicating a lack of 51% ownership or control of the applicant by individuals in the case of a small business or by a woman or women or by a minority individual or individuals at some time in the past if the applicant meets the ownership and control standards at the time of application. A business will not be certified, however, if it appears from the record that the business was organized

or its ownership structure or control changed for the purpose of qualifying for certification as a small, women- or minority-owned business.

An eligible applicant will not be refused certification solely on the basis that it is a newly formed business.

7VAC10-21-210. Ownership.

A. The ownership by women or minority or individual owners (in the case of a small business) must be real, substantial and continuing going beyond the pro forma ownership of the business.

B. Records of the applicant's business arrangements must demonstrate that the women, minority or individual owners that the applicant claims to have ownership interests in the applicant's business share in all risks and profits in proportion to their ownership interests.

C. Women, minority or individual owners who the applicant claims to have an ownership interest in the applicant's business as evidenced by securities must hold the securities directly or in a trust described in subsection I of this section.

D. Contribution of capital or expertise.

1. Contribution of capital and/or expertise by women, minority or individual owners to acquire their ownership interest shall be real and substantial and be in proportion to the interest(s) acquired.

2. Insufficient contributions shall include, but shall not be limited to, promises to contribute capital or expertise in the future, a note or notes payable to the business or its owners who are not themselves women, minority or individual owners, or the mere participation as an employee.

E. In a sole proprietorship, the woman, minority or individual applying for certification must own 100% of the business and its assets.

F. Corporations.

1. In a corporate form of organization, women, minority or individual owners must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.

2. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or the influence of the women, minority or individual owners of the stock or classes of stock of the corporation.

3. Women, minority or individual owners shall possess the right to all customary incidents of ownership (e.g., ability to transfer stock, title possession, enter binding agreements, etc.).

G. Partnerships.

1. General partnership. In a general partnership, women, minority or individual owners must own at least 51% of the partnership interests.

2. Limited partnership.

a. In a limited partnership, the women, minority or individual owners who are general partners must own at least 51% of the general partnership interest and exert at least 51% of the control among general partners. The women, minority or individual owners who are general partners must receive at least 51% of the profits and benefits, including tax credits, deductions and postponements distributed or allocable to the general partner.

b. In addition, the women, minority or individual owners who are limited partners must own at least 51% of the limited partnership interests and receive at least 51% of the profits and benefits, including tax credits, deductions and postponements distributed or allocable to the limited partners.

H. Limited liability companies.

1. In a limited liability company, women, minority, or individual owners must own at least 51% of membership interests and have at least 51% of the management and control among the members.

2. The women, minority or individual owners must also participate in all risks and profits of the organization at a rate commensurate with their membership interests.

I. Trusts. In order to be counted as owned by women, minority or individual owners, securities held in a trust must meet the following requirements, as applicable:

1. Irrevocable trusts. The beneficial owner of securities held in an irrevocable trust is a woman, minority individual or natural person who is not a minor, and all the trustees are women, minority individuals or natural persons, provided that a financial institution may act as trustee.

2. Revocable trusts. The beneficial owner of securities held in a revocable trust is a woman, minority individual or natural person who is not a minor, all the grantors are women, minority individuals or natural persons and all the trustees are women, minority individuals, or natural persons provided that a financial institution may act as trustee.

3. ESOPs. Securities owned by women, minority individuals or natural persons who are participants in an employee stock ownership plan qualified under §401 of the Internal Revenue Code, 1986, as amended, and held in a trust where all or at least 51% or more of the trustees are women, minority individuals or natural persons provided that a financial institution may act as trustee.

4. Other requirements. Businesses whose securities are owned in whole or part in a trust are not thereby exempt from the other requirements of this chapter.

J. Joint venture. In a joint venture, the women, minority or individual owners must own at least 51% of the business venture, exert at least 51% of the control of the venture, and have made at least 51% of the total investment.

7VAC10-21-220. Control.

The applicant must show evidence that the women, minority or individual owners have control of the business. The following factors will be examined in determining who controls an applicant's business:

1. Governance.

a. The organizational and governing documents of an applicant (e.g., limited liability company operating agreements, partnership agreements, or articles of incorporation and bylaws) must not contain any provision that restricts the ability of the women, minority or individual owners from exercising managerial control and operational authority of the business.

b. In reviewing governance documents and issues, special attention shall be given to:

(1) The composition of the business's governing body (e.g., board of directors or management committee);

(2) The functioning of the governing body;

(3) The content of shareholder's agreements, bylaws, or state incorporation statutes, and the extent to which such agreements, bylaw(s), or statutes affect the ability of the women, minority or individual owners to direct the management and policy of the business; and

(4) In a business seeking certification as a women- or minority-owned business, a woman or minority owner must hold the highest executive officer position in the company by whatever title.

2. Operation and management.

a. The woman, minority or individual owner(s) must possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day decisions as well as major decisions on matters of management, policy and operations. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the women, minority, or individual business owner(s).

b. A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the women, minority or individual employee-owner has management responsibilities and capabilities.

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c. In the event that the actual management of the business is contracted or carried out by individuals other than the women, minority or individual owner(s), those persons who have the ultimate power and expertise to hire and fire the managers can for this purpose be considered as controlling the business.

d. The applicants must show evidence that the women, minority, or individual owner(s) have operational authority and managerial control of the applicant. In evaluating this evidence, the following factors will be considered:

(1) Operational authority. For purposes of this section, "operational authority" means the extent to which the women, minority or individual owner(s) actually operate the day-to-day business. Assessments of operational control will rest upon the peculiarities of the industry of which the business is a part. In order to ascertain the level of operational control of the women, minority or individual owner(s), the following will be considered:

(a) Experience. The women, minority, or individual owner(s) shall have education, demonstrable working knowledge or experience in the area of specialty or industry claimed in the certification application.

(b) Responsibility for decision making. The women, minority or individual owner(s) shall be able to demonstrate his role in making basic decisions pertaining to the daily operation of the business.

(c) Technical competence. The women, minority or individual owner(s) shall have technical competence in the industry or specialty of the applicant business or a working knowledge of the technical requirements of the business sufficient enough to critically evaluate the work of subordinates.

(2) Managerial control. For purposes of this section, "managerial control" is the demonstrated ability to make independent and unilateral business decisions necessary to guide the future and destiny of the business. Managerial control may be demonstrated in a number of ways. For women, minority or individual owners to demonstrate the extent of their managerial control, the department will consider the following (not intended to be all inclusive) areas of routine business activity:

(a) The women, minority or individual owner(s) must produce documents that clearly indicate his control of basic business functions (e.g., authority to sign payroll checks and letters of credit, signature responsibility for insurance or bonds, authority to negotiate and execute contracts and financial services).

(b) Agreements for support services that do not impair the women, minority or individual owner(s)'s control of the company are permitted as long as the owner's power

to manage the company is not restricted or impaired as determined by the department in its sole administrative discretion.

3. Independence.

a. Performance.

(1) The women, minority or individual owner(s)'s expertise must be indispensable to the business's potential success.

(2) The women, minority or individual owner(s) shall have the ability to perform in the applicant's area of specialty or expertise without substantial reliance upon finances and resources (e.g., equipment, automobiles, facilities, etc.) of businesses that are not eligible for certification.

b. Test of independence. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities shall not be a sole determinant of any applicant's assertions of independence. Test criteria include, but are not be limited to, the following:

(1) Applicant's use of employees, equipment, expertise, facilities, etc., "shared" with or obtained from a company not eligible for certification.

(2) Financial transactions, such as accounts receivable, accounts payable, billing, order processing, are performed by a business that is not eligible for certification.

(3) Applicant's relationship with a business that is not eligible for certification that involves any long-term contract or lease agreements.

(4) Applicant's status as a party to any contract or lease agreement on terms at variance with industry standards or prudent business practices.

(5) Interlocking ownership of the applicant and business not eligible for certification in the same industry.

(6) Common directors/officers/members between the applicant and a business not eligible for certification.

(7) Receipt by the business not eligible for certification of financial benefits (i.e., profits, wages, etc.) that are not commensurate with the duties performed.

(8) Dependence on licenses, permits and/or insurance held by a business not eligible for certification in order to operate; failure to possess all legal requirements necessary to legally conduct business.

c. An agent, broker, dealer, or manufacturer's representative, unless it is the standard for the industry, generally does not qualify for certification.

d. A business that adds no material value or does not perform a commercially useful function in the provision

of the products or services being supplied or has no ownership, financial responsibility, legal liability, or does not possess or handle the item being procured with its own employees, equipment, or facilities generally does not qualify for certification, unless the business structure is the standard in the industry.

7VAC10-21-230. Certifying franchises.

A business operating under a franchise or license agreement may be certified if it meets the eligibility requirements. In addition:

1. The franchise agreement between the franchisor and the franchisee seeking certification must not contain any provision that unreasonably restricts the ability of the women, minority or individual owner(s) from exercising managerial control and operational authority of the business.

2. In reviewing the franchise agreement, special attention shall be given to circumstances that, for certification purposes, shall be considered as restricting control and authority of the women, minority or individual owner(s). These include, but are not limited to:

- a. Termination of the franchise agreement by the franchisor without cause;
- b. Lack of ownership of receivables by the franchisee;
- c. Exclusive ownership of account receivables and/or contracts by the franchisor;
- d. Restrictions on the sale of the business below market value;
- e. Terms and conditions not related to the brand or systems that can be altered without franchisee's notification and/or approval;
- f. Contracts are prepared and approved by the franchisor;
- g. Management decisions cannot be made independently by the franchisee;
- h. No financial risk is borne by the franchisee;
- i. Hiring and firing decisions cannot be made independently by the franchisee; or
- j. Equity interest in the franchise is owned by the franchisor.

3. Where there are inconsistencies between the standards and procedures in this section and other sections of regulations, this section will prevail.

Part IV
Certification and Recertification Procedures

7VAC10-21-300. General provisions.

A. Applications for certification or recertification and other forms are available from and should be submitted to the Virginia Department of Minority Business Enterprise at its principal place of business or through the department's website if available.

B. A business may withdraw its application for certification or recertification without prejudice at any time prior to the department's determination. The request to withdraw the application must be in writing and addressed to the director.

C. The department shall maintain a list of all certified businesses in a form accessible to the public. This list shall be used as a source to assist governmental agencies, individuals, corporations, and prime contractors in identifying and utilizing certified businesses. This list shall be updated and published on a consistent basis.

D. An application for certification or recertification may be administratively closed or placed in inactive status by the department when:

- 1. The applicant has submitted insufficient information or failed to submit information in response to a written request for information by the department;
- 2. The applicant has voluntarily withdrawn its application; or
- 3. The business has been closed or is no longer operating.

7VAC10-21-310. Procedures for initial certification of businesses previously certified by other qualifying local, state, private sector, or federal certification programs.

A. A Virginia-based business that has been certified as a small, women- or minority-owned business by a local, state, private sector or federal certification program determined by the department pursuant to Part V (7VAC10-21-400 et seq.) of this chapter to meet the minimum eligibility, ownership and control requirements shall be certified as a small, women- or minority-owned business in Virginia, without additional paperwork or fee, upon presentation to the department of documentation that the business has received such certification, the certification has not expired and ownership and control of the applicant business remains unchanged since the certification was granted.

B. A business that is not based in Virginia that has been certified as a small, women- or minority-owned business by a local, state, private sector or federal certification program determined by the department pursuant to Part V (7VAC10-21-400 et seq.) of this chapter to meet the minimum eligibility, ownership and control requirements, shall be certified as a small, women- or minority-owned business in

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Virginia, without additional paperwork or fee, upon presentation to the department of documentation that it has received such certification, the certification has not expired and ownership and control of the applicant business remains unchanged since the certification was granted only after the department determines that such certification would be available to Virginia-based businesses in the state in which the business is incorporated or has its principal place of business.

C. A business certified by the department under this section shall be certified for a period of three years unless:

1. The certification is revoked by the department or the program issuing the original certification;
2. The business is no longer in business; or
3. The business is no longer eligible as a small, women- or minority-owned business.

D. A business certified under this section is responsible for notifying the department of any change in legal structure, ownership, control, management, or status of the business or its certification within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

E. It shall be the responsibility of the certified business to notify the department of any change of name, address or contact information and to keep the department informed of its current address and contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications or correspondence based upon the certified business' failure to notify the department of any change of address or to provide correct address and contact information.

7VAC10-21-320. Procedures for initial certification of businesses not previously certified by other qualifying local, state, private sector, or federal certification programs.

A. Any business that meets the criteria for certification may file an official application with the department.

B. The application will be reviewed initially for completeness. The department may conduct an on-site visit of the business to obtain or clarify any information. The on-site visit may be scheduled or unannounced.

C. The department may request the applicant to provide additional information or documentation to provide clarification and substantiation of certain criteria or to resolve any ambiguities or inconsistencies in an application.

D. The department may impose a time limit of not less than 30 calendar days in which the applicant must provide the

requested information. A reasonable extension may be given by the department for good cause shown by the applicant. Requests for time extensions must be made to the department in writing, and should specify the length of time for which the extension is being requested and the reasons for the request. Failure to provide such information or documentation shall render the application administratively closed.

E. After reviewing the application, the department shall issue either a notice of certification or a notice of intent to deny certification stating the reasons for denial and offering the applicant the opportunity for an informal hearing pursuant to §2.2-4019 of the Administrative Process Act.

F. A business certified by the department under this section shall be certified for a period of three years unless (i) the certification is revoked before the end of the three-year period, (ii) the business is no longer in business, or (iii) the business is no longer eligible as a small, women- or minority-owned business.

G. The applicant shall be responsible for notifying the department immediately of any change in legal structure, ownership, control, management, or status of the business within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

H. It shall be the responsibility of the applicant and/or the certified business to notify the department of any change of name, address or contact information and to keep the department informed of their current address and contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so within 30 calendar days of such change may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications, or correspondence based upon the certified business' failure to notify the department of any change of address or to provide correct address and contact information.

7VAC10-21-330. Procedures for renewal of certification or recertification.

A. To maintain its certification status, a certified business must apply to renew its certification prior to the end of the three-year certification period using the forms and procedures specified by the department.

B. The certification of a business that fails to apply for renewal or recertification prior to the end of the three-year certification period shall terminate automatically on the expiration of the certification.

C. The department shall notify the business of the pending expiration of its certification at least 60 calendar days prior to the end of the three-year certification period.

Part V
Evaluation of Local, State, Private Sector and Federal
Certification Programs

7VAC10-21-400. Department-initiated evaluation.

The department may at its discretion evaluate any local, state, private sector or federal certification program to determine whether it meets the minimum eligibility, ownership and control requirements for certification of small, women- and minority-owned businesses as set forth in this chapter.

7VAC10-21-410. Application for evaluation by business or program.

The department shall evaluate any such program upon the application (on a form or forms provided by the department for such evaluation) by an individual business, or a representative of the certification program.

7VAC10-21-420. Standards for evaluating other certification programs.

In conducting its evaluation of other certification programs, the department will determine:

1. Whether the minimum eligibility, ownership, and control requirements for certification are equivalent to or stricter than those set forth in this chapter;
2. Whether the program provides for a process for reviewing applications for certification that requires adequate documentation that the applicant meets the standards for certification;
3. Whether the program has a fair process for reviewing the application for certification (that may include an on-site visit); and
4. Whether the program provides an opportunity for an applicant to appeal a denial of certification.

7VAC10-21-430. Department to maintain list of other certification programs.

The department shall maintain and make available on its website and in print form a list of all local, state, private sector and federal certification programs that it has determined meet the minimum eligibility, ownership and control requirements for certification set forth in this chapter.

Part VI
Denial of Certification or Revocation of Certification

7VAC10-21-500. Denial of certification.

The department may deny an application for certification or recertification for any of the following reasons:

1. The department determines that the applicant fails to meet the eligibility, ownership, or control standards for certification;

2. The applicant fails to furnish the department with requested information within the allotted time; or

3. The applicant knowingly provides false or misleading information to the department.

7VAC10-21-510. Notice of denial.

The department shall notify the applicant of the denial of its application for certification or recertification in writing no later than 15 days from the date of the decision by the department. The notice shall state the reasons for the denial of certification or recertification and offer the applicant the opportunity to appeal the decision as provided in the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

7VAC10-21-520. Criteria for revocation of certification.

The department may revoke the certification of a business that it finds no longer qualifies as a small, women- or minority-owned business under §2.2-1401 of the Code of Virginia.

Grounds for revocation of certification may include the following:

1. The organization, structure, management or control of the certified women- or minority-owned business has changed to the extent that it no longer satisfies the requirement of ownership, control and active management of the business by women or minority individuals.
2. The number of employees or revenues exceeds the requirements for certification of a small business or the small business no longer satisfies the requirements to be independently owned and operated.
3. The business fails to submit the required documentation or to comply with a reasonable request from the department for records or information within the allotted time.
4. The business knowingly provides false or misleading information in support of its initial application or its application for recertification or in response to the department's request for records or information.
5. The business is based in a state that denies like certifications to Virginia-based small, women- or minority-owned businesses or that provides a preference for small, women- or minority-owned businesses that is not available to Virginia-based businesses.

7VAC10-21-530. Revocation procedure.

A. Initiation of the revocation process.

1. The department may, at the request of any state agency or at its own discretion, examine any certified business to verify that it continues to meet the applicable eligibility

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requirements for certification as a small, woman- or minority-owned business.

2. Any individual or firm who believes that a business certified by the department does not qualify under the standards of eligibility for certification may request that the department undertake a review to verify that the certified business continues to meet the eligibility requirements for certification. Such requests must be written and signed and must contain specific identification of the affected business, and the basis for the belief that it does not meet the eligibility standards. After reviewing the request, the department shall determine whether to conduct a review of the business. The department's decision may not be appealed by the party seeking such verification. Written requests for verification of a certified business' continued eligibility for certification should be sent to the Virginia Department of Minority Business Enterprise at its principal place of business.

B. Review procedure.

1. If the department determines to conduct a review of a business' certification, the department shall notify the business in writing that the department is reviewing its certification, explaining the basis for its decision to conduct a review.

2. The department may request records or other documentation from the business, may conduct an on-site visit of the business facilities, and may question other parties during its review.

3. The department may impose a time limit of not less than 15 days in which the business must respond to a request for records or other documentation. A reasonable extension may be given by the department for good cause shown by the business. Requests for time extensions should be made in writing to the department and should specify the length of time for which the extension is being requested and the reason for the request. If the business fails to provide the information in the time requested, the department shall issue a notice of intent to revoke the certification.

4. Upon completion of the review, a written report shall be prepared, which shall include:

- a. A statement of the facts leading to the review;
- b. A description of the process followed in the review;
- c. The findings of the review; and
- d. A conclusion that contains a recommendation for disposition of the matter.

C. Notice of intent to revoke certification.

1. If the department determines that the business does not continue to qualify as a small, women- or minority-owned business, it shall issue a notice of intent to revoke the

business' certification stating the reasons for revocation, providing information compiled in the course of the investigation, requesting a written response from the business, and offering the business the opportunity for an informal hearing pursuant to the requirements of §2.2-4019 of the Administrative Process Act.

2. The business shall have 15 days from the date of the department's notification to submit a written request for an informal hearing.

3. If no request for an informal hearing is made, the department shall issue a final notice of revocation stating the factual and legal grounds therefore and notifying the business of its appeal rights under Article 3 (§2.2-4018 et seq.) of the Administrative Process Act.

4. The department shall send a copy of the notice of intent to revoke certification and a copy of the final notice of revocation of certification to the affected business and publish such information to interested agencies or departments.

7VAC10-21-540. Reapplication.

A business whose application for certification has been denied may reapply for the same category of certification 12 months after the date on which the business receives the notice of denial if no appeal is filed or 12 months after the appeal is exhausted. An applicant denied certification as a women- or minority-owned business may reapply for certification as a small business without delay if otherwise eligible.

The applicant may request a waiver of the 12-month reapplication period from the department director by submitting a written request for reconsideration and providing a reasonable basis for the waiver. The director or his designee, in his discretion, shall render a final decision regarding the request for reconsideration and waiver within 30 days, which determination shall not constitute a case decision subject to appeal.

A business whose certification has been revoked may not reapply for certification in the same classification.

Part VII

Procedures for Appeal of Denial of Certification or Revocation of Certification

7VAC10-21-600. Appeals from a denial of certification or revocation of certification.

An applicant shall have the right to appeal a denial of certification and a certified business shall have the right to appeal revocation of certification as provided in the Article 3 (§2.2-4018 et seq.) of the Administrative Process Act. The appeal process for denial of certification and revocation of certification shall be the same.

7VAC10-21-610. Judicial review.

If an applicant desires further review after exhausting its administrative remedies, the department shall inform the applicant of the right to pursue judicial review pursuant to §§2.2-4026 through 2.2-4030 of the Administrative Process Act.

VA.R. Doc. No. R08-1397; Filed August 11, 2008, 4:45 p.m.

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TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: 8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-5, 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-60, 8VAC20-131-140, 8VAC20-131-210, 8VAC20-131-270 through 8VAC20-131-360).

Statutory Authority: §§22.1-19 and 22.1-253.13:3 of the Code of Virginia.

Public Hearing Information:

October 30, 2008 - 7 p.m. - Jolliff Middle School, 1021 Jolliff Rd., Chesapeake, VA

October 30, 2008 - 7 p.m. - Waynesboro High School, 1200 Main St., Waynesboro, VA

October 30, 2008 - 7 p.m. - Highland Springs High School, 15 S. Oak Ave., Highland Springs, VA

October 30, 2008 - 7 p.m. - George Wythe High School, 1 Maroon Way, Wytheville, VA

October 30, 2008 - 7 p.m. - Thomas A. Edison High School, 5801 Franconia Rd., Alexandria, VA

Public Comments: Public comments may be submitted until November 5, 2008.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

Basis: Section 22.1-19 of the Code of Virginia requires that the Board of Education "... provide for the accreditation of public elementary, middle, and high schools in accordance with standards prescribed by it." Further, the Standards of Quality for Public Schools in Virginia (SOQ), in §22.1-253.13:3 F of the Code of Virginia, requires that local school boards "... maintain schools which meet the standards of accreditation prescribed by the Board of Education." The

current standards were final in September 2006. This action by the Board of Education is mandatory.

Purpose: This action is essential to protect the health, safety, and welfare of the Commonwealth's most vulnerable citizens--its school-age population. The goals of the proposal are to strengthen the quality of instruction in public schools in Virginia and to bring the standards into conformity with amended or new state laws. These regulations form the basis for the day-to-day operation of the educational program in each public school in Virginia. The regulations contain provisions to govern student achievement expectations; requirements for graduation; transfer students; college and career preparation programs and opportunities for postsecondary credit; role of the school principal; school and community communications; school accountability; procedures for certifying school accountability, application of the standards; and recognition and rewards for school and division accountability performance.

Substance: There are a number of substantive changes to the regulations, most notably in 8VAC20-131-50 creating the Standard Technical and Advanced Technical diplomas as required by General Assembly action. Other substantive changes are found in 8VAC20-131-140 where an Academic and Career Plan for students beginning in grade seven is proposed at the Governor's request. Changes have been proposed in 8VAC20-131-300 to establish a graduation and completion index that all schools with a graduating class would be required to meet in order to be fully accredited.

Issues: The revisions to the regulations creating the requirements for a Standard Technical Diploma and an Advanced Technical Diploma will be advantageous to the business community. Graduates with the new technical diplomas will provide employers evidence that they are skilled, educated and prepared to enter into the workforce at a time when the number of retirement age employees in the workforce is creating a strain on employers to find skilled employees. The creation of graduation and completion index will be advantageous to the public and business community by providing further accountability for the public schools to ensure that schools are making the necessary efforts to prevent dropouts, to retain students, and to graduate students with appropriate credentials that have prepared students to transition into postsecondary instruction and/or the workforce.

The Department of Planning and Budget's Economic Impact Analysis

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 859 and 919 of the 2007 Virginia Acts of Assembly, the Board of Education (Board) proposes to establish requirements for the Standard Technical and Advanced Technical Diplomas. The Board also proposes several other amendments including: 1) specifying a

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graduation and completion index, 2) requiring that each school with a graduating class achieve a minimum of 80 percentage points on the Board's graduation and completion index in order to be rated Fully Accredited, 3) establishing a new accreditation rating called "Provisionally Accredited-Graduation Rate," 4) clarification that students shall be required to take only one test per content area in each tested grade, 5) requiring two additional standard credits for the Advanced Studies Diploma, 6) requiring that all middle schools develop and maintain a personal Academic and Career Plan for each seventh- and eighth-grade student, 7) requiring that principals notify the parents of students removed from class for disciplinary reasons for two or more consecutive days, and 8) adding language to permit school divisions to receive recognitions and rewards from the Board for accountability performance.

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

Estimated Economic Impact. The objective measures provided by the Standards of Learning (SOL) examinations and the associated accreditation ratings earned by public schools have been beneficially informative for the public and policymakers. It has long been known though that state accountability systems such as the SOL testing and associated accreditation rating do provide pressure for "gaming the system" by schools and school divisions which have difficulty achieving the pass rates necessary to garner full accreditation. For example, in 1999 The Richmond Times-Dispatch quoted the superintendent of Danville City Public Schools stating that the Commonwealth's accountability exam system "actually encourages higher dropout rates ... It is actually to the school's advantage to drop slow learners and borderline students from the school, because they are usually poor test-takers." Research has conclusively shown that gaming the system has occurred in other states.[1]

This is not to say that many schools have intentionally pushed out poor-performing students. The incentive structure has encouraged schools under pressure of not being fully accredited to devote less time and resources toward keeping poor-performing students in school than if the need to increase the pass rate of students in school did not exist. Thus the proposal to require that each school with a graduating class achieve a minimum of 80 percentage points on the Board's graduation and completion index in order to be rated Fully Accredited may potentially provide a very significant benefit for the Commonwealth. This proposed requirement may largely eliminate the incentive to devote less time and resources toward keeping poor-performing students in school since having poor-performing students dropout will no longer unambiguously increase the likelihood of achieving full accreditation.

The proposed regulations specify that "no student shall be required to take more than one test in any single content area

in any tested grade." According to the Department of Education, at times advanced students have been mistakenly required to take separate tests for both their enrolled grade level and for the grade level of the content received in instruction. The proposed clarifying language will be beneficial in that there likely will be less wasting of time and testing materials.

Currently students must acquire 24 standard credits (as well as 9 verified credits) in order to earn the Advanced Studies Diploma. The Board proposes to require two additional standard credits: one in economics or personal finance, and one in an elective, thus requiring in total 26 standard credits for the Advanced Studies Diploma. The new Advanced Technical Diploma would also require 26 standard credits. Knowledge in economics and/or personal finance can bring significant benefits to the individuals acquiring the knowledge as well as the public in that the individuals may be able to better understand what makes sensible policy and may contribute more to the economy by being more productive. Since students may still graduate with a Standard Diploma if earning two additional credits is cumbersome, the proposed addition will not negatively affect graduation. Thus, this proposed amendment will likely provide a net benefit.

The proposal to require that all middle schools develop and maintain a personal Academic and Career Plan for each seventh- and eighth-grade student has the potential to provide significant benefit, depending on how it is implemented. The proposed regulatory language includes the following:

The components of the Plan shall include, but not be limited to, the student's educational goals and program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The Academic and Career Plan shall be developed and signed by the student, student's parent or guardian, and school official(s) designated by the principal. The Plan shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters the ninth and eleventh grades.

The Plan potentially may help keep students in school by tailoring their courses toward the students' interests. Students who see that courses they are taking will help them toward a career they desire are more likely to put forth effort to pass their classes and stay in school. Also, students not at risk of dropping out may benefit by seeing more purpose in their classes and putting forth a stronger effort. Creating, maintaining and reviewing the Academic and Career Plan will take staff time. If done well the benefits will likely exceed the costs.

The proposal to require that principals notify the parents of students removed from class for disciplinary reasons for two or more consecutive days will likely provide a net benefit. For the schools where this is not already policy it will create a small amount of additional cost in staff time; but the benefit

of having parents informed and more likely to become involved likely outweighs the cost.

The current regulations only permit schools to be recognized and rewarded for accountability performance. The Board proposes to allow school divisions to receive recognitions and rewards from the Board for accountability performance. Allowing appropriate recognition for success at the division level can certainly be beneficial. There are no apparent costs to permitting such recognition.

Businesses and Entities Affected. The proposed amendments affect the 132 school divisions in the Commonwealth, as well their students and staff.

Localities Particularly Affected. All Virginia localities are significantly affected by these regulations.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment in the short run. In the long run the proposed amendments may moderately improve the preparation of public school students for the workforce. To the extent that graduates are more employable, there may be greater productivity and increased employment in the long run.

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 the proposed amendments may moderately improve the preparation of public school students for the workforce. To the extent that graduates are more productive, there may be an increase in the value of private property in the long run.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses in the short run. In the long run the proposed amendments may moderately improve the preparation of public school students for the workforce. An increase in the supply of productive workers can reduce costs for small businesses and may lead to the establishment of additional small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not create adverse impact for small businesses.

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

References

Berry Cullen, Julie and Randall Reback, "Tinkering Toward Accolades: School Gaming Under a Performance Accountability System," pages 1-34 in *Improving School Accountability: Check-ups or Choice*, Advances in Applied Microeconomics, Timothy J. Gronberg and Dennis W. Jansen editors, Volume 14, Elsevier Ltd, 2006.

Borja, Rhea R., "Comments: SOLs Raise Concern, Little Support/Change Tests, Use Multiple Criteria, Speakers Say," *Richmond Times-Dispatch*, December 1, 1999.

Figlio, David N. and Lawrence S. Getzler, "Accountability, Ability and Disability: Gaming the System," pages 35-49 in *Improving School Accountability: Check-ups or Choice*, Advances in Applied Microeconomics, Timothy J. Gronberg and Dennis W. Jansen editors, Volume 14, Elsevier Ltd, 2006.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 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, Section 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] Florida: Figlio and Getzler (2006) and Texas: Berry Cullen and Reback (2006)

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

Summary:

Section 22.1-253.13:3 of the Code of Virginia requires the Board of Education to promulgate Standards of Accreditation for Virginia's K-12 public schools. The current regulations were adopted by the Board of Education on May 24, 2006, and became effective September 7, 2006. In July 2006, the president of the board, Dr. Mark Emblidge, formed a special committee of

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the Board of Education to research and recommend policies to reduce the number of students who drop out of high school and to improve graduation rates, especially among minority students. The proposed revisions are an outgrowth of the work both of that committee and of the board's adoption of a graduation rate formula in November 2006: Graduation rate = [On-time graduates in Year X] / [(First-time entering ninth graders in Year X-4) + (Transfers in) - (Transfers out)]. In the fall of 2008, the records of first-time ninth graders in 2004-2005 will be able to be linked to their records four years later to determine their graduation status.

The proposed revisions are also in response to Chapter 859 and 919 of the 2007 Acts of Assembly, which require the Board of Education to establish the requirements for the Standard Technical and Advanced Technical Diplomas. The legislation requires the board to establish the requirements for a technical diploma. This diploma shall meet or exceed the requirements of a standard diploma and will include a concentration in career and technical education, as established in board regulations. A student who meets the requirement for the advanced studies diploma who also fulfills a concentration in career and technical education shall receive an advanced technical diploma. The board may develop or designate assessments in career and technical education for the purposes of awarding verified credit.

Finally, in 2007, the House Education Committee, while not taking action on HB 3201, related to removing students from classes, requested the chairman write a letter to the Board of Education asking that the board consider this issue in its review of applicable regulations, and report back to the patron and the committee. Language in response to this bill is included in the proposed revisions.

Part I Definitions and Purpose

8VAC20-131-5. Definitions.

The following words and terms apply only to these regulations and do not supersede those definitions used for federal reporting purposes or for the calculation of costs related to the Standards of Quality (§22.1-253.13:1 et seq. of the Code of Virginia). When used in these regulations, these words shall have the following meanings, unless the context clearly indicates otherwise:

"Accreditation" means a process used by the Virginia Department of Education (hereinafter "department") to evaluate the educational performance of public schools in accordance with these regulations.

"Additional test" means a test, including substitute tests approved by the Board of Education that students may use in lieu of a Standards of Learning test to obtain verified credit.

"Class period" means a segment of time in the school day that is approximately 1/6 of the instructional day.

"Combined school" means a public school that contains any combination of or all of the grade levels from kindergarten through grade 12. This definition does not include those schools defined as elementary, middle, or secondary schools.

"Elementary school" means a public school with any grades kindergarten through five.

"Eligible students" means the total number of students of school age enrolled in the school at a grade or course for which a Standards of Learning test is required unless excluded under the provisions of 8VAC20-131-30 F and 8VAC20-131-280 D relative to limited English proficient (LEP) students.

"Enrollment" means the act of complying with state and local requirements relative to the registration or admission of a child for attendance in a school within a local school division. This term also means registration for courses within the student's home school or within related schools or programs.

"First time" means the student has not been enrolled in the school at any time during the current school year (for purposes of 8VAC20-131-60 with reference to students who transfer in during the school year).

"Four core areas" or "four core academic areas" means English, mathematics, science, and history and social science for purposes of testing for the Standards of Learning.

"Graduate" means a student who has earned a Board of Education recognized diploma, which includes the Advanced Studies, Advanced Technical, Standard, Standard Technical, Modified Standard, Special, and General Achievement diplomas.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or a licensed clinical psychologist.

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8VAC20-131-110.

"Middle school" means a public school with any grades 6 through 8.

"Planning period" means one class period per day or the equivalent unencumbered of any teaching or supervisory duties.

"Recess" means a segment of free time exclusive of time provided for meals during the standard school day in which students are given a break from instruction.

"Reconstitution" means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied that may include, but not be limited to, restructuring a school's governance, instructional program, staff or student population.

"School" means a publicly funded institution where students are enrolled for all or a majority of the instructional day and:

1. Those students are reported in fall membership at the institution; and
2. At a minimum, the institution meets the preaccreditation eligibility requirements of these regulations as adopted by the Board of Education.

"Secondary school" means a public school with any grades 9 through 12.

"Standard school day" means a calendar day that averages at least five and one-half instructional hours for students in grades 1 through 12, excluding breaks for meals and recess, and a minimum of three instructional hours for students in kindergarten.

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 teaching hours per year.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-131-110.

"Standards of Learning (SOL) tests" means those criterion referenced assessments approved by the Board of Education for use in the Virginia assessment program that measure attainment of knowledge and skills required by the Standards of Learning.

"Student" means a person of school age as defined by §22.1-1 of the Code of Virginia, a child with disabilities as defined in §22.1-213 of the Code of Virginia, and a person with limited English proficiency in accordance with §22.1-5 of the Code of Virginia.

"Student periods" means the number of students a teacher instructs per class period multiplied by the number of class periods taught.

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and achieves a passing score on a corresponding end-of-course SOL test or an additional test approved by the Board of Education as part of the Virginia assessment program.

"Virginia assessment program" means a system used to evaluate student achievement that includes Standards of Learning tests and additional tests that may be approved from time to time by the Board of Education.

Part III Student Achievement

8VAC20-131-30. Student achievement expectations.

A. Each student should learn the relevant grade level/course subject matter before promotion to the next grade. The division superintendent shall certify to the Department of Education that the division's promotion/retention policy does not exclude students from membership in a grade, or participation in a course, in which SOL tests are to be administered. Each school shall have a process, as appropriate, to identify and recommend strategies to address the learning, behavior, communication, or development of individual children who are having difficulty in the educational setting.

B. In kindergarten through eighth grade, where the administration of Virginia assessment program tests are required by the Board of Education, each student shall be expected to take the tests; students who are accelerated ~~should~~ shall take the test of the grade level enrolled or the tests for the grade level of the content received in instruction. No student shall be required to take more than one test in any single content area in any tested grade. Schools shall use the Virginia assessment program test results in kindergarten through eighth grade as part of a set of multiple criteria for determining the promotion or retention of students. Students promoted to high school from eighth grade should have attained basic mastery of the Standards of Learning in English, history and social science, mathematics, and science and should be prepared for high school work. Students shall not be required to retake the Virginia assessment program tests unless they are retained in grade and have not previously passed the related tests.

C. In kindergarten through grade 12, students may participate in a remediation recovery program as established by the board in English (Reading) or mathematics or both.

D. The board recommends that students in kindergarten through grade 8 not be required to attend summer school or weekend remediation classes solely based on failing a SOL test in science or history/social science.

E. Each student in middle and secondary schools shall take all applicable end-of-course SOL tests following course instruction. Students who achieve a passing score on an end-of-course SOL test shall be awarded a verified unit of credit in that course in accordance with the provisions of 8VAC20-131-110. Students may earn verified units of credit in any courses for which end-of-course SOL tests are available. Middle and secondary schools may consider the student's

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end-of-course SOL test score in determining the student's final course grade. However, no student who has failed an end-of-course SOL test but passed the related course shall be prevented from taking any other course in a content area and from taking the applicable end-of-course SOL test. The board may approve additional tests to verify student achievement in accordance with guidelines adopted for verified units of credit described in 8VAC20-131-110.

F. Participation in the Virginia assessment program by students with disabilities shall be prescribed by provisions of their Individualized Education Program (IEP) or 504 Plan. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments where necessary.

G. All students identified as limited English proficient (LEP) shall participate in the Virginia assessment program. A school-based committee shall convene and make determinations regarding the participation level of LEP students in the Virginia assessment program. In kindergarten through eighth grade, limited English proficient students may be granted a one-time exemption from SOL testing in the areas of writing, science, and history and social science.

H. Students identified as foreign exchange students taking courses for credit shall be required to take the relevant Virginia assessment program tests. Foreign exchange students who are auditing courses and who will not receive a standard unit of credit for such courses shall not be required to take the Standards of Learning tests for those courses.

8VAC20-131-50. Requirements for graduation.

A. The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school.

When students below the ninth grade successfully complete courses offered for credit in grades 9 through 12, credit shall be counted toward meeting the standard units required for graduation provided the courses are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8VAC20-131-110.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the Board of Education. All additional requirements prescribed by local school boards that have been approved by the Board of Education remain in effect until such time as the local school board submits a request to amend or discontinue them.

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade classes of ~~2003-04~~ 2009-2010 and beyond, students shall earn the required standard

and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	3	1
Laboratory Science ^{2,6}	3	1
History and Social Sciences ^{3,6}	3	1
Health and Physical Education	2	
Fine Arts or Career and Technical Education	1	
<u>Foreign Language, Economics or Personal Finance</u>	<u>1</u>	
Electives ⁴	<u>6</u> <u>5</u>	
Student Selected Test ⁵		1
Total	22	6

¹Courses completed to satisfy this requirement shall be ~~at or above the level of algebra and shall~~ include at least two course selections from among: Algebra I, Geometry, Algebra, Functions, and Data Analysis, Algebra II, or other mathematics courses above the level of algebra and geometry Algebra II. The board ~~may shall~~ approve additional courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics. The board ~~may shall~~ approve additional courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board ~~may shall~~ approve additional courses to satisfy this requirement.

⁴Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

⁵A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

⁶Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the Board of Education as an additional test to verify student achievement.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection I K of this section.

C. Requirements for a Standard Technical Diploma. Credits required for graduation with a Standard Technical Diploma.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English</u>	<u>4</u>	<u>2</u>
<u>Mathematics¹</u>	<u>3</u>	<u>1</u>
<u>Laboratory Science^{2,5}</u>	<u>3</u>	<u>1</u>
<u>History and Social Sciences^{3,5}</u>	<u>3</u>	<u>1</u>
<u>Health and Physical Education</u>	<u>2</u>	
<u>Fine Arts, Foreign Language, Economics or Personal Finance</u>	<u>1</u>	
<u>Career and Technical Education⁴</u>	<u>4</u>	
<u>Electives</u>	<u>2</u>	

<u>Student Selected⁶</u>		<u>1</u>
<u>Total</u>	<u>22</u>	<u>6</u>

¹Courses completed to satisfy this requirement shall include at least three course selections from among: Algebra I, Geometry, Algebra Functions and Data Analysis, or Algebra II or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement must include a career concentration as approved by the board. For concentrations that require less than four courses students must complete additional courses that are related to the student's career concentration.

⁵Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry or trade or professional association or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification competency credential or license for (i) the student selected verified credit and (ii) either a science or history and social science verified credit when the certification license or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement. If a career concentration includes a specific assessment approved by the board, then the student must take this assessment.

⁶A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Standard Technical Diploma may be eligible to receive an honor

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deemed appropriate by the local school board as described in subsection K of this section.

D. Requirements for an Advanced Studies Diploma. (*Contingent upon passage of the VDOE legislative proposal--Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.)

Credits required for graduation with an Advanced Studies Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	4	2
Laboratory Science ²	4	2
History and Social Sciences ³	4	2
Foreign Language ⁴	3	
Health and Physical Education	2	
Fine Arts or Career and Technical Education	1	
<u>Economics or Personal Finance</u>	<u>1</u>	
Electives	<u>2 3</u>	
Student Selected Test ⁵		1
Total	<u>24 26</u>	9

¹Courses completed to satisfy this requirement shall ~~be at or above the level of algebra and shall~~ include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board ~~may~~ shall approve ~~additional~~ courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board ~~may~~ shall approve additional courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia

Government, and two courses in either world history or geography or both. The board ~~may~~ shall approve additional courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

⁵A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection ~~I~~ K of this section.

E. Requirements for an Advanced Technical Diploma. (*Contingent upon passage of the VDOE legislative proposal--Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.)

Credits required for graduation with an Advanced Technical Diploma.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English</u>	<u>4</u>	<u>2</u>
<u>Mathematics¹</u>	<u>4</u>	<u>2</u>
<u>Laboratory Science²</u>	<u>4</u>	<u>2</u>
<u>History and Social Sciences³</u>	<u>4</u>	<u>2</u>
<u>Foreign Language⁴</u>	<u>3</u>	
<u>Health and Physical Education</u>	<u>2</u>	
<u>Fine Arts or Economics</u>	<u>1</u>	
<u>Career and Technical Education⁵</u>	<u>4</u>	
<u>Student Selected Test⁶</u>		<u>1</u>
<u>Total</u>	<u>26</u>	<u>9</u>

¹Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

⁵Courses completed to satisfy this requirement must include a career concentration as approved by the board. For concentrations that require less than four courses, students must complete additional courses that are related to the student's career concentration. If a career concentration includes a specific assessment approved by the board, then the student must take this assessment to fulfill this requirement.

⁶A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Advanced Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

~~D. F.~~ Requirements for the Modified Standard Diploma.

1. Every student shall be expected to pursue a Standard Diploma ~~or~~ Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma. The Modified Standard Diploma program is intended for certain students at the secondary level who have a disability and are unlikely to meet the credit requirements for a Standard Diploma. Eligibility and participation in the Modified Standard Diploma program shall be determined by the student's Individualized Education Program (IEP) team including the student, where appropriate, at any point after the student's eighth grade year.

2. The school must secure the informed written consent of the parent/guardian and the student to choose this diploma program after review of the student's academic history and the full disclosure of the student's options.

3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard Diploma, or Standard Technical Diploma,

Advanced Studies Diploma or Advanced Technical Diploma at any time throughout that student's high school career, and the student must not be excluded from courses and tests required to earn a Standard or Advanced Studies Diploma.

4. Students pursuing the Modified Standard Diploma shall pass literacy and numeracy competency assessments prescribed by the board.

5. Credits required for graduation with a Modified Standard Diploma.

Discipline Area	Standard Units of Credit Required
English	4
Mathematics ¹	3
Science ²	2
History and Social Sciences ³	2
Health and Physical Education	2
Fine Arts or Career and Technical Education	1
Electives ⁴	6
Total	20

¹Courses completed to satisfy this requirement shall include content from among applications of algebra, geometry, personal finance, and statistics in courses that have been approved by the board.

²Courses completed shall include content from at least two of the following: applications of earth science, biology, chemistry, or physics in courses approved by the board.

³Courses completed to satisfy this requirement shall include one unit of credit in U.S. and Virginia History and one unit of credit in U.S. and Virginia Government in courses approved by the board.

⁴Courses to satisfy this requirement shall include at least two sequential electives in the same manner required for the Standard Diploma.

6. The student must meet any additional criteria established by the Board of Education.

~~E. G.~~ In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas shall be awarded Special Diplomas.

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~~F.~~ H. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for Standard, Standard Technical, Advanced Studies, Advanced Technical, Modified Standard, Special, or General Achievement diplomas shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality. Students receiving a general achievement diploma shall comply with 8VAC20-680, Regulations Governing the General Achievement Diploma.

~~G.~~ I. In accordance with the provisions of the compulsory attendance law and 8VAC20-360, Regulations Governing General Educational Development Certificates, students who do not qualify for diplomas may earn a high school equivalency credential.

~~H.~~ J. At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

~~I.~~ K. Awards for exemplary student performance. Students who demonstrate academic excellence and/or outstanding achievement may be eligible for one or more of the following awards:

1. Students who complete the requirements for an Advanced Studies Diploma or Advanced Technical Diploma with an average grade of "B" or better, and successfully complete college-level coursework that will earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses shall receive the Governor's Seal on the diploma.

2. Students who complete the requirements for a Standard Diploma ~~or Standard Technical Diploma~~, Advanced Studies Diploma or Advanced Technical Diploma with an average grade of "A" shall receive a Board of Education Seal on the diploma.

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard ~~or Diploma, Standard Technical Diploma~~, Advanced Studies Diploma or Advanced Technical Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that

confers certification or occupational competency credential from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students who earn either a Standard ~~or Diploma, Standard Technical Diploma~~ Advanced Studies Diploma or Advanced Technical Diploma and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma or Advanced Technical Diploma (four units of credit including Algebra II; two verified units of credit) with a "B" average or better; and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

5. The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a Standard ~~or Diploma, Standard Technical Diploma~~, Advanced Studies Diploma or Advanced Technical Diploma and (i) complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) of this subdivision include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.

6. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

~~J.~~ L. Students completing graduation requirements in a summer school program shall be eligible for a diploma. The

last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

~~K.~~ M. Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements of subsections B and C of this section.

~~L.~~ N. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits as provided in accordance with the provisions of 8VAC20-131-110, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

8VAC20-131-60. Transfer students.

A. The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in grades K-8 from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board.

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools and state-operated programs. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.

D. A secondary school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE). The Board of Education will maintain contact with the VCPE and may periodically review its accrediting procedures and policies as part of its policies under this section.

Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit, and the school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8VAC20-131-110 A.

Students transferring into a Virginia public school shall be required to meet the requirements prescribed in 8VAC20-131-50 to receive a Standard, Standard Technical, Advanced Studies, Advanced Technical or Modified Standard Diploma, except as provided by subsection G of this section. To receive a Special Diploma or Certificate of Program Completion, a student must meet the requirements prescribed by the Standards of Quality.

E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia.

F. The academic record of a student transferring into Virginia public schools from other than a Virginia public school shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection G of this section. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when the student has been given credit by the previous school attended.

Students transferring above the tenth grade from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

G. Students entering a Virginia public high school for the first time after the tenth grade shall earn as many credits as possible toward the graduation requirements prescribed in 8VAC20-131-50. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8VAC20-131-110 for verified units of credit in courses previously completed at another school or program of study,

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unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:

1. For a Standard Diploma or Standard Technical Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of four verified units of credit: one each in English, mathematics, history, and science. Students who complete a career and technical education program sequence may substitute a certificate, occupational competency credential or license for either a science or history and social science verified credit pursuant to 8VAC20-131-50; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of two verified units of credit: one in English and one of the student's own choosing.

2. For an Advanced Studies Diploma or Advanced Technical Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of four verified units of credit: one in English and three of the student's own choosing.

H. Students entering a Virginia high school for the first time after the first semester of their eleventh grade year must meet the requirements of subdivision G 1 c or G 2 c of this section. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a Standard, Advanced Studies, or Modified Standard Diploma. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such

waivers upon request by the local school board in accordance with guidelines prescribed by the Board of Education.

I. Any local school division receiving approval to increase its course credit requirements for a diploma may not deny either the Standard, Advanced Studies, or Modified Standard Diploma to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated.

J. The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of 8VAC20-160, Regulations Governing Secondary School Transcripts.

K. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements established in 8VAC20-131-50 and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

8VAC20-131-140. College and career preparation programs and opportunities for postsecondary credit.

Each middle and secondary school shall provide for the early identification and enrollment of students in a college preparation program with a range of educational and academic experiences in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to attend college.

Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement courses or three college-level courses for degree credit pursuant to 8VAC20-131-100. Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

1. Written approval of the high school principal prior to participation in dual enrollment must be obtained;
2. The college must accept the student for admission to the course or courses; and
3. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

Schools that comply with this standard shall not be penalized in receiving state appropriations.

Beginning with the 2009-2010 academic year, all middle schools shall develop and maintain a personal Academic and Career Plan for each seventh- and eighth-grade student that includes specific components established by the Board of Education. Beginning with the 2010-2011 academic year, students who transfer into a Virginia public school after their eighth grade year shall have an Academic and Career Plan developed upon enrollment. The components of the Plan shall include, but not be limited to, the student's educational goals and program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The Academic and Career Plan shall be developed and signed by the student, student's parent or guardian, and school official(s) designated by the principal. The Plan shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters the ninth and eleventh grades. The school shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the Plan.

Part V

School and Instructional Leadership

8VAC20-131-210. Role of the principal.

A. The principal is recognized as the instructional leader of the school and is responsible for effective school management that promotes positive student achievement, a safe and secure environment in which to teach and learn, and efficient use of resources. As a matter of policy, the board, through these standards, recognizes the critically important role of principals to the success of public schools and the students who attend those schools and recommends that local school boards provide principals with the maximum authority available under law in all matters affecting the school including, but not limited to, instruction and personnel, in a manner that allows the principal to be held accountable in a fair and consistent manner for matters under his direct control.

B. As the instructional leader, the principal is responsible for ensuring that students are provided an opportunity to learn and shall:

1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the

professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class;

2. Ensure that the school division's student code of conduct is enforced and seek to maintain a safe and secure school environment;

3. Analyze the school's test scores annually, by grade and by discipline, to:

a. Direct and require appropriate prevention, intervention, and/or remediation to those students performing below grade level or not passing the SOL tests;

b. Involve the staff of the school in identifying the types of staff development needed to improve student achievement and ensure that the staff participate in those activities; and

c. Analyze classroom practices and methods for improvement of instruction;

4. Ensure that students' records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's performance, are included in the record;

5. Monitor and evaluate the quality of instruction, provide staff development, provide support that is designed to improve instruction, and seek to ensure the successful attainment of the knowledge and skills required for students by the SOL tests;

6. Maintain records of students who drop out of school, including their reasons for dropping out and actions taken to prevent these students from dropping out; ~~and~~

7. Notify the parents of rising eleventh-grade and twelfth-grade students of:

a. The number of standard and verified units of credit required for graduation; and

b. The remaining number of such units of credit the individual student requires for graduation; and

8. Notify the parents of students removed from class for disciplinary reasons for two or more consecutive days in whole or in part.

C. As the school manager, the principal shall:

1. Work with staff to create an atmosphere of mutual respect and courtesy and to facilitate constructive communication by establishing and maintaining a current handbook of personnel policies and procedures;

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2. Work with the community to involve parents and citizens in the educational program and facilitate communication with parents by maintaining and disseminating a current student handbook of policies and procedures that includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;
3. Maintain a current record of licensure, endorsement, and in-service training completed by staff; and
4. Maintain records of receipts and disbursements of all funds handled. These records shall be audited annually by a professional accountant approved by the local school board.

Part VII

School and Community Communications

8VAC20-131-270. School and community communications.

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.
2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:
 - a. Virginia assessment program results including the percentage of students tested, as well as the percentage of students not tested.
 - b. Performance of student subgroups on the Virginia assessment program as appropriate.
 - c. The accreditation rating awarded to the school.
 - d. Attendance rates for students.
 - e. Information related to school safety to include, but not limited to, incidents of physical violence (including fighting and other serious offenses), possession of firearms, and possession of other weapons.
 - f. Information related to qualifications and experience of the teaching staff including the percentage of the school's teachers endorsed in the area of their primary teaching assignment.
 - g. In addition, secondary schools' School Performance Report Cards shall include the following:

- (1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of those students who take AP tests;
- (2) International Baccalaureate (IB) and Cambridge course information to include percentage of students who are enrolled in IB or Cambridge programs and percentage of students who receive IB or Cambridge Diplomas;
- (3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;
- (4) Percentage of (i) graduates by diploma type as prescribed by the Board of Education, (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not complete high school;
- (5) Information on the number of students obtaining industry certifications, and passing state licensure examinations and occupational competency assessments while still in high school; and
- (6) Percentage of drop-outs.

3. Cooperate with business and industry in formulating career and technical educational programs and conducting joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment and/or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to its students' parents or guardians information on the availability of and source for receiving:

1. The learning objectives developed in accordance with the provisions of 8VAC20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;
2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and
3. An annual notice to students in all grade levels of all requirements for Standard, Standard Technical, Advanced Studies, Advanced Technical and Modified Standard Diplomas, and the board's policies on promotion and retention as outlined in 8VAC20-131-30.

The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

Part VIII
School Accreditation

8VAC20-131-280. Expectations for school accountability.

A. Schools will be accredited annually based on compliance with preaccreditation eligibility requirements and achievement of the school accountability requirements of 8VAC20-131-300 C.

B. Each school shall be accredited based, primarily, on achievement of the criteria established in 8VAC20-131-30 and in 8VAC20-131-50 as specified below:

1. The percentage of students passing the Virginia assessment program tests in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three-year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.

2. The percentage of students graduating from or completing high school based on a graduation and completion index prescribed by the Board of Education. The accreditation rating of any school with a twelfth grade shall be determined based on achievement of required SOL pass rates and percentage points on the board's graduation and completion index. School accreditation shall be determined by the school's current year index points or a trailing three-year average of index points that includes the current year and the two most recent years, whichever is higher. The Board of Education's graduation and completion index shall include weighted points for diploma graduates (100 points), GED recipients (75 points), students not graduating but still in school (70 points), and students earning certificates of program completion (60 points). The Board of Education's graduation and completion index shall account for all students in the graduating class's ninth-grade cohort, plus students transferring in, minus students transferring out and deceased students. Those students who are not included in one of the preceding categories (i.e. students who dropout) will also be included in the index.

~~2.~~ 3. The number of students who successfully complete a remediation recovery program.

~~3.~~ 4. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the Board of Education as outlined in 8VAC20-131-110 are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the local superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

C. Subject to the provisions of 8VAC20-131-330, the governing school board of special purpose schools such as those provided for in §22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Schools offering alternative education programs and schools with an enrollment 50 or fewer students in the ninth grade cohort may request that the Board of Education approve an alternative accreditation plan to meet the graduation and completion index benchmark. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Advanced Studies, or Modified Standard Diploma must meet the requirements prescribed in 8VAC20-131-50.

D. When calculating the passing rates on Virginia assessment program tests for the purpose of school accreditation, the following tolerances for limited English proficient (LEP) and transfer students will apply:

1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by 8VAC20-131-280 B and 8VAC20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.

2. In accordance with the provisions of 8VAC20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.

3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accreditation rating. Students who transfer into a Virginia school from home instruction, or from another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or additional tests approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accreditation ratings.

4. Students who transfer into a Virginia middle or high school from home instruction, or from another state or country, and enroll in a course for which there is an end-of-

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course SOL test, shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school accreditation ratings in the year the transfer occurs.

5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in calculating the school accreditation rating in the year in which the transfers occur.

~~6. The board may alter the inclusions and exclusions from the accreditation calculations by providing adequate notice to local school boards.~~

E. The Board of Education may adopt special provisions related to the administration and use of any Virginia assessment program test in a content area ~~as applied to these regulations~~. The Board of Education may adopt special provisions related to the administration and use of the graduation and completion index, as prescribed by the board. The Board of Education may also alter the inclusions and exclusions from the accreditation calculations by providing adequate notice to local school boards.

F. As a prerequisite to the awarding of an accreditation rating as defined in 8VAC20-131-300, each new or existing school shall document, in a manner prescribed by the board, the following: (i) the division's promotion/retention policies developed in accordance with the requirements of 8VAC20-131-30, (ii) compliance with the requirements to offer courses that will allow students to complete the graduation requirements in 8VAC20-131-50, (iii) the ability to offer the instructional program prescribed in 8VAC20-131-70 through 8VAC20-131-100, (iv) the leadership and staffing requirements of 8VAC20-131-210 through 8VAC20-131-240, and (v) the facilities and safety provisions of 8VAC20-131-260. The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

8VAC20-131-290. Procedures for certifying accreditation eligibility.

A. Schools will be accredited under these standards annually based, in part, on compliance with the preaccreditation eligibility requirements described in 8VAC20-131-280 F.

B. To be eligible for accreditation, the principal of each school and the division superintendent shall report to the Department of Education:

1. The extent to which each school continues to meet standards reported as met in the previous year described in 8VAC20-131-280 F.

2. That the SOL have been fully incorporated into the school division's curriculum in all accreditation-eligible schools and the SOL material is being taught to all students eligible to take the SOL tests. This shall be certified by each school division superintendent as part of the preaccreditation eligibility determination process.

3. Actions taken to correct any noncompliance issues cited in the previous year.

4. Compliance with 8VAC20-131-270 B.

The principal of each school and the division superintendent shall submit preaccreditation eligibility reports in a manner prescribed by the board to the Department of Education. Failure to submit the reports on time will constitute grounds for denying accreditation to the school.

C. In keeping with provisions of the Standards of Quality, and in conjunction with the ~~six-year~~ long-range comprehensive plan of the division, each school shall prepare and implement a biennial school plan which shall be available to students, parents, staff, and the public. Each biennial school plan shall be evaluated as part of the development of the next biennial plan. Schools may use other plans to satisfy the requirement for the biennial plan with prior written approval from the Department of Education.

D. With the approval of the local school board, local schools seeking to implement experimental or innovative programs, or both, that are not consistent with these standards shall submit a waiver request, on forms provided, to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental/innovative programs;
2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

Except as specified below, the board may grant, for a period up to five years, a waiver of these regulations that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request. Waivers of requirements in 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-70, and 8VAC20-131-280 through 8VAC20-131-340 shall not be granted, and no waiver may be approved for a program which would violate the provisions of the Standards of Quality.

8VAC20-131-300. Application of the standards.

A. Schools that meet the preaccreditation eligibility requirements prescribed in 8VAC20-131-280 F shall be assigned one of the following ratings as described in this section:

1. Fully Accredited;
2. Accredited with Warning in (specified academic area or areas);
3. Accreditation Denied;
4. Conditionally Accredited;
5. ~~Accreditation Withheld/Improving School Near Accreditation (rating shall not be awarded after academic year ending in 2007, based on tests administered in 2005-2006).~~ Provisionally Accredited-Graduation Rate.

B. Compliance with the student academic achievement expectations shall be documented to the board directly through the reporting of the results of student performance on SOL tests and other alternative means of assessing student academic achievement as outlined in 8VAC20-131-110. Compliance with other provisions of these regulations will be documented in accordance with procedures prescribed by the Board of Education.

C. Accreditation ratings defined. Accreditation ratings awarded in an academic year are based upon Virginia assessment program scores from the academic year immediately prior to the year to which the accreditation rating applies. Accreditation ratings are defined as follows:

1. Fully accredited.
 - a. ~~With tests administered in the academic year 2005-2006 for the accreditation ratings awarded for academic year 2006-2007, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas, except the pass rates required shall be 75% in third-grade and fifth-grade English and 50% in third-grade science and history/social science.~~
 - b. a. With tests administered in the academic years 2006-2007, 2007-2008, and 2008-2009 for the accreditation ratings awarded for academic years 2007-2008, 2008-2009, and 2009-2010 respectively, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas except, the pass rates required shall be 75% in third - grade through fifth-grade English and 50% in third-grade science and history/social science.
 - e. b. For schools housing grade configurations where multiple pass rates apply, the results of the tests may be combined in each of the four core academic areas for the

purpose of calculating the school's accreditation rating provided the school chooses to meet the higher pass rate.

~~c.~~ c. With tests administered beginning in the academic year ~~2009-10~~ 2009-2010 for the accreditation ratings awarded for school year ~~2010-11~~ 2010-2011 and beyond, a school will be rated Fully Accredited when its eligible students meet the pass rate of 75% in English and the pass rate of 70% in mathematics, science, and history and social science. Additionally, each school with a graduating class shall achieve a minimum of 80 percentage points on the Board of Education's graduation and completion index, as described in 8VAC20-131-280 B 2, to be rated Fully Accredited.

e. d. For accreditation purposes, the pass rate will be calculated as single rates for each of the four core academic areas by combining all scores of all tests administered in each subject area.

2. Accredited with Warning (in specific academic ~~area or areas~~ areas and/or in achievement of the minimum threshold for the graduation and completion index). A school will be Accredited with Warning (in specific academic ~~area or areas~~ areas and/or in achievement of the minimum threshold for the graduation and completion index) if it has failed to achieve Fully Accredited status. Such a school may remain in the Accredited with Warning status for no more than three consecutive years.

3. Accreditation Denied. Based on a school's academic performance ~~during academic years ending in 2006 and beyond~~ and/or achievement of the minimum threshold for the graduation and completion index, a school shall be rated Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited, for the preceding three consecutive years or for three consecutive years anytime thereafter.

In any school division in which one-third or more of the schools have been rated Accreditation Denied, the superintendent shall be evaluated by the local school board with a copy of such evaluation submitted to the Board of Education no later than December 1 of each year in which such condition exists. In addition, the Board of Education may take action against the local school board as permitted by the Standards of Quality due to the failure of the local board to maintain accredited schools.

~~4. Accreditation Withheld/Improving School Near Accreditation. A school that has never met the requirements to be rated Fully Accredited by the academic year ending in 2006 and subject to being awarded a rating of Accreditation Denied may apply to the board for this accreditation designation for 2006-2007. To be eligible, the school must meet each of the following criteria:~~

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~~a. With assessments administered in 2005-2006, at least 70% of its students must have passed the applicable English SOL tests except at third and fifth grade where the requirement is 75%.~~

~~b. With assessments administered in 2005-2006, a combined pass rate of 60% of its students must have passed the Virginia assessment program tests in the other three core academic areas.~~

~~c. In each academic area in which the pass rate is below the rate required to be rated Fully Accredited, the school's pass rate must have increased by at least 25 percentage points as compared to the pass rates on tests taken during the academic year ending in 1999.~~

~~This rating shall not be awarded after the 2006-2007 academic year.~~

~~5. 4. Conditionally Accredited. New schools that are comprised of students from one or more existing schools in the division will be awarded this status for one year pending an evaluation of the school's eligible students' performance on SOL tests or additional tests approved by the Board of Education to be rated Fully Accredited. This rating may also be awarded to a school that is being reconstituted in accordance with the provisions of 8VAC20-131-340 upon approval by the Board of Education. A school awarded this rating under those circumstances will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the agreed upon term or if it fails to have its annual application for such rating renewed.~~

~~5. Provisionally Accredited-Graduation Rate. With tests administered in the academic years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 for the accreditation ratings awarded for academic years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 respectively, a school will be rated Provisionally Accredited when its eligible students meet SOL pass rates to be rated Fully Accredited but fails to achieve a minimum of 80 percentage index points on the Board of Education's graduation and completion index, but achieve the following minimum benchmarks for each year:~~

<u>Graduation and Completion Index Benchmarks for Provisionally Accredited Ratings</u>		
<u>Academic Year</u>	<u>Accreditation Year</u>	<u>Index Percentage Points</u>
<u>2009-2010</u>	<u>2010-2011</u>	<u>75</u>
<u>2010-2011</u>	<u>2011-2012</u>	<u>76</u>
<u>2011-2012</u>	<u>2012-2013</u>	<u>77</u>
<u>2012-2013</u>	<u>2013-2014</u>	<u>78</u>
<u>2013-2014</u>	<u>2014-2015</u>	<u>79</u>

The last year in which this rating shall be awarded is the 2014-2015 accreditation year, based on tests administered in the 2013-2014 academic year.

8VAC20-131-325. Recognitions and rewards for school and division accountability performance.

A. Schools may be recognized by the Board of Education in accordance with guidelines it shall establish. Such recognition may include:

1. Public announcements recognizing individual schools and divisions;
2. Tangible rewards;
3. Waivers of certain board regulations;
4. Exemptions from certain reporting requirements; or
5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, participation in community activities for input purposes when setting policy relating to schools and budget development, as well as other appropriate recognition.

B. A school that maintains a passing rate on Virginia assessment program tests or additional tests approved by the board as outlined in 8VAC20-131-110 of 95% or above in each of the four core academic areas for two consecutive years may, upon application to the Department of Education, receive a waiver from annual accreditation. A school receiving such a waiver shall be Fully Accredited for a three-year period. However, such school shall continue to annually submit documentation in compliance with the preaccreditation eligibility requirements described in 8VAC20-131-280 F.

C. Schools may be eligible to receive the Governor's Award for Outstanding Achievement. This award will be given to schools rated Fully Accredited that significantly increase the achievement of students within student subgroups in accordance with guidelines prescribed by the Board of Education.

8VAC20-131-360. Effective date.

Unless otherwise specified, these regulations shall be effective for the ~~2006-2007~~ 2009-2010 academic year.

VA.R. Doc. No. R07-228; Filed August 13, 2008, 10:16 a.m.

GEORGE MASON UNIVERSITY

Proposed Regulation

REGISTRAR'S NOTICE: George Mason University is exempt from the Administrative Process Act in accordance with §2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC35-60. Policy Prohibiting Weapons (amending 8VAC35-60-20).**

Statutory Authority: §23-91.29 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Agency Contact: Kenneth W. Hubble, Agency Regulatory Coordinator, George Mason University, 4400 University Drive, Fairfax, VA 22030, telephone (703) 993-3091 or email khubble@gmu.edu.

Summary:

The proposed amendment adds dining facilities to the list of university properties where weapons are prohibited.

8VAC35-60-20. Possession of weapons prohibited.

Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, ~~and~~ dining facilities, or while attending sporting, entertainment or educational events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden.

VA.R. Doc. No. R08-1368; Filed August 6, 2008, 3:08 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Effective Date

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-30).**

Statutory Authority: §62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC §1251 et seq.); 40 CFR Part 131.

Effective Date: August 12, 2008.

On June 27, 2007, the State Water Control Board approved a fast-track regulation process to adopt revisions to the Water Quality Standards in 9VAC25-260-30. These revisions relate to water quality standards to designate a segment of the Hazel River within the Shenandoah National Park as Exceptional State Waters. The proposed amendments were published as a

fast-track regulation rulemaking on December 10, 2007, Volume 24, Issue 7 of the Virginia Register and considered approved by the board upon receiving no comment by the conclusion of the comment period on February 8, 2008. The effective date is upon filing the notice of Environmental Protection Agency (EPA) approval with the Registrar of Regulations. The State Water Control Board hereby notices EPA approval of these revisions to the water quality standards via a letter dated July 18, 2008, from Jon M. Capacasa, Director of the Water Protection Division, EPA Region 3 to David K. Paylor, Director of the Virginia Department of Environmental Quality. The effective date of these amendments is August 12, 2008. Copies are available online at <http://www.deq.state.va.us/wqs> or call toll free at 1-800-592-5482 ext. 4121, local 698-4121, or by written request to David C. Whitehurst at P.O. Box 1105, Richmond, VA 23218, or email request to dcwhitehurst@deq.virginia.gov.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email dcwhitehurst@deq.virginia.gov.

VA.R. Doc. No. R08-642; Filed August 12, 2008, 11:53 a.m.

Final Regulation

Title of Regulation: **9VAC25-740. Water Reclamation and Reuse Regulation (adding 9VAC25-740-10 through 9VAC25-740-210).**

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

Effective Date: October 1, 2008.

Agency Contact: Valerie Rourke, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4158, FAX (804) 698-4116, or email varourke@deq.virginia.gov.

Summary:

This regulation establishes requirements for the reclamation and reuse of wastewater that are protective of state waters and public health. Contained in the regulation are two sets of treatment standards and monitoring requirements for the reclamation of municipal wastewater, and provisions to develop treatment standards for the reclamation of industrial wastewater on a case-by-case basis. For six reuse categories (urban – unrestricted access, irrigation - unrestricted access, irrigation – restricted access, landscape impoundments, construction, and industrial), the regulation specifies the required treatment standards and allows for the approval of other reuses and associated treatment standards commensurate with the quality of the reclaimed water and its intended reuse. This regulation also details requirements for application and permitting; design, construction, operation and maintenance of water reclamation systems and

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reclaimed water distribution systems; management of pollutants from significant industrial users; access control and signage; public education and notification; management of reclaimed water in use areas; recordkeeping; and reporting.

Amendments were made to the proposed regulation based on public comment. Changes to address significant areas of comment include revisions to 9VAC25-740-70 concerning the point of compliance for Level 1 reclaimed water and resampling and diversion requirements for the bacterial corrective action and in 9VAC25-740-80 for time requirements for bacterial sampling. 9VAC25-740-100 C concerning the assumed nutrient losses to state waters from irrigation reuse with non-BNR reclaimed water linked to nutrient credits allowed for reclamation and reuse was repealed and the language was moved to a new section 9VAC25-740-105. The board deferred action on 9VAC25-740-105; it will not take effect on October 1, 2008.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 740

WATER RECLAMATION AND REUSE REGULATION

Part I

Definitions and General Program Requirements

9VAC25-740-10. Definitions.

The following words and terms when used in this [regulation chapter] shall have the following meanings unless the context clearly indicates otherwise.

"Biological nutrient removal (BNR)" means treatment that achieves an annual average of [& 8.0] mg/l total nitrogen (N) and [± 1.0] mg/l total phosphorus (P).

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

"Bulk irrigation reuse" means reuse of reclaimed water for irrigation of an area greater than five acres on one contiguous property.

"Class I reliability" means a measure of reliability that requires a treatment works design to provide continuous satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut-down. [Design features of this This] class [shall include includes design features, such as] additional electrical power sources, additional flow storage capacity, and additional treatment [unit operations units] that provide [for alternate] operation in accordance with the issued certificate or permit requirements.

"Controlled use" means a use of reclaimed water authorized in accordance with this [regulation chapter].

"Corrective action threshold" means a bacterial, turbidity or total residual chlorine standard for reclaimed water at which measures shall be implemented to correct operational problems of the reclamation system within a specified period, or divert flow from the reclamation treatment process in accordance with this [regulation chapter].

"Direct beneficial use" means the use of reclaimed water in a manner protective of the environment and public health that involves transport of the reclaimed water from the point of reclamation treatment and production to the point of use without an intervening discharge to waters of the state.

"Direct potable reuse" means the discharge of reclaimed water directly into a drinking water treatment facility or into a drinking water distribution system. This includes storage facilities associated with the drinking water treatment facility or drinking water distribution system that are not surface or ground waters of the state.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Disinfection" means the destruction, inactivation, or removal of pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants; UV radiation; or other processes.

"Disposal" means the discharge of effluent to injection wells, effluent outfalls, subsurface drain fields, or other facilities utilized primarily for the release of effluents into the environment without deriving a direct beneficial use.

"Domestic sewage" means sewage derived from the normal family or household activities, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

"Drip irrigation" means the slow and uniform aboveground application of water to individual plants and vegetated cover using tubing and drip devices or emitters. Drip irrigation may include below-ground applications of reclaimed water as specified in 9VAC25-740-90 B.

"Effluent," unless specifically stated otherwise, means treated wastewater that is not reused after flowing out of any treatment works.

"End user" means a person or entity that directly uses reclaimed water.

"Filtration" means the passing of wastewater through a conventional technology, such as sand, anthracite or cloth; or an advanced technology, such as microfiltration, ultrafiltration, nanofiltration or reverse osmosis membrane.

"Food crops commercially processed" means food crops that, prior to sale to the public or others, have undergone

chemical or physical processing sufficient to remove or destroy pathogens.

"Food crops not commercially processed" means food crops that, prior to sale to the public or others, have not undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Gray water" means untreated wastewater from bathtubs, showers, lavatory fixtures, wash basins, washing machines, and laundry tubs. It does not include wastewater from toilets, urinals, kitchen sinks, dishwashers, or laundry water from soiled diapers.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Indirect potable reuse" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water supply source, with subsequent withdrawal after mixing with the ambient surface water and transport to the withdrawal location, followed by treatment and distribution for drinking water and other potable water purposes.

"Indirect reuse" means the use of reclaimed water subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES permit.

"Industrial wastewater" means wastewater resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land for plant use at a rate that undesirable plant water stress does not occur.

"Landscape impoundment" means a body of water that contains reclaimed water, is not intended for public contact, and is used primarily for aesthetic enjoyment. Landscape impoundments include, but are not limited to, decorative pools, fountains, ponds and lagoons; located outdoors or indoors.

"Level 1" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment with filtration and higher-level disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Level 2" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment and standard disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Municipal wastewater" means sewage.

"Nonbulk irrigation reuse" means the reuse of reclaimed water for irrigation of individual areas less than or equal to five acres.

"Nonpotable water" means any water, including reclaimed water, not meeting the definition of potable water.

"Nonsystem storage" means storage for reclaimed water that is other than system storage and is used at a location downstream of the service connection to the reclaimed water distribution system to equalize flow to end users.

"Nutrient management plan (NMP)" means a plan prepared by a nutrient management planner certified by the Department of Conservation and Recreation to manage the amount, placement, timing, and application of plant nutrients from liquid, solid or semisolid manures, fertilizers, biosolids, or other materials, for the purpose of producing crops and reducing nutrient loss to the environment.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for the production or distribution of reclaimed water, or any facility or operation that produces or distributes reclaimed water.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this [~~regulation~~ chapter].

"Point of compliance" means a point at which compliance with the standards of this [~~regulation~~ chapter] is required.

"Pollutants of concern" means any pollutants that might reasonably be expected to be discharged to a publicly or privately owned treatment works in sufficient amounts to pass through or interfere with the works, contaminate sludge generated by the works, cause problems in the collection system of the works, or jeopardize the health of employees at the works and the public.

"Potable water" means water fit for human consumption and domestic use that is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served.

"Public access area" means an area that is intended to be accessible to the general public, such as golf courses, cemeteries, parks, athletic fields, school yards, and landscape areas. Public access areas include private property that is not open to the public at large, but is intended for frequent use by

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many persons. Presence of authorized farm personnel or other authorized treatment plant, utilities system, or reuse system personnel does not constitute public access.

"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.

"Reclamation system" means a treatment works that treats domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a water reuse that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclaimed water agent" means a person or entity that holds a permit to distribute reclaimed water to one or more end users.

"Reclaimed water distribution system" means a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more reclamation systems to one or more end users.

["Reject water storage" means storage for water diverted by a reclamation system or satellite reclamation system that does not meet applicable reclaimed water standards.]

"Reuse" or "water reuse" means the use of reclaimed water for a direct beneficial use, an indirect potable reuse, or a controlled use in accordance with this [~~regulation~~ chapter].

"Reuse system" means an installation or method of operation that uses reclaimed water for a water reuse in accordance with this [~~regulation~~ chapter].

"Restricted access" means limited access by humans to areas where, nonpotable water, including reclaimed water, is used, resulting in minimal or no potential for human contact.

"Satellite reclamation system" means a conjunctive wastewater treatment [~~facility~~ works] and reclamation system that operates within or parallel to a sewage collection system to treat a portion of the available wastewater flow in the collection system to produce reclaimed water for reuse. Satellite reclamation systems do not have a discharge to surface waters, but may return their treatment process wastewater and residuals to the sewage collection system.

"Secondary treatment" means a biological treatment process for wastewater that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation in 40 CFR §133.102 (2001).

"Service area" means a geographic area that receives reclaimed water from a reclaimed water distribution system or directly from a reclamation system for approved reuses within that area.

"Sewage" means the water-carried human wastes and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such ~~underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.~~

"State waters" or "waters of the state" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"State Water Control Law or Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Supplemental irrigation" means irrigation [~~with reclaimed water in addition to rainfall~~], which in combination with rainfall, meets [~~the water demands of the irrigated vegetation but does not exceed the water necessary~~] to maximize production or optimize growth [~~of the irrigated vegetation~~].

"Surface waters" means all waters in the Commonwealth, except ground water as defined in §62.1-255 of the Code of Virginia.

"System storage" means storage on or off the site and considered part of a reclamation system, satellite reclamation system, or reclaimed water distribution system that is used to store reclaimed water produced by the reclamation system or satellite reclamation system and to equalize flow to or within a reclaimed water distribution system.

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste, or that are necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvements, remodeling, additions, or alterations thereof; or any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Unrestricted access" means unlimited or minimally limited access by humans to areas where nonpotable water, including reclaimed water, is used, resulting in a high potential for human contact.

"User" means end user.

"Virginia Pollution Abatement (VPA) Permit" means a document issued by the board, pursuant to the Virginia Pollution Abatement Permit Regulation (9VAC25-32), authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the board, pursuant to the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31), authorizing, under prescribed conditions the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"Wastewater" means untreated liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.

"Water reclamation" means the reclamation of wastewater or treated effluent for reuse.

9VAC25-740-20. Purpose.

In accordance with §§62.1-44.2, 62.1-44.3 and 62.1-44.15 of the Code of Virginia, it is the purpose of this [~~regulation~~ chapter] to promote and encourage the reclamation of wastewater, here after referred to as water reclamation, and water reuse in a manner that is protective of the environment and public health, and as an alternative to discharging treated effluent to state waters. For this purpose, the [~~regulation~~ chapter] establishes permitting requirements, general requirements for design, operation and maintenance; quality standards, monitoring requirements, and approved reuses for reclaimed water.

9VAC25-740-30. Applicability and transition.

A. The requirements of this [~~regulation~~ chapter] shall apply to water reclamation systems, reclaimed water distribution systems, and water reuse unless specifically excluded under 9VAC25-740-50 A. The requirements shall apply to all new water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses for which Virginia Pollution Abatement (VPA) or Virginia Pollutant Discharge Elimination System (VPDES) permit applications are received after [~~the effective date of this regulation~~ October 1, 2008]. The requirements may also be applied to all existing permitted facilities producing, distributing or using reclaimed water through a permit modification or reissuance procedure and shall be applied when such facilities are to be modified or expanded unless specifically excluded under 9VAC25-740-50 A. The owners of existing water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses that do not have a VPA or VPDES permit shall submit a complete VPA or VPDES permit application or other necessary information as prescribed under 9VAC25-740-40 within 180 days of being requested by the board.

B. For the purposes of this [~~regulation~~, ~~modification of a VPDES or VPA permit to incorporate~~ chapter:

1. The incorporation of] standards, monitoring requirements and special conditions [~~that address~~ for]

water reclamation and reuse [into a VPA permit] shall be considered a minor modification unless they alter other conditions of the permit specifically related to [~~an effluent discharge or the~~] pollutant management activity for which the permit was originally issued.

[2. Standards, monitoring requirements and special conditions for water reclamation and reuse may be administratively authorized for a VPDES permit without a permit modification unless they effectively alter other conditions of the permit specifically related to the effluent discharge for which the permit was originally issued. The administrative authorization shall have the full effect of the VPDES permit until such time that it is incorporated into the VPDES permit through reissuance or major modification.

3. Minor modification of a VPA permit or an administrative authorization associated with a VPDES permit described in subdivisions 1 and 2 of this subsection shall require an application for a water reclamation and reuse project in accordance with 9VAC25-740-100.]

9VAC25-740-40. Permitting requirements.

A. The owner of the reclamation system and the owner of the reclaimed water distribution system or the reclaimed water agent shall obtain a VPDES or VPA permit to produce and distribute reclaimed water, unless otherwise excluded from the requirements of this [~~regulation~~ chapter] under 9VAC25-740-50 A. Where both the reclamation system and the reclaimed water distribution system are under common ownership and management, one permit may be issued to the owner. Permit coverage may be provided through ~~modification or reissuance of an existing~~ [~~VPDES or~~] VPA permit [, or reissuance of or administrative authorization for an existing VPDES permit] to include standards, monitoring requirements and special conditions that address water reclamation and reuse.

B. The owner of a satellite reclamation system shall obtain a VPA permit. Alternatively and at the discretion of the board, a satellite reclamation system may be authorized under a VPA or VPDES permit issued to a wastewater treatment [~~facility~~ works] that is under common ownership or management with the satellite reclamation system and receives wastewater and residuals discharged by the satellite reclamation system.

C. [~~Regulation~~ Monitoring] and management of individual end users of reclaimed water shall be by the permittee with whom the end users have a service connection, and through service agreements or contracts between the permittee and the individual end users.

[D. Where a reclamation system and a reclaimed water distribution system that receives reclaimed water from the reclamation system are under separate ownership and management, and the reclaimed water distribution system

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does not distribute reclaimed water to end users other than to the owner or management of that system, the reclaimed water distribution system shall not require a permit provided a service agreement is established between the reclamation system and the reclaimed water distribution system.]

[~~D. E.~~] A separate permit [~~shall be issued to an~~ may be required for] end [~~users only if the end user receives~~ users receiving] reclaimed water directly from more than one reclamation system, satellite reclamation system, reclaimed water distribution system, or a combination thereof. An end user may be authorized under the permit issued to one of the reclamation systems, satellite reclamation systems, or reclaimed water distribution systems that supply reclaimed water to the end user, provided the end user [~~owns or manages~~ is under common ownership or management with] the permitted system.

[~~E. F.~~] Property irrigated with reclaimed water from a reclamation system [, satellite reclamation system] or reclaimed water distribution system under common ownership or management with [~~the that~~] property [~~receiving the reclaimed water~~], shall be regulated by the permit issued to the reclamation system [, satellite reclamation system] or reclaimed water distribution system [, ~~whichever directly supplies~~ providing] reclaimed water to the irrigated property.

[~~F. G.~~] A reclamation system shall not discharge reclaimed or reject water to surface waters of the state in lieu of providing storage, discharging to another permitted reuse system, if applicable; returning reclaimed or reject water to a wastewater treatment [~~facility~~ works]; or suspending production of reclaimed water; without authorization to discharge under a VPDES Permit.

9VAC25-740-50. Exclusions and prohibitions.

A. Exclusions. The following are excluded from the requirements of this [~~regulation~~ chapter]:

1. Activities permitted by the Virginia Department of Health, such as, but not limited to, septic tank drainfield systems and other on-site sewage treatment and disposal systems, and water treatment plant recycle flows.

2. Utilization of gray water.

3. Nonpotable water produced and utilized on-site by the same treatment works [for facilities permitted through a VPDES or VPA permit]. This includes the use of nonpotable water at the treatment works site for incidental landscape irrigation that is not identified as land treatment defined in the Sewage Collection and Treatment Regulations (9VAC25-790). The treatment works site shall include property that is either contiguous to or in the immediate vicinity of the parcel of land upon which the treatment works is located, provided such property is under common ownership or management with the treatment

works. [This exclusion does not apply to nonpotable water produced by treatment works authorized by the VPDES General Permit for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110).]

4. Recycle flows within a treatment works.

5. Industrial effluents or other industrial water streams created prior to final treatment and used for water re-circulation, recycle, or reuse systems located on the same property as the industrial facility, provided:

a. The water used in these systems does not contain or is not expected to contain pathogens or other constituents in sufficient quantities and with a potential for human contact as may be harmful to human health;

b. These systems are closed or isolated to prevent worker contact with the water of the systems; or

c. Other measures are in place [, including but not limited to, applicable federal and state occupational safety and health standards and requirements,] to adequately inform and protect employees from pathogens or other constituents that may be harmful to human health in the water to be re-circulated, recycled or reused at the facility.

6. Land treatment systems defined in the Sewage Collection and Treatment Regulations (9VAC25-790). Such use of wastewater effluent, either existing or proposed, must be authorized by a VPA or VPDES permit and must be on land owned or under the direct long-term control of the permittee.

7. Indirect reuse with the exception of indirect potable reuse projects proposed after [~~the effective date of this regulation~~ October 1, 2008].

8. Existing indirect potable reuse projects that upon [~~the effective date of this regulation~~ October 1, 2008,] are authorized by a VPDES permit to discharge to surface waters of the state, and future expansions of these projects.

9. Direct injection of reclaimed water into any underground aquifer authorized by EPA under the Safe Drinking Water Act, Underground Injection Control Program (UIC), 40 CFR Part 144; or other applicable federal and state laws and regulations.

Exclusion from the requirements of this [~~regulation~~ chapter] does not relieve any owner of the above operations of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulations.

B. Prohibitions. The following are prohibited under this [~~regulation~~ chapter]:

1. Direct potable reuse;

2. The reuse of reclaimed water for any purpose inside a residential or domestic dwelling or a building containing a residential or domestic unit;

3. The reuse of reclaimed water to fill residential swimming pools, hot tubs or wading pools;

4. The reuse of reclaimed water for food preparation or incorporation as an ingredient into food or beverage for human consumption;

5. Bypass of untreated or partially treated wastewater from the reclamation system or any intermediate unit process to the point of reuse unless the bypass complies with standards and requirements specified in 9VAC25-740-70 and is for essential maintenance to assure efficient operation; and

6. The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to an end user.

9VAC25-740-60. Relationship to other board regulations.

A. Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32). The VPA Permit Regulation delineates the procedures and requirements to be followed in connection with the VPA permits issued by the board pursuant to the State Water Control Law. While any treatment works treating domestic, municipal or industrial wastewater that produces reclaimed water or a facility that distributes reclaimed water in a manner that does not result in a discharge to surface waters is required to obtain a VPA permit, this chapter prescribes design, operation and maintenance standards for water reclamation and water reuse. These requirements shall be incorporated into the VPA permit application and the VPA permit when applicable. [Water reclamation and reuse requirements contained in a VPA permit shall be enforced through existing enforcement mechanisms of the VPA permit.]

B. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). The VPDES Permit Regulation delineates the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and the State Water Control Law. While any treatment works treating domestic, municipal or industrial wastewater that produces reclaimed water or a facility that distributes reclaimed water in a manner that results in a discharge to surface waters is required to obtain a VPDES permit, this chapter prescribes design, operation and maintenance standards for water reclamation and reuse. These requirements shall be incorporated into the VPDES permit application and the VPDES permit when applicable. [Water reclamation and reuse requirements contained in a VPDES permit shall be enforced through existing enforcement mechanisms of the VPDES permit.]

C. Sewage Collection and Treatment Regulations (9VAC25-790). The Sewage Collection and Treatment Regulations establish standards for the operation, construction, or modification of a sewerage system or treatment works, including land treatment systems. This chapter prescribes design, operation and maintenance standards for water reclamation and reuse.

D. Regulation for Nutrient Enriched Waters and Discharges within the Chesapeake Bay Watershed (9VAC 25-40). Sections 62.1-44.19:12 through 62.1-44.19:19 of the Code of Virginia, which establishes the Regulation for Nutrient Enriched Waters and Discharges within the Chesapeake Bay Watershed (9VAC25-40), allows for [~~the reuse of wastewater to reduce loads of credit to be given for reductions in~~ total nitrogen and total phosphorus [~~equivalent to reductions that would be provided by biological nutrient removal technology or state of the art nutrient removal technology~~ discharged loads through recycle or reuse of wastewater when determining technology requirements associated with new or expanded discharges].

E. General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). The General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia [~~allows facilities to report a reduced waste load discharge of total nitrogen and total phosphorus for reclaiming and reusing water. A permittee reporting this reduction must demonstrate that the reuses of water will result in a reduced nutrient load to the Chesapeake Bay and its tributaries, and that these reuses are not alternative transport mechanisms for the nutrient load~~ regulates point sources of nutrients and establishes a framework for nutrient credit trading and offsets. Water reclamation and reuse provides an opportunity to reduce point source nutrient loads].

F. Local and Regional Water Supply Planning Regulation (9VAC25-780). The Local and Regional Water Supply Planning Regulation requires every county, city, and town to develop a water plan in accordance with established planning criteria. Where appropriate, the plan may consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse.

Part II

Reclaimed Water Standards, Monitoring Requirements and Reuses

9VAC25-740-70. Standards for reclaimed water.

A. Standards for reclaimed water are as follows:

1. Level 1:

a. Secondary treatment with filtration and higher-level disinfection.

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b. Bacterial standards:

(1) Fecal coliform*: monthly geometric mean** less than or equal to 14 colonies/100 ml; corrective action threshold at greater than 49 colonies/100 ml, or

(2) E. coli*: monthly geometric mean** less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or

(3) Enterococci*: monthly geometric mean** less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.

c. Total Residual Chlorine (TRC)***: corrective action threshold at less than [± 1.0] mg/l**** after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow

d. pH 6.0-9.0 standard units.

e. Five-day Biochemical Oxygen Demand (BOD₅): monthly average less than or equal to 10 mg/l; or Carbonaceous Biochemical Oxygen Demand [~~CBOD~~ CBOD₅]*****: monthly average less than or equal to 8 mg/l.

f. Turbidity: Daily average of discrete measurements recorded over a 24-hour period less than or equal to 2 nephelometric turbidity units (NTU); corrective action threshold at greater than 5 NTU.

2. Level 2:

a. Secondary treatment and standard disinfection.

b. Bacterial standards:

(1) Fecal coliform*: monthly geometric mean** less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml, or

(2) E. coli*: monthly geometric mean** less than or equal to 126 colonies/100ml; corrective action threshold at greater than 235 colonies/100 ml; or

(3) Enterococci*: monthly geometric mean** less than or equal to 35 colonies/100ml; corrective action threshold at greater than 104 colonies/100 ml.

c. Total Residual Chlorine (TRC)***: corrective action threshold at less than [± 1.0] mg/l**** after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.

d. pH 6.0-9.0 standard units.

e. BOD₅: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or [~~CBOD~~ CBOD₅]*****: monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.

f. TSS: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.

* After disinfection.

** For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.

*** Applies only if chlorine is used for disinfection.

**** TRC less than 1.0 mg/l may be authorized by the board if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

***** Applies only if [~~CBOD~~ CBOD₅] is used in lieu of BOD₅.

B. Point of compliance. Excluding the turbidity standard for Level 1 treatment, reclaimed water for reuse shall meet all other applicable standards in accordance with this [~~regulation~~ chapter], at the point of compliance. [~~The point of compliance for Level 1 treatment shall be after all reclaimed water treatment and any open system storage.~~] The point of compliance for Level [1 and Level] 2 treatment shall be after all reclaimed water treatment and prior to discharge to a reclaimed water distribution system. The point of compliance for the turbidity standard of Level 1 treatment shall be just upstream of disinfection.

C. Reclaimed water that fails to comply with the standards shall be managed as follows:

1. Should reclaimed water reach the corrective action threshold (CAT) for turbidity in the standard for Level 1, or for [~~bacteria or~~] TRC in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards. Resampling [~~and~~ or diversion shall occur within one hour of first reaching the CAT. Procedures for resampling,] operational review [and diversion] shall be [~~performed in accordance with procedures as~~] described in an approved operations and maintenance manual for the reclamation system. [~~Resampling shall occur within one hour of first reaching the CAT. a.~~] If subsequent monitoring results of the resamples collected within one hour of the first CAT monitoring results for turbidity or TRC continue to reach the CAT of the standards, the reclaimed water shall be considered substandard or reject water and shall be diverted to either storage for subsequent additional treatment or retreatment, or discharged to another permitted reuse system requiring a lower level of treatment not less than Level 2 or to a VPDES permitted effluent disposal system provided the reject water meets the effluent limits of the permit. If the reclamation system is unattended, the diversion of reject water shall be initiated

and performed with automatic equipment. There shall be no automatic restarts of distribution to reuse until the treatment problem is corrected. Failure to divert the substandard or reject water after one hour of CAT monitoring results shall be considered a violation of this [~~regulation~~ chapter], [Upon resuming discharge of reclaimed water to the reclaimed water distribution system for which the CAT was reached, resampling for turbidity or TRC shall occur within one hour to verify proper treatment.]

[~~b. If subsequent~~ 2. Should reclaimed water reach the CAT for bacteria (i.e., fecal coliform, E. coli or enterococci) in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT.] monitoring results [to bring the reclaimed water back into compliance with the standards. Procedures for operational review shall be as described in an approved operations and maintenance manual for the reclamation system. Two consecutive bacterial] monitoring results [~~of the resample for bacteria (i.e., fecal coliform, E. coli or enterococci) also continue to that~~] reach the CAT of the standards [~~or the operational review confirms that there exists a problem with the bacterial disinfection that can not be immediately corrected, the reclaimed water shall be considered substandard or reject water and shall be immediately diverted as described in subdivision C 1 a of this section, except that diversion shall be performed manually. Failure to divert the substandard or reject water at the earliest determination of CAT monitoring results for bacteria in the resample or a problem with the bacterial disinfection that can not be immediately corrected,~~] shall be considered a violation of this [~~regulation~~ chapter].

[~~2. 3.~~] Repeated, although temporary, failure to comply with all other standards by the reclamation system may be considered a violation of this [~~regulation~~ chapter] determined by the frequency and magnitude of the noncompliant monitoring results and other relevant factors. Failure to resample after determination that monitoring results are not in compliance with the standards [~~or failure~~], [~~to make adjustments to the treatment process to bring the reclaimed water back into compliance with the standards~~], [~~or to divert substandard or reject water in accordance with subdivision 1 of this subsection~~] shall be considered a violation of this [~~regulation~~ chapter].

D. Treatment other than or in addition to the standards of 9VAC25-740-70 A may be necessary based on the quality and character of the wastewater to be reclaimed or the intended reuse or reuses of the reclaimed water. Such alternative or additional treatment may be exempt from this [~~regulation~~ chapter] unless required by the board to protect public health and the environment.

E. Standards for the reclamation of industrial wastewater will be determined on a case-by-case basis relative to the proposed reuse or reuses of the reclaimed water and for the purpose of protecting public health and the environment. Industrial wastewater may also be subject to disinfection requirements of Level 1 or Level 2 if the industrial wastewater contains sewage or is expected to contain organisms pathogenic to humans, such as, but not limited to, wastewater from the production and processing of livestock and poultry. The point of compliance for reclamation standards of industrial wastewater shall also be determined on a case-by-case basis.

9VAC25-740-80. Reclaimed water monitoring requirements for reuse.

A. The monitoring requirements for the standards provided under 9VAC25-740-70 A, are as follows:

1. Turbidity analysis shall be performed by a continuous, on-line turbidity meter equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for turbidity in the standard for Level 1 has been reached. Compliance with the average turbidity standard shall be determined daily, based on the arithmetic mean of hourly or more frequent discrete measurements recorded during a 24-hour period. Monitoring for the turbidity CAT shall be continuous.

Should the on-line turbidity meter go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for turbidity analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line monitoring with a turbidity meter shall resume.

2. Sampling and analysis for residual concentrations of disinfectants, including total residual chlorine (TRC):

a. Shall for Level 1, be continuous on-line monitoring, equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for the disinfectant has been reached. For disinfectants other than chlorine, continuous on-line monitoring shall be provided at the point of compliance monitoring. For TRC, continuous on-line monitoring shall be provided at the end of the contact tank or contact period. Monitoring for the TRC CAT shall be continuous.

Should the on-line disinfectant monitoring equipment go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for disinfectant analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line disinfectant monitoring shall resume.

b. Shall for Level 2, be based on the design flow of the reclamation system and be the same sampling type and

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frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). For chemical disinfectants other than TRC, monitoring shall be provided at the point of compliance monitoring. For TRC, monitoring shall be provided at the end of the contact tank or contact period.

3. Sampling for TSS and BOD₅ or [~~CBOD~~ CBOD₅] shall be at least weekly or more frequently based on the design flow of the reclamation system, and shall be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the monthly average TSS and BOD₅ or [~~CBOD~~ CBOD₅] standards shall be determined monthly, based on the arithmetic mean of all samples collected during the month. Compliance with the maximum weekly average TSS and BOD₅ or [~~CBOD~~ CBOD₅] standards shall be determined monthly, using the same procedures applied in the VPDES Permit program for point source discharges.

4. Sampling for fecal coliform, E. coli or enterococci:

a. Shall for Level 1, be grab samples collected at a time when wastewater characteristics are most representative of the treatment facilities and disinfection processes for water reuse, and at the following frequencies.

Reclamation System Design Flow (MGD) [^{a(1)}]	Bacterial Sampling Frequency [^{b(2)}]
>0.500	Daily with the ability to reduce to no less than four days per week [^{c(3)}]
0.050 to 0.500	Four days per week with the ability to reduce to no less than three days per week [^{c(3)}]
<0.050	Three days per week with no reduction allowed

[^{a(1)}] MGD means million [.] gallons per day [.]

[^{b(2)}] For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. [to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the board that peak flows to the reclamation system occur outside this period.]

[^{c(3)}] Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.

Compliance with the geometric mean standards for fecal coliform, E. coli or enterococci shall be determined monthly, based on all bacteriological monitoring results for that month. Monitoring of the CAT for fecal coliform, E. coli or enterococci shall be based on the

bacteriological monitoring results determined for each day a sample is collected.

b. Shall for Level 2, be based on the design flow of the reclamation system and be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the geometric mean standard and monitoring of the CAT for fecal coliform, E. coli or enterococci shall be in accordance with the same procedures specified for Level 1 in subdivision A 4 a of this section.

5. Samples for pH shall be grab samples collected at least daily. Compliance with the range of the pH standard shall be determined daily based on the pH of the samples.

B. Samples collected for TSS, BOD₅ or [~~CBOD~~ CBOD₅], and fecal coliform, E. coli or enterococci analyses, shall be analyzed by laboratory methods accepted by the board.

C. A reclamation system that produces reclaimed water intermittently or seasonally shall monitor only when the reclamation system discharges to a reclaimed water distribution system, a non-system storage facility, or directly to a reuse.

D. Monitoring other than or in addition to that described under 9VAC25-740-80 A may be required for treatment of reclaimed water that is provided pursuant to 9VAC25-740-70 D and 9VAC25-740-70 E.

9VAC25-740-90. Minimum standard requirements for reuses of reclaimed water.

A. Minimum standard requirements for reclaimed water shall be determined, in part, by the reuse or reuses of that water. For specific reuses, the minimum standard requirements of reclaimed water are as follows:

Reuse Category	Reuse	Minimum Standard Requirements ^a
1. Urban – Unrestricted Access	<p>All types of landscape irrigation in public access areas (i.e., golf courses, cemeteries, public parks, school yards and athletic fields)</p> <p>Toilet flushing – nonresidential</p> <p>Fire fighting or protection and fire suppression</p>	Level 1

<u>Reuse Category</u>	<u>Reuse</u>	<u>Minimum Standard Requirements^a</u>
	<u>in nonresidential buildings</u> <u>Outdoor domestic or residential reuse (i.e., lawn watering and noncommercial car washing)</u> <u>Commercial car washes</u> <u>Commercial air conditioning systems</u>	
<u>2. Irrigation – Unrestricted Access^b</u>	<u>Irrigation for any food crops not commercially processed, including crops eaten raw</u>	<u>Level 1</u>
<u>3. Irrigation – Restricted Access^{b, c}</u>	<u>Irrigation for any food crops commercially processed</u>	<u>Level 2</u>
	<u>Irrigation for nonfood crops and turf, including fodder, fiber and seed crops; pasture for foraging livestock; sod farms; ornamental nurseries; and silviculture</u>	
<u>4. Landscape Impoundments^d</u>	<u>Potential for public access or contact</u>	<u>Level 1</u>
	<u>No [Potential potential] for public access or contact</u>	<u>Level 2</u>

<u>Reuse Category</u>	<u>Reuse</u>	<u>Minimum Standard Requirements^a</u>
<u>5. Construction^e</u>	<u>Soil compaction</u> <u>Dust control</u> <u>Washing aggregate</u> <u>Making concrete</u>	<u>Level 2</u>
	<u>Commercial laundries</u> <u>Livestock watering^f</u> <u>Aquaculture^g</u> <u>Stack scrubbing</u> <u>Street washing</u> <u>Boiler feed</u> <u>Ship ballast</u> <u>Once-through cooling^h</u> <u>Recirculating cooling towers^h</u>	<u>Level 1</u>
<u>6. Industrial^e</u>		<u>Level 2</u>

^a For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.

^b Reclaimed water treated to Levels 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with 9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.

^c For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:

1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and
2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.

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^d Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the board pursuant to 9VAC25-740-110 C 15.

^e Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.

^f Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.

^g Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as for sushi.

^h Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public [unless Level 1 disinfection is provided]. See also setback requirements in 9VAC 25-740-170 for open cooling towers.

B. For any type of reuse not addressed in this [~~regulation~~ chapter], including, but not limited to, indirect potable reuse and below-ground drip irrigation reuse, that is newly proposed after [~~the effective date of this regulation~~ October 1, 2008], the board may prescribe specific reclaimed water standards and monitoring requirements needed to protect public health and the environment. When establishing these requirements for the proposed reuse, the board shall consider the following factors:

1. The risk of the proposed reuse to public health with specific input from the Virginia Department of Health;
2. The degree of public access and human exposure to reclaimed water by the proposed reuse;
3. The reclaimed water treatment necessary to prevent nuisance conditions by the proposed reuse;
4. The reclaimed water treatment necessary for the proposed reuse to comply with this and other applicable regulations of the board;
5. The potential for improper or unintended use of the reclaimed water;
6. Other federal or state laws, regulations and guidelines that would apply to the proposed reuse;
7. The similarity of the proposed reuse to reuses listed in this [~~regulation~~ chapter] with regard to potential impact to public health and the environment;
8. Whether the proposed reuse may be excluded or prohibited by 9VAC25-740-50; and
9. For new indirect potable reuse proposals, residence or transport time, mixing ratios, and other relevant information deemed necessary by the board.

Part III

Application and Technical Requirements

9VAC25-740-100. Application for permit.

A. The need for an owner to obtain a permit or modification or reissuance of an existing permit from the board for a proposed or an existing reclamation system, reclaimed water distribution system, satellite reclamation system, or, as applicable, water reuse, shall be determined in accordance with 9VAC25-740-30. Where required, permit coverage for these systems or activities shall be provided in accordance with 9VAC25-740-40, contingent upon receipt of a complete application from the owner. The application shall contain [~~the following~~] supporting documentation and information [~~as~~ required by subsections B and C of this section.]

B. General information. For projects that involve water reclamation and the distribution of reclaimed water, the following information shall be submitted with an application for a permit. For projects that involve exclusively the distribution of reclaimed water, information for only subdivisions 1, 2, and 5 of this subsection shall be submitted with an application for a permit.

1. A description of the design and a site plan showing operations and unit processes of the proposed project, including and as applicable, treatment, storage, distribution, reuse and disposal facilities, and reliability features and controls. Treatment works [, reclamation systems and reclaimed water distribution systems] previously permitted need not be included, unless they are directly tied into the new units or are critical to the understanding of the complete project. Design approaches shall be consistent with accepted engineering practice and any applicable state regulations;

2. A general location map, showing orientation of the project with reference to at least two geographic features ([e.g.,] numbered roads, named streams or rivers, etc.). A general location map for a reclaimed water distribution system may be included in the map of a service area required in accordance with subdivision [~~B C~~] 1 a of this section;

3. Information regarding each wastewater treatment [~~facility~~ works] that diverts or will divert effluent or source water to the [~~proposed~~] reclamation system [~~to be permitted~~], including:

a. All unit processes used for the treatment of wastewater at the facility prior to diversion to the reclamation system,

[~~b. Maximum and average flows and seasonally varying flows, if any, to be diverted by the facility to the reclamation system. Estimated flows may be provided if actual flow data are not available;~~

~~e. b.] Any significant industrial users defined in 9VAC25-31-10 that indirectly discharge to the wastewater treatment [facility works]; and~~

~~[d. c.] Analyses of the effluent or source water to be diverted by [the] facility to the reclamation system.~~

4. Information regarding the sewage [~~collections collection~~] system that diverts or will divert sewage to the [~~proposed~~] satellite reclamation system [to be permitted], including:

~~a. [Maximum and average flows and seasonally varying flows, if any, to be diverted by the facility to the reclamation system. Estimated flows may be provided if actual flow data is not available; The name of the sewage collection system and the owner of that system;]~~

~~b. Any significant industrial users [(SIUs)] defined in 9VAC25-31-10 that discharge [directly or indirectly] to the [same] collection line from which sewage will be diverted to the satellite reclamation system, [including excluding any downstream SIUs whose discharge has no potential to backflow to the satellite reclamation system intake. This information shall include the] location of the [significant industrial users SIUs] and distance between the [significant industrial users SIUs] and the satellite reclamation system along the sewage collection line [or lines]; and~~

~~c. [Analyses Characterization] of the sewage to be diverted [by from] the sewage collection system to the [satellite] reclamation system at the point of diversion [or representative of that point]. [Analysis of the sewage may be required where SIUs described in subdivision 4 b of this subsection discharge to the sewage collection system.]~~

5. [~~Expected reclaimed water characteristics and current and design flows of the proposed~~ Information regarding each] reclamation system or satellite reclamation system [to include to be permitted, including]:

~~a. The standards specified in 9VAC25-740-70 A to be achieved [;]~~

~~b. Any other physical, chemical, and biological characteristics and constituent concentrations that may affect the intended reuse of the reclaimed water with respect to adverse impacts to public health or the environment; and~~

~~c. [Monthly average and daily maximum flows Design flow].~~

6. Information, if applicable, regarding any type of proposed reuse not listed in this [~~regulation~~] chapter], by which the board can evaluate the need to prescribe specific reclaimed water treatment and monitoring requirements in accordance with 9VAC25-740-90 B; and

Information required for subsection B of this section may be provided by referencing [specific] information previously submitted to the board unless changes have occurred that require the submission of new or more current information.

C. Reclaimed water management (RWM) plan.

1. A RWM plan shall be submitted in support of permit applications for new or expanded reclamation systems, satellite reclamation systems or reclaimed water distribution systems that provide reclaimed water directly to an end user or end users, including an end user that is also the applicant or permittee. The RWM plan shall contain the following:

~~a. A description and map of the expected service area to be covered by the RWM plan for the term of the permit for the project (i.e., five years for a VPDES or 10 years for a VPA permit). The map shall identify all reuses according to reuse categories shown in 9VAC25-740-90 A or other categories for reuses that are or shall be authorized pursuant to 9VAC25-740-90 B, and their locations within the service area. The map shall also identify and show the location of all public potable water supply wells and springs, and public water supply intakes, within the boundaries of the service area. The description and map of the service area shall be updated by the permittee with each permit renewal. [A service area or portions of a service area shall not be covered under more than one RWM plan to avoid redundant service to the same area.]~~

~~b. A current inventory of impoundments, ponds or tanks that are used for system storage of reclaimed water and, as applicable, reject water storage under the control of the permittee, and nonsystem storage located within the service area of the RWM plan in accordance with 9VAC25-740-110 C 15.~~

~~c. A water balance that accounts for the volumes of reclaimed water to be generated, stored, reused and discharged (i.e., through a VPDES permitted outfall, back to a sewage collection system, or otherwise disposed). The water balance shall include projected volumes of [daily;] seasonal and annual reclaimed water demand for each reuse category.~~

~~d. An example of service agreements or contracts to be established by the applicant or permittee with end users regarding implementation of and compliance with the RWM plan. A service agreement or contract shall contain conditions and requirements specified in subdivisions [C 2 3] b and c of this [section subsection] and in 9VAC25-740-170 that apply to the particular planned reuse of each end user. Terms of the agreement shall require property owners to report [to the applicant or permittee] all potable and nonpotable water supply wells~~

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on their property and to comply with appropriate setback distances for wells where reclaimed water will be used on the same property. Within the agreement or contract, the applicant or permittee shall also reserve the right to terminate the agreement and withdraw service for any failure by the end user to comply with the terms and conditions of the agreement or contract if corrective action for such failure is not taken by the end user.

e. A description of monitoring of end users by the applicant or permittee to verify compliance with the terms of their agreements or contracts. Monitoring shall include, at a minimum, metering the volume of reclaimed water consumed by end users.

f. An education and notification program required in accordance with 9VAC25-740-170 A;

g. A cross-connection and backflow prevention program that:

(1) Evaluates the potential for cross-connections of the reclaimed water distribution system to a potable water system and backflow to the reclaimed water distribution system from industrial end users,

(2) Evaluates the public health risks associated with possible backflow from industrial end users, [~~and~~]

(3) Describes inspections to be performed by the applicant or permittee at the time end users connect to the reclaimed water distribution system and periodically thereafter to prevent cross-connections to a potable water system and backflow from industrial end users as determined necessary through the program evaluation [, and

(4) Insures that cross-connection and backflow prevention design criteria specified in 9VAC25-740-110 B for reclaimed water distribution systems are implemented].

A backflow prevention device shall be required on the reclaimed water service connection to an industrial end user, unless evaluation by the cross-connection and backflow prevention program determines that there is minimal risk to public health associated with possible backflow from the industrial end user or that there will be no backflow from the industrial end user capable of contaminating the reclaimed water supply.

[h. A description of how the quality of reclaimed water in the reclaimed water distribution system shall be maintained to meet the standards for the intended reuse or reuses of the reclaimed water in accordance with 9VAC25-740-90.]

[~~h. i.~~] Where the applicant or permittee is the [provider of reclaimed water, the] exclusive end user of [~~the that~~] reclaimed water [~~that is generated~~] and is not otherwise

excluded under 9VAC25-740-50 A, information for only subdivisions C 1 a, b and c of this section is required.

2. All irrigation reuses of reclaimed water shall be limited to supplemental irrigation.

[3.] Nutrient management requirements for irrigation reuse will be established in the RWM plan according to the concentration of total N and total P in the reclaimed water compared to "Biological Nutrient Removal (BNR)" as defined in 9VAC25-740-10.

a. Except as specified in subdivision [~~B-3 in 4 of~~] this [~~section~~ subsection] , a nutrient management plan (NMP) shall not be required for irrigation reuse of reclaimed water treated to achieve BNR or nutrient levels below BNR.

b. For bulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall be required of the end user.

(1) Where the applicant or permittee is the end user, the NMP shall be submitted with the RWM plan to the board and shall be the responsibility of the applicant or permittee to properly implement.

(2) Where the end user is other than the applicant or permittee, the NMP shall be required as a condition of the service agreement or contract specified in subdivision C 1 d of this section between the applicant or permittee and the end user. The end user shall be responsible for obtaining, maintaining and following a current NMP; providing a copy of the most current NMP to the applicant or permittee prior to initiating bulk irrigation reuse of reclaimed water; and providing proof of compliance with the NMP at the request of the permittee.

[~~(3) For a wastewater treatment facility required to obtain a General VPDES Watershed Permit for total N and total P discharges and nutrient trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820) and that provides wastewater or effluent for reclamation and reuse, 15 % of the annual N load and 10 % of the annual P load by bulk irrigation reuses requiring NMPs shall be considered losses to state waters and shall be reported annually as discharged total N and total P loads by the wastewater treatment facility in accordance with the General VPDES Watershed Permit.]~~

c. For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall not be required. However, the RWM plan shall describe other measures to be implemented by the applicant or permittee to manage nutrient loads by nonbulk irrigation reuse of reclaimed water not treated to achieve BNR within the service area. These shall include, but are not limited to the following:

(1) The inclusion of language in the service agreement or contract specified in subdivision C 1 d of this section,

explaining proper use of the reclaimed water by the end user for the purpose of managing nutrients;

(2) Reclaimed water metering of individual nonbulk irrigation end users;

(3) Routine distribution of literature not less than annually, to individual nonbulk irrigation end users addressing the proper use of reclaimed water for irrigation in accordance with 9VAC25-740-170 A; [and]

(4) Monthly monitoring of N and P loads by nonbulk irrigation reuses to the service area of the RWM plan based on the total monthly metered use of reclaimed water for the service area and the monthly average concentrations of total N and total P in the reclaimed water [~~and~~ .]

~~(5) For a wastewater treatment facility required to obtain a General VPDES Watershed Permit for total N and total P discharges and nutrient trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820) and that provides wastewater or effluent for reclamation and reuse, 30% of the annual N load and 20% of the annual P load by non-bulk irrigation reuses to the service area shall be considered losses to state waters and shall be reported annually as discharged total N and total P loads by the wastewater treatment facility in accordance with the General VPDES Watershed Permit.]~~

~~[3. 4.] Independent of the reclaimed water nutrient content, a NMP shall be required for a bulk irrigation reuse site where:~~

a. A wastewater treatment [~~facility works~~], [~~a~~] reclamation system, [~~or~~] satellite reclamation system [or reclaimed water distribution system] and the irrigation reuse site or sites are under common ownership or management, and

b. In addition to irrigation reuse:

(1) There is no option to dispose of the reclaimed water through a VPDES permitted discharge, or

(2) There is an option to dispose of the reclaimed water through a VPDES permitted discharge, but the VPDES permit does not allow discharge of the full nutrient load under design flow (e.g., a treatment [~~facility works~~] with a VPDES permitted discharge implements water reclamation and reuse in lieu of providing treatment to meet nutrient effluent limits at design flow).

The NMP shall be approved by the DCR and submitted with the RWM plan to the board. The applicant or permittee shall be responsible for proper implementation of the NMP.

[~~4. 5.] If required for a specific irrigation reuse, the NMP shall be prepared by a nutrient management planner certified by the DCR and shall be maintained current in accordance with the Nutrient Management Training and Certification Regulations, 4VAC5-15. A copy of the NMP for each irrigation reuse site shall be maintained at the site or at a location central to all sites covered by the plan. Another copy shall be provided to and retained by the applicant or permittee.~~

[~~5. 6.] A site plan is required for each bulk irrigation reuse site, displayed on the most current USGS topographic maps (7.5 minutes series, where available) and showing the following:~~

- a. The boundaries of the irrigation site;
- b. The location of all potable and nonpotable water supply wells and springs, public water supply intakes, occupied dwellings, property lines, areas accessible to the public, outdoor eating, drinking and bathing facilities; surface waters, including wetlands; limestone rock outcrops and sinkholes within 250 feet of the irrigation site; and
- c. Setbacks areas around the irrigation site in accordance with 9VAC25-740-170.

Where expansion of an existing irrigation site is anticipated, the same information shall be provided for the area of proposed expansion.

[~~6. 7.] The site plan for a bulk irrigation reuse site shall be prepared by:~~

- a. The applicant or permittee for submission with the RWM plan to the board when the irrigation site is under common ownership or management with a wastewater treatment [~~facility works~~], a reclamation system or satellite reclamation system from which it receives reclaimed water for irrigation; or
- b. The bulk irrigation end user for submission with the service agreement or contract between the end user and the applicant or permittee when the irrigation site is not under common ownership or management with a wastewater treatment [~~facility works~~], a reclamation system or satellite reclamation system from which it receives reclaimed water for irrigation.

[~~7. 8.] For the addition of new end users not contained in the original RWM plan submitted with the application for a permit, the permittee shall submit to the board an amendment to the RWM plan identifying new end users not less than 30 days prior to connection and reclaimed water service to these users. For each new end user, the permittee shall also provide all applicable information required by subsection C of this section. Amendment of the RWM plan for the addition of new end users after the~~

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issuance or reissuance of the permit shall not be considered a modification of the permit [unless the new end users will require the addition of different reclaimed water standards, monitoring requirements and conditions not contained in the permit].

EDITOR'S NOTE: The State Water Control Board deferred action on 9VAC25-740-105; therefore, this section will not become effective on October 1, 2008. The text of this section was originally proposed in 9VAC25-740-100 C (see 23:24 VA.R. August 6, 2007).

[9VAC25-740-105. Reporting of discharged total N and total P by treatment works subject to 9VAC25-820.

A wastewater treatment works required to have a General VPDES Watershed Permit in accordance with 9VAC25-820 that provides wastewater or effluent for reclamation and reuse, shall report total N and total P loads from irrigation reuses of reclaimed water not treated to achieve BNR as follows:

1. For bulk irrigation reuses, 15% of the annual N load and 10% of the annual P load shall be considered lost to state waters and shall be reported annually as discharged total N and total P loads by the wastewater treatment works through the General VPDES Watershed Permit.

2. For nonbulk irrigation reuses within the service area, 30% of the annual N load and 20% of the annual P load shall be considered lost to state waters and shall be reported annually as discharged total N and total P loads by the wastewater treatment works through the General VPDES Watershed Permit.]

9VAC25-740-110. Design criteria.

A. Reclamation system. The design of systems for the reclamation of municipal wastewater or the effluent derived from a municipal wastewater treatment [facility works] shall adhere to the standards of design and construction specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and other applicable engineering standards and regulations. Design standards for reclamation systems of industrial wastewater or the effluent derived from an industrial wastewater treatment [facility works] shall be determined and evaluated on a case-by-case basis.

B. Reclaimed water distribution system.

1. All reclaimed water distribution systems shall be designed and constructed in accordance with this [regulation chapter] and applicable sections of the Sewage Collection and Treatment Regulations (9VAC25-790) pertaining to force mains, so that:

a. Reclaimed water does not come into contact with or otherwise contaminate a potable water system;

b. The structural integrity of the system is provided and maintained; and

c. The capability for inspection, maintenance, and testing is maintained.

2. For a reclaimed water distribution system, the following shall be implemented as part of the cross-connection and backflow prevention program submitted with the RWM plan:

a. There shall be no direct cross-connections between the reclaimed water distribution system and a potable water supply system.

b. The reclaimed water distribution system shall be in compliance with the cross connection control and backflow prevention requirements of Article 3 (12VAC590-580 et seq.) of Part II of the Commonwealth of Virginia Waterworks Regulations, the Virginia Statewide Building Code, and local building and plumbing codes.

c. Potable water may be used to supplement reclaimed water for a reuse, provided there is an air gap separation of at least eight inches between the potable water and the reclaimed water or a reduced pressure principle backflow prevention device installed at the potable water service connection to the reuse. The installation of the reduced pressure principal backflow prevention device shall allow for proper inspection and testing of the device.

d. Reclaimed water shall not be returned to the reclaimed water distribution system after the reclaimed water has been delivered to an end user.

3. In-ground reclaimed water distribution pipelines shall be installed and maintained to achieve minimum separation distance and configurations as follows:

a. No reclaimed water distribution pipeline shall pass within 50 feet of a potable water supply well, potable water supply spring or water supply intake that are part of a regulated waterworks. The same separation distance shall be required between a reclaimed water distribution pipeline and a nonpublic or private potable water supply well or spring, but may be reduced to not less than 35 feet provided special construction and pipe materials are used to obtain adequate protection of the potable water supply.

b. Reclaimed water distribution pipeline shall be separated horizontally by at least 10 feet from a water main. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the water main is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the water main is at least 18 inches above the top of the reclaimed water distribution pipeline. Where this vertical separation cannot be obtained, the reclaimed water

distribution pipeline shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

c. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer line. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the sewer line is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the reclaimed water distribution pipeline is at least 18 inches above the top of the sewer line. Where this vertical separation cannot be obtained, either the reclaimed water distribution pipeline or the sewer line shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

d. Reclaimed water distribution pipeline shall cross under water main such that the top of the reclaimed water distribution pipeline is at least 18 inches below the bottom of the water main. When local conditions prohibit this vertical separation, the reclaimed water distribution pipeline shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where reclaimed water distribution pipeline crosses over water main, the reclaimed water distribution pipeline shall:

(1) Be laid to provide a separation of at least 18 inches between the bottom of the reclaimed water distribution pipeline and the top of the water main.

(2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).

(3) Have adequate structural support to prevent damage to the water main.

(4) Have joints placed equidistant and as far as possible from the water main joints.

e. Sewer line shall cross under distribution pipeline that conveys Level 1 reclaimed water such that the top of the sewer line is at least 18 inches below the bottom of the reclaimed water distribution pipeline. When local conditions prohibit this vertical separation, the sewer line shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where sewer line crosses over distribution pipeline that conveys Level 1 reclaimed water, the sewer line shall:

(1) Be laid to provide a separation of at least 18 inches between the bottom of the sewer line and the top of the reclaimed water distribution pipeline.

(2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).

(3) Have adequate structural support to prevent damage to the reclaimed water distribution pipeline.

(4) Have joints placed equidistant and as far as possible from the reclaimed water distribution pipeline joints.

f. No reclaimed water distribution pipeline shall pass through or come into contact with any part of a sewer manhole. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer manhole whenever possible. The distance shall be measured from the edge of the pipe to the edge of the manhole structure. When local conditions prohibit this horizontal separation, the manhole shall be of watertight construction and tested in place.

4. No setback distance is required to any nonpotable water supply well and no vertical or horizontal separation distances are required between above-ground reclaimed water pipelines and potable water, sewer or wastewater pipelines.

5. All reclaimed water outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel. Public access to reclaimed water outlets shall be controlled in areas where reclaimed water outlets are accessible to the public as follows:

a. If quick connection couplers are used on above-ground portions of the reclaimed water distribution system, they shall differ materially from those used on the potable water supply.

b. Use of above-ground hose bibs, spigots or other hand-operated connections that are standard on local potable

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water distribution systems shall be prohibited for use on the local reclaimed water distribution system. If above-ground hose bibs, spigots or other hand-operated connections are used on the reclaimed water distribution system, they must differ materially from those used on the local potable water distribution system and must be clearly distinguishable as reclaimed water connections (i.e., painted purple, valve operation with a special tool) so as not to be mistaken for potable water connections. Where below-grade vaults are used to house reclaimed water connections, the connections in the vault may have standard potable water distribution system thread and bib size services provided the bib valves can be operated only by a special tool. The below-grade vaults shall also be labeled as being part of the reclaimed water distribution system (i.e., painted purple, labeled).

6. Existing potable water, sewer and wastewater pipelines may be converted for use as reclaimed water distribution pipelines. The following information shall be submitted to the board for approval of the conversion:

- a. The location and identification of the facilities to be converted;
- b. The location of all connections to the facilities to be converted;
- c. A description of measures to be taken to ensure that existing connections will be eliminated;
- d. Description of procedures to be used to ensure that all connections and cross-connections shall be eliminated. This may include physical inspections, dye testing, or other testing procedures;
- e. Description of marking, signing, labeling, or color coding to be used to identify the converted facility as a reclaimed water transmission facility;
- f. Description of cleaning and disinfection procedures to be followed before the converted facilities will be placed into operation for reclaimed water distribution;
- g. Assessment of the physical condition and integrity of facilities to be converted; and
- h. Reasonable assurance that cross-connections will not result, public health will be protected, and the integrity of potable water, wastewater, and reclaimed water systems will be maintained when the conversion is made.

7. Tank trucks may be used to transport and distribute reclaimed water only if the following requirements are met:

- a. The truck is not used to transport potable water that is used for drinking water or food preparation;
- b. The truck is not used to transport waters or other fluids that do not meet the requirements of this [~~regulation~~

chapter], unless the tank has been evacuated and properly cleaned prior to the addition of the reclaimed water:

- c. The truck is not filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply; and
- d. The reclaimed water contents of the truck are clearly identified as nonpotable water on the truck.

8. Reclaimed water distribution systems shall have the following identification, notification and signage:

a. All reclaimed water piping shall have the words "CAUTION: RECLAIMED WATER - DO NOT DRINK" embossed, integrally stamped, or otherwise affixed to the piping, and shall be identified by one or more of the following methods:

(1) Painting the piping purple (Pantone 522) and stamping the piping with the required caution statement on opposite sides of the pipe, repeated at intervals of three feet or less.

(2) Using stenciled pipe with two- to three-inch letters on opposite sides of the pipe, placed at intervals of three to four feet. For pipes less than two inches in diameter, lettering shall be at least 5/8 inch, placed on opposite sides of the pipe, and repeated at intervals of one foot.

(3) Wrapping the piping with purple (Pantone 522) polyethylene vinyl wrap or adhesive tape, placed longitudinally at three-foot intervals. The width of the wrap or tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.

(4) Permanently affixing purple (Pantone 522) vinyl adhesive tape on top of the piping, parallel to the axis of the pipe, fastened at least every 10 feet to each pipe section, and continuously for the entire length of the piping. The tape shall display the required caution statement in either white or black lettering.

b. All visible, above-ground portions of the reclaimed water distribution system including reclaimed water piping, valves, outlets (including fire hydrants) and other appurtenances shall be colored coded, taped, labeled, tagged or otherwise marked to notify the public and employees that the source of the water is reclaimed water, not intended for drinking or food preparation. For reclaimed water treated to Level 2, such notification shall also inform employees to practice good personal hygiene for incidental contact with reclaimed water and the public to avoid contact with the reclaimed water.

c. Each mechanical appurtenance of a reclaimed water distribution system shall be colored purple and legibly marked "RECLAIMED WATER" to identify it as a part

of the reclaimed water distribution system and to distinguish it from mechanical appurtenances of a potable water distribution system or a wastewater collection system.

d. Existing underground distribution or collection pipelines and appurtenances retrofitted for the purpose of distributing reclaimed water shall be colored coded, taped, labeled, tagged or otherwise identified as described in subdivisions 8 a, b and c of this subsection. This identification need not extend the entire length of the retrofitted reclaimed water distribution system but is required within 10 feet of locations where the distribution system crosses a potable water supply line or sanitary sewer line.

e. Valve boxes for reclaimed water distribution systems shall be painted purple. Valve covers for reclaimed water distribution lines shall not be interchangeable with potable water supply valve covers.

9. All reclaimed water distribution systems shall be maintained to minimize losses and to ensure safe and reliable conveyance of reclaimed water such that the reclaimed water will not be degraded below the standards required for the intended reuse or reuses in accordance with 9VAC25-740-90.

C. Storage requirements.

1. To ensure reliable reclamation system operation in accordance with the requirements of this [~~regulation~~ chapter], all reclamation systems shall have the ability to implement one or more of the following options:

a. Store reclaimed water.

b. Discharge reclaimed water to another permitted reuse system, if applicable;

c. Discharge reclaimed water to surface waters of the state under a VPDES permit;

d. Suspend all or a portion of water reclamation for planned periods; or

e. In the case of a satellite reclamation system, discharge reclaimed water into the sewage collection system from which it received water for reclamation.

2. Storage for reclaimed water shall be required only when subdivision 1 b, c, or d of this subsection or, as applicable, subdivision 1 e of this subsection are not available or approved by the board.

3. Separate, off-line storage shall be provided for reject water of the reclamation system unless the reject water can be diverted to another permitted reuse system, discharged to surface waters of the state under a VPDES permit, returned directly to an appropriate point of treatment in the reclamation system, or in the case of a satellite reclamation

system, sent to the sewage collection system from which the reclamation system received water for reclamation. Where reject water is stored, provisions shall be incorporated into the design of the reclamation system to distribute the reject water from storage to other parts of the reclamation system for additional or repeated treatment.

4. Storage for reject water may also be used for emergency storage to ensure Class I reliability of the reclamation system in accordance with 9VAC25-740-130.

5. Reject water and reclaimed water may be stored in water-tight tanks placed above-ground or in-ground. Labeling of tanks used for reject water storage, system storage or nonsystem storage shall be in accordance with 9VAC25-740-160 B, and shall, at a minimum, identify the contents of each tank as either reject water or reclaimed water.

6. For all impoundments or ponds that are used for reject water storage or system storage, with the exception of impoundments and ponds specified in subdivision 7 of this subsection, the following are required:

a. A minimum two-foot freeboard shall be maintained at all times. Any emergency discharge or overflow device and the disposition of the overflow discharge shall be identified in the engineering report.

b. There shall be a minimum two-foot separation distance between the bottom of the impoundment or pond and the seasonal high water [table].

c. The impoundment or pond shall have a properly designed and installed synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness. Synthetic liners shall be installed in accordance with the manufacturer's specifications and recommendations. The soil liner shall be composed of separate lifts not to exceed six inches. The maximum coefficient of permeability for the synthetic and soil liners shall not exceed 1×10^{-6} cm/sec and 1×10^{-7} cm/sec, respectively. A plan of quality assurance and quality control which substantiates the adequacy of the liner and its installation shall be included in or shall accompany the preliminary engineering report or supporting documentation for the CTC. Documentation of quality assurance and quality control activities on liner installation along with permeability test results, shall be submitted with the statement of construction completion to the board.

d. If the requirements of subdivision 6 b or c of this subsection cannot be met, the board may allow use of the impoundment or pond for storage provided that a groundwater monitoring plan for the facility is submitted to the board for review and approval. The plan shall identify the direction of groundwater flow and the

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proposed location and depth of groundwater monitoring wells at the location of the impoundment or pond, parameters to be monitored, a monitoring schedule, and procedures for proper sample collection and handling.

e. The design of the impoundment or pond shall prevent the entry of surface water or storm water runoff from outside the facility embankment or berm.

f. Where the embankment of the impoundment or pond is composed of soil, the embankment shall have:

(1) A top width of at least five feet,

(2) Interior and exterior slopes no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are used,

(3) Shallow-rooted vegetative cover or other soil stabilization to prevent erosion, and

(4) Erosion stops and water seals installed on all piping that penetrates the embankment.

g. There shall be routine maintenance of the impoundment or pond liner, embankments and access areas.

h. Impoundments and ponds shall be sited to avoid areas of uneven subsidence, sinkholes, or unstable soils unless provisions are made for their correction. Results from field and laboratory tests from an adequate number of test borings and soil samples shall be the basis for computations pertaining to permeability and stability analyses.

i. Impoundments or ponds shall not be located on a floodplain unless protected from inundation or damage by a 100-year frequency flood event.

j. There shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water or reject water.

7. Reject water storage and system storage impoundments or ponds that exist upon [~~the effective date of this regulation~~ October 1, 2008,] shall be exempt from the design, construction, and operation requirements specified in subdivision 6 of this subsection until such time these facilities are modified or expanded, or unless they have failed to comply with other existing regulatory or permitting requirements.

8. The capacity of reject water storage and system storage facilities, including impoundments, ponds or tanks, shall be as follows:

a. For reject water, the capacity of the storage facility shall, at a minimum, be the volume equal to the average

daily permitted flow of the reclamation system unless other options exist for immediate disposal or retreatment of the reject water in addition to storage.

b. For reclaimed water, the capacity of the storage facility shall be determined by the seasonal variability in demand, intended reuses with intermittent, variable demand, such as fire protection or fighting; and the availability of other options to generate or manage reclaimed water as specified in subdivision 1 of this subsection.

(1) Where there is no or minimal seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water, the capacity of the storage facility shall, at a minimum, be the volume equal to three times that portion of reclaimed water average daily flow for which no other options to generate or manage the reclaimed water are permitted.

(2) Where there is seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water during periods of low seasonal demand, storage facilities shall have sufficient storage capacity to assure the retention of the reclaimed water under conditions and circumstances that preclude reuse. The methods, assumptions and calculations used to determine the system storage requirements shall be provided and justified in the preliminary engineering report or supporting documentation for the CTC. Analytical means of determining system storage requirements, such as water balance calculations or computer hydrological programs, shall be used and shall account for all water inputs into the system. Analysis shall be based on site-specific data. Irrigation efficiencies or rainfall efficiencies shall not be used in storage volume determinations.

9. Requirements specified in subdivision 6 of this subsection shall not apply to lakes, impoundments or ponds used for nonsystem storage with the exception of those specified in subdivision 11 of this subsection.

10. Landscape impoundments may also be used for nonsystem storage of reclaimed water prior to another subsequent reuse, such as irrigation.

11. Impoundments or ponds used for nonsystem storage of reclaimed water, including landscape impoundments, for subsequent irrigation reuse on sites under common ownership or management with the reclamation system or satellite reclamation system that provides reclaimed water to the sites, shall comply with the design, construction and operation requirements specified in subdivision 6 of this subsection.

12. For lakes, impoundments or ponds used for nonsystem storage of reclaimed water, the following setback distances shall apply:

a. There shall be a 50-foot minimum setback distance measured horizontally from the perimeter of the lake, impoundment or pond to property lines.

b. For an impoundment or pond with a liner meeting the requirements specified in subdivision 6 c of this subsection, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water.

c. For an unlined impoundment or pond, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 200 feet for storage of Level 1 reclaimed water and 400 feet for storage of Level 2 reclaimed water.

13. Where more than one setback distance applies to storage for reclaimed water or reject water, the greater setback distance shall govern.

14. All storage facilities, including landscape impoundments used for nonsystem storage, shall be designed and operated to prevent a discharge to surface waters of the state except in the event of a storm greater than the 25-year 24-hour storm.

15. Permittees shall maintain current inventories of reject water storage, system storage and nonsystem storage facilities located within the service area of the RWM plan. An inventory or a revised inventory shall be submitted as part of the RWM plan in the permit application. For the addition of new storage facilities to an inventory after permit issuance, the permittee shall submit to the board an amended inventory at least 30 days before reclaimed water will be introduced into the new storage facilities. An inventory of reject water storage, system storage and nonsystem storage facilities shall include the following:

- a. Name or identifier for each storage facility,
- b. Location of each storage facility ([including] latitude and longitude),
- c. Function of each storage facility (i.e., reject water storage, system storage or nonsystem storage),
- d. Type of each storage facility (i.e., covered tank, uncovered tank, lined pond, unlined pond, etc.), and
- e. Location (latitude and longitude) and distance of the nearest potable water supply well and spring, and public

water supply intake, to each storage facility within 450 feet of that facility.

16. Storage requirements as specified in this subsection shall not apply to reclaimed water storage facilities provided at the site of an industrial end user [~~These facilities shall be subject to regulation under the end user's industrial wastewater permit where such facilities are regulated by an existing water permit issued by the board to the industrial end user, or the industrial end user is also the generator of reclaimed water stored in the facilities and is excluded under 9VAC25-740-50 A~~].

9VAC25-740-120. Construction requirements.

A. Preliminary engineering report. A preliminary engineering report shall be submitted for new water reclamation projects and for modification or expansion of existing reclamation systems, satellite reclamation systems and reclaimed water distributions systems. At the request of the applicant or permittee, the board may waive the need for a preliminary engineering report or portions of a preliminary engineering report for modification or expansion of an existing reclamation system, satellite reclamation system or reclaimed water distributions system based on the scope of the proposed project.

B. Certificate to construct and certificate to operate.

1. No owner shall cause or allow the construction, expansion or modification of a reclamation system or satellite reclamation system except in compliance with a certificate to construct (CTC) from the board unless otherwise provided for by this [~~regulation~~ chapter]. Furthermore, no owner shall cause or allow any reclamation system or satellite reclamation system to be operated except in compliance with a certificate to operate (CTO) issued by the board, which authorizes the operation of the reclamation system or satellite reclamation system unless otherwise provided for by this [~~regulation~~ chapter]. The need for a CTC and CTO for modifications shall be determined by the board on a case-by-case basis. Conditions may be imposed on the issuance of any CTC or CTO, and no reclamation system or satellite reclamation system may be constructed, modified, or operated in violation of these conditions.

2. CTC.

a. Upon approval of the proposed design by the board, including any submitted plans and specifications, if required, the board will issue a CTC to the owner of such approval to construct or modify his reclamation system or satellite reclamation system in accordance with the approved plans and specifications.

b. Any deviations from the approved design or the submitted plans and specifications significantly affecting hydraulic conditions (flow profile), unit operations

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capacity, the functioning of the reclamation system or satellite reclamation system, or the quality of the reclaimed water, must be approved by the board before any such changes are made.

3. CTO.

a. Upon completion of the construction or modification of the reclamation system or satellite reclamation system, the owner shall submit to the board a Statement of Construction Completion signed by a licensed professional engineer stating that the construction work has been completed in accordance with the approved plans and specifications, or revised only in accordance with subdivision 2 b of this subsection. This statement shall be based upon inspections of the reclamation system or satellite reclamation system during and after construction or modifications that are adequate to ensure the truth of the statement.

b. Upon receipt of the construction completion statement, the board may issue a final CTO. However, the board may delay the granting of the CTO pending inspection, or satisfactory evaluation of reclaimed water test results, to ensure that the work has been satisfactorily completed.

c. A conditional CTO may be issued specifying final approval conditions, with specific time periods for completion of unfinished work, revisions to the operations and maintenance manual, or other appropriate items. The board may issue a conditional CTO to owners of a reclamation system or satellite reclamation system for which the required information for completion of construction has not been received. Such CTOs will contain appropriate conditions requiring the completion of any unfinished or incomplete work including subsequent submission of the statement of completion of construction.

d. Consideration will be given to issuance of an interim CTO to individual unit operations of the treatment system so as to allow utilization of these unit operations prior to completion of the total project. A final CTO shall be issued upon verification that the requirements of this [~~regulation~~ chapter] have been complied with.

e. Within 30 days after placing a new or modified reclamation system or satellite reclamation system into operation, the reclaimed water produced should be sampled and tested in a manner sufficient to demonstrate compliance with approved specifications and permit requirements. The board shall be notified of the time and place of the tests, and shall be sent the results of the tests for evaluation as part of the final CTO.

f. Within 90 days of placing the new or modified reclamation system or satellite reclamation system into operation, the owner shall submit a new or revised operations and maintenance manual for the water

reclamation system, satellite reclamation system, or both, as applicable, to be covered by the same permit. The manual shall contain information as specified in 9VAC25-740-140.

g. The board may amend or reissue a CTO where there is a change in the manner of treatment or the source of water that is reclaimed at the permitted location, or for any other cause incidental to the protection of the public health and welfare, provided notice is given to the owner.

9VAC25-740-130. Operator requirements and system reliability.

A. Operator requirements. In accordance with the Virginia Board for Waterworks and Wastewater Works Operators Regulations (18VAC160-20), each reclamation system shall be assigned a classification based on the treatment processes used to reclaim water and the design capacity of the facility. The classification of both the reclamation system and the operator in responsible charge shall be the same as that specified in the Sewage Collection and Treatment Regulations (9VAC25-790) for sewage treatment works with similar treatment processes and design capacities. The reclamation system shall be manned while in operation and under the supervision of the operator in responsible charge unless the system is equipped with remote monitoring and, as applicable, automated diversion of substandard or reject water in accordance with 9VAC25-740-70 C 1 a.

B. Class I reliability as defined in 9VAC25-740-10 is required for Level 1 reclamation systems and satellite reclamation systems unless there is a permitted alternate treatment or discharge system available that has sufficient capacity to handle any reclaimed water flows that do not meet the reclaimed water standards of this [~~regulation~~ chapter] or performance criteria established in the operations and maintenance manual.

C. For independent reclamation systems and systems consisting of an industrial wastewater treatment [~~facility~~ works] and reclamation system, the applicability of Class I reliability requirements as specified in the Sewage Collection and Treatment Regulations (9VAC25-790), shall be determined by the board for each proposed or existing system.

D. The board may approve alternative measures to achieve Class I reliability specified in the Sewage Collection and Treatment Regulations (9VAC25-790) if the applicant or permittee can demonstrate in the engineering report, using accepted and appropriate engineering principles and practices, that the alternative measures will achieve a level of reliability equivalent to Class I reliability.

9VAC25-740-140. Operations and maintenance.

A. The permittee shall develop and submit to the board an operations and maintenance manual in accordance with

9VAC25-740-120 B 3 f for each reclamation system, satellite reclamation system, [reclaimed water distribution system,] or [any] combination of these facilities covered by the same permit. The permittee shall maintain the manual and any changes in the practices and procedures followed by the permittee shall be documented and submitted to the board within 90 days of the effective date of the changes.

[B. For each reclaimed water distribution system, the permittee shall develop an operations and maintenance manual to be made available at a location central to the system. The permittee shall maintain the manual and include any changes in the practices and procedures followed by the permittee in the manual. The operations and maintenance manual for a reclaimed water distribution system may be included in the operations and maintenance manual described in subsection A of this section where the reclaimed water distribution system and a reclamation system or satellite reclamation system, or all these facilities are covered by the same permit.]

[~~B. C.~~ For a reclamation system authorized under the permit of a wastewater treatment [facility works] that provides flow to the reclamation system, the operations and maintenance manual of the reclamation system may be made a part of the operations and maintenance manual for the wastewater treatment [facility works].

[~~C. D.~~] The operations and maintenance manual is a set of detailed instructions developed to facilitate the operator's understanding of operational constraints and maintenance requirements for the reclamation system, satellite reclamation system or reclaimed water distribution system; and the monitoring and reporting requirements specified in the permit issued for each system. The scope and content of the manual will be determined by the complexity of the system or systems described by the manual.

1. For a reclamation system or satellite reclamation system, the operations and maintenance manual shall, at a minimum, contain the following:

- a. A description of unit treatment processes within the reclamation system or satellite reclamation system and step-by-step instructions for the operation of these processes;
- b. Routine maintenance and schedules of maintenance for each unit treatment process in the system;
- c. The criteria used to make continuous determinations of the acceptability of the reclaimed water being produced and shall include set points for parameters measured by continuous on-line monitoring equipment;
- d. Descriptions of sampling and monitoring procedures and record keeping that comply with the requirements of this [regulation chapter] and any applicable permit conditions;

e. The physical steps and procedures to be followed by the operator when substandard water is being produced, including resampling and operational review in accordance with 9VAC25-740-70 C;

f. The physical steps and procedures to be followed by the operator when the treatment [facility works] returns to normal operation and acceptable quality reclaimed water is again being produced;

g. Procedures to be followed during a period when an operator is not present at the treatment [facility works];

h. Information necessary for the proper management of sludge or residuals from reclamation treatment that is not specifically requested in the application for a VPDES or VPA permit; and

i. A contingency plan to eliminate or minimize the potential for untreated or inadequately treated water to be delivered to reuse areas. The plan shall, as applicable, reference and coordinate with the education and notification program specified in 9VAC25-740-170 A for any release of untreated or inadequately treated water to the reclaimed water distribution system.

2. For a reclaimed water distribution system, the operations and maintenance manual shall, at a minimum, contain the following:

- a. A description of all components within the distribution system and step-by-step instructions for the operation of specific mechanical components;
- b. Routine and unplanned inspection of the distribution system, including required inspections for the cross-connection and backflow prevention program as specified in 9VAC25-740-100 [B C] 1 g;
- c. Routine maintenance and schedules of maintenance for all components of the distribution system. Maintenance shall include, but is not be limited to, initial and routine flushing of the distribution system, measures to prevent or minimize corrosion, fouling and clogging of distribution lines; and detection and repair of broken distribution lines, flow meters or pumping equipment; and
- d. Procedures to handle and dispose of any wastes or wastewater generated by maintenance of the distribution system in a manner protective of the environment.

[~~D. E.~~] The permittee shall review and revise the operations and maintenance manual, as needed and appropriate, to ensure that the manual contains procedures and criteria addressing the requirements of subsection [C D] of this section for satisfactory system performance. Any revision to the manual shall be reviewed and approved by the board.

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[E. F.] The permittee of a reclamation system, satellite reclamation system, or reclaimed water distribution system shall be responsible for making the facility protective of the environment and public health at all times, including periods of inactivation or closure. Included in the operations and maintenance manual for the reclamation system, satellite reclamation system, or reclaimed water distribution system, the permittee shall submit a plan for inactivation or closure of the facility, specifying what steps will be taken to protect the environment and public health.

[F. G.] Where a reclamation system or satellite reclamation system and a bulk irrigation reuse site or sites are under common ownership or management, the operations and maintenance manual for the reclamation system or satellite reclamation system shall include the following:

1. Measurements and calculations used to determine supplemental irrigation rates of reclaimed water for the irrigation reuse sites,
2. Operating procedures of the irrigation system,
3. Routine maintenance required for the continued design performance of the irrigation system and reuse sites,
4. Identification and routine maintenance of reclaimed water storage facilities dedicated to bulk irrigation reuse,
5. Schedules for harvesting and crop removal at the irrigation reuse sites,
6. An inventory of spare parts to be maintained for the irrigation system, and
7. Any other information essential to the operation of the irrigation system and reuse sites in accordance with the requirements of this [~~regulation~~ chapter].

9VAC25-740-150. Management of pollutants from significant industrial users.

A. A reclamation system that receives effluent from a wastewater treatment [~~facility~~ works] having significant industrial users (SIUs) as defined by the VPDES Permit Regulation (9VAC25-31-10), shall not be permitted to produce reclaimed water treated to Level 1 or for reuse in areas accessible to the public or where human contact with the reclaimed water is likely, unless the wastewater treatment [~~facility~~ works] providing effluent to the reclamation system is:

1. A publicly owned treatment works (POTW) as defined in the VPDES Permit Regulation (9VAC25-31-10), that has a pretreatment program developed, approved and maintained in accordance with Part VII of the VPDES Permit Regulation (9VAC25-31-730 through 9VAC25-31-900); or
2. Any other POTW or privately owned treatment works as defined in the VPDES Permit Regulation (9VAC 25-31-

10), with either a VPA or VPDES permit that has developed a program to manage pollutants of concern discharged by SIUs, equivalent to a pretreatment program required in the VPDES Permit Regulation for qualifying POTWs.

B. The permittee of a reclamation system authorized to produce reclaimed water treated to Level 1 or for reuse in areas accessible to the public or where human contact is likely, shall establish a contractual agreement with all wastewater treatment [~~facilities~~ works] providing effluent or source water to the reclamation system. The purpose of the contractual agreement shall be to ensure that reclaimed water discharged from the reclamation system is safe for use in areas accessible to the public or where human contact is likely. Prior to execution of the contractual agreement, a draft copy of the contract agreement shall be provided to the Board for review and approval. A contractual agreement will not be required where the permittee of the reclamation system is also the permittee of the wastewater treatment system that provides effluent or source water to the reclamation system.

9VAC25-740-160. Access control and advisory signs.

A. There shall be no uncontrolled public access to reclamation systems, satellite reclamation systems and system storage facilities. Access to any wastewater treatment [~~facility~~ works] directly associated with a reclamation system or satellite reclamation system shall be controlled in accordance with the Sewage, Collection and Treatment Regulations (9VAC25-790). System storage ponds shall be enclosed with a fence or otherwise designed with appropriate features to discourage the entry of animals and unauthorized persons.

B. Where advisory signs or placards are required as described in subsections C and D of this section, each sign shall state, at a minimum, "CAUTION: RECLAIMED WATER – DO NOT DRINK" and have the equivalent standard international symbol for non potable water. The size of the sign and lettering used shall be such that it can be easily read by a person with normal vision at a distance of 50 feet. Alternate signage and wording that assures an equivalent degree of public notification and protection may be accepted by the board.

C. For all reuses of reclaimed water treated to Level 2, public access shall be restricted and advisory signs shall be posted around reuse areas or reuse site boundaries. The advisory signs shall additionally state the nature of the reuse and no trespassing. Fencing around the site boundary is not required.

D. Advisory signs or placards for all reuses of reclaimed water treated to Level 1 shall be posted within and at the boundaries of reuse areas. The advisory signs or placards shall additionally state the nature of the reuse. Examples of some notification methods that may be used by permittees

include posting advisory signs at entrances to residential neighborhoods where reclaimed water is used for landscape irrigation and posting advisory signs at the entrance to a golf course and at the first and tenth tees.

E. Advisory signs shall be posted adjacent to impoundments or ponds, including landscape impoundments, used for nonsystem storage of reclaimed water.

F. For industrial reuses, advisory signs shall be posted around those areas of the industrial site where reclaimed water is used and at the main entrances to the industrial site to notify employees and the visiting public of the reclaimed water reuse. Access control beyond what is normally provided by the industry is not required.

9VAC25-740-170. Use area requirements.

A. Education and notification program. An education and notification program (program) shall be developed and submitted with the RWM Plan for reuses that require Level 1 reclaimed water, will be in areas accessible to the public, or are likely to have human contact. The program shall be the responsibility of the permittee to implement.

1. Education. The purpose of the education component of the program is to ensure that end users and the public likely to have contact with reclaimed water are informed of the origin, nature, and characteristics of the reclaimed water; the manner in which the reclaimed water can be used safely; and uses for which the reclaimed water is prohibited or limited. The program shall describe all modes of communication to be used to educate and inform, including, but not limited to, meetings, distribution of written information, the news media (i.e., news papers, radio, television or the internet), and advisory signs as described in 9VAC25-740-160. Program education for individual end users shall be at the time of their initial connection to the reclaimed water distribution system and may be provided in the service agreement or contract with the permittee established in accordance with 9VAC25-740-100 [~~B~~ C] 1 d. For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, education of individual end users shall be, at a minimum, annually after the reclaimed water distribution system is placed into operation.

2. Notification. The notification component of the program shall contain procedures to notify end users and the affected public of treatment failures at the reclamation system that can adversely impact human health, or result in loss of reclaimed water service. Where treatment of the reclaimed water fails more than once during a seven-day period to comply with Level 1 disinfection or other standards developed in accordance with 9VAC25-740-70 D or 9VAC25-740-70 E for the protection of human health, and the non-compliant reclaimed water has been discharged to the reclaimed water distribution system, the

permittee shall notify the end user of the treatment failures and advise the end user of precautions to be taken to protect public health when using the reclaimed water in areas accessible to the public or where human contact with the reclaimed water is likely. These precautions shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the treatment failure. Where reclaimed water service to end users will be interrupted due to planned causes, such as scheduled repairs, the permittee shall provide advance notice to end users of the anticipated date and duration of the interrupted service. Where reclaimed water service to end users is disrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify end users and the affected public of the disrupted service if it can not or will not be restored within eight hours of discovery.

B. Reclaimed water shall be used in a manner that is consistent with this [~~regulation~~ chapter] and with the conditions of the VPDES or VPA permit, such that public health and the environment shall be protected.

C. Reclaimed water delivered to end users shall be of acceptable quality for the intended reuses at the point of delivery to end users.

D. There shall be no nuisance conditions resulting from the distribution, use, or storage of reclaimed water.

E. For all irrigation reuses of reclaimed water, the following shall be required:

1. There shall be no application of reclaimed water to the ground when it is saturated, frozen or covered with ice or snow, and during periods of rainfall.

2. The chosen method of irrigation shall minimize human contact with the reclaimed water.

3. Reclaimed water shall be prevented from coming into contact with drinking fountains, water coolers, or eating surfaces.

F. For bulk irrigation reuse of reclaimed water, the following shall be required:

1. Irrigation systems shall be designed, installed and adjusted to:

a. Provide uniform distribution of the reclaimed water over the irrigation site,

b. Prevent ponding or pooling of reclaimed water at the irrigation site,

c. Facilitate maintenance and harvesting of irrigated areas and precludes damage to the irrigation system from the use of maintenance or harvesting equipment,

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d. Prevent aerosol carry-over from the irrigation site to areas beyond the setback distances described in subsection H of this section, and

e. Prevent clogging from algae or suspended solids.

2. All pipes, pumps, valve boxes and outlets of the irrigation system shall be designed, installed, and identified in accordance with 9VAC25-740-110 B.

3. Any reclaimed water runoff shall be confined to the irrigation reuse site unless authorized by the board.

G. Overspray of surface waters, including wetlands, from irrigation or other reuses of reclaimed water is prohibited.

H. Setback distances for irrigation reuses of reclaimed water.

1. For sites irrigated with reclaimed water treated to Level 1, the following setback distances are required:

a. Potable water supply wells and springs, and public water supply intakes - 100 feet

b. Nonpotable water supply wells - 10 feet

c. Limestone rock outcrops and sinkholes - 50 feet

2. For sites irrigated with reclaimed water treated to Level 1, no setback distances are required [~~to~~ from] occupied dwellings and outdoor eating, drinking and bathing facilities. However, aerosol formation shall be minimized within 100 feet of occupied dwellings and outdoor eating, drinking and bathing facilities through the use of low trajectory nozzles for spray irrigation, above-ground drip irrigation, or other means.

3. For sites irrigated with reclaimed water treated to Level 2, the following setback distances are required:

a. Potable water supply wells and springs, and public water supply intakes - 200 feet

b. Nonpotable water supply wells - 10 feet

c. Surface waters, including wetlands - 50 feet

d. Occupied dwellings - 200 feet

e. Property lines and areas accessible to the public - 100 feet

f. Limestone rock outcrops and sinkholes - 50 feet

4. For sites irrigated with reclaimed water treated to Level 2, the setback distances may be reduced as follows:

a. Up to but not exceeding 50% [~~to~~ from] occupied dwellings [~~, property lines~~] and areas accessible to the public if it can be demonstrated that alternative measures shall be implemented to provide an equivalent level of public health protection. Such measures shall include, but are not limited to, disinfection of the reclaimed water equivalent to Level 1, application of the reclaimed water

by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation), installation of permanent physical barriers to prevent migration of aerosols from the reclaimed water irrigation site, or any combination thereof. Written consent of affected landowners is required to reduce setback distances from occupied dwellings [~~or property lines~~].

[b. Up to 100 % from property lines with written consent from adjacent landowners.]

[~~b-~~ c.] To but not less than 100 feet [~~to~~ from] potable water supply wells and springs, or public water supply intakes if it can be demonstrated that disinfection of the reclaimed water is equivalent to Level 1 and there are no other constituents of the reclaimed water present in quantities sufficient to be harmful to human health.

[~~e-~~ d.] To but not less than 25 feet [~~to~~ from] surface waters, including wetlands, where reclaimed water shall be applied by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation); or permanent physical barriers are installed to prevent the migration of aerosols from the reclaimed water irrigation site to surface waters.

5. For irrigation reuses where more than one setback distance may apply, the greater setback distance shall govern.

6. Unless specifically stated otherwise, all setback distances shall be measured horizontally.

I. Minimum separation distances for in-ground reclaimed water distribution pipelines specified in 9VAC25-740-110 B 3, shall apply to in-ground piping for irrigation systems of reclaimed water.

J. A setback distance of 100 feet horizontally shall be maintained from indoor aesthetic features (i.e., decorative waterfalls or fountains) that use reclaimed water treated to Level 1, to adjacent indoor public eating and drinking facilities where the aesthetic features have the potential to create aerosols and eating and drinking facilities are within the same room or building space.

K. A setback distance of 300 feet horizontally shall be provided from an open cooling tower to the site property line where reclaimed water treated to Level 2 is used in the tower. No setback distance shall be required from an open cooling tower to the site property line where a drift or mist eliminator is installed and properly operated or reclaimed water treated to Level 1 disinfection standards is used in the tower. Treatment of the reclaimed water to Level 1 disinfection standards may be provided by the industrial end user through the contract or agreement established by the permittee in accordance with 9VAC25-740-100 [~~B C~~] 1 d.

9VAC25-740-180. Operational flow requirements.

[A.] When the monthly average flow into a reclamation system or satellite reclamation system reaches 95% of the design capacity authorized by the VPDES or VPA permit issued to that system for each month of any three-month period, the permittee shall within 30 days notify the board in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

1. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem that could be reasonably anticipated, resulting from high flows entering the reclamation system or satellite reclamation system.
2. Upon receipt of the permittee's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.
3. Failure to timely submit an adequate plan shall be deemed a violation of the permit.
4. Nothing herein shall in any way impair the authority of the board to take enforcement action under §62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

9VAC25-740-190. Recordkeeping.

A. Operating records shall be maintained at the reclamation system or a central depository within the reclaimed water distribution system for a period as specified in the VPDES or VPA permit issued to the facility. Operating records shall include all analyses specified in ~~[these regulations]~~ this chapter], records of operational problems, alarm failures, unit process and equipment breakdowns, diversions to reject storage or emergency storage, discharge to another permitted reuse system requiring a lower level of treatment, or disposal via a permitted effluent discharge; and all corrective or preventive action taken.

B. A monthly summary of operating records as specified under subsection A of this section shall be maintained at the facility.

9VAC25-740-200. Reporting.

A. Permittees of water reclamation systems and satellite reclamation systems shall submit a monthly monitoring report to the board. The report shall include monitoring results for parameters contained in the VPDES or VPA permit to demonstrate compliance with applicable reclaimed water standards of this ~~[regulation]~~ chapter].

B. Interruption or loss of reclaimed water supply or discharge of any untreated or partially treated water that fails to comply with standards specified in the VPDES or VPA permit to the service area of intended reuse, shall be reported

in accordance with procedures specified in the permit. This report shall also contain a description of any notification provided in accordance with 9VAC25-740-170 A 2.

C. Permittees of reclaimed water distribution systems shall submit an annual report to the board on or before February 10 of the following year. The annual report shall, at a minimum:

1. Estimate the volume of reclaimed water distributed to the service area of the RWM plan, reported as monthly totals for a 12-month period from January 1 through December 31;
2. Provide for reclaimed water not treated to achieve BNR that is used within the service area of the RWM plan, the monthly average concentrations of total N and total P in the reclaimed water, an estimate of the monthly total volume of reclaimed water used for nonbulk irrigation and for bulk irrigation, the monthly total nutrient loads (N and P) to the service area resulting from nonbulk irrigation reuse and from bulk irrigation reuse, and the area in active reuse for nonbulk irrigation and for bulk irrigation within the service area, all reported for a 12-month period from January 1 through December 31; and
3. Provide a summary of ongoing education and notification program activities, including copies of education materials, as required by 9VAC25-740-170 A.

9VAC25-740-210. Delegation of authority.

The director or the director's designee may perform any act of the board provided under this ~~[regulation]~~ chapter], except as limited by §62.1-44.14 of the Code of Virginia.

[FORMS

Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, October 2008.]

DOCUMENTS INCORPORATED BY REFERENCE

Installation of Ductile-Iron Water Mains and Their Appurtenances, ANSI/AWWA C600-05 (Revision of ANSI/AWWA C600-99), effective December 1, 2005, American Water Works Association.

VA.R. Doc. No. R06-33; Filed August 12, 2008, 1:35 p.m.



TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

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.

Title of Regulation: 10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10; adding 10VAC5-160-70, 10VAC5-160-80).

Statutory Authority: §§6.1-421 and 12.1-13 of the Code of Virginia.

Effective Date: August 10, 2008.

Agency Contact: Deputy Commissioner Susan Hancock, BFI Commissioner, State Corporation Commission, P. O. Box 640, Richmond, VA 23218, telephone (804) 371-9657, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

The amendments are designed to implement the provisions of Chapter 863 of the 2008 Acts of Assembly and clarify certain terms in Chapter 16 (§6.1-408 et seq.) of Title 6.1 of the Code of Virginia. Definitions of "covered employee," "customer," "dwelling," "personal family or household purposes," and "personal identifying or financial information" are added to implement Chapter 863 and definitions of "licensee" and "senior officer" clarify the commission's construction of these terms in Chapter 16. Provisions are added implementing the prohibition against employment of individuals who have been convicted of certain crimes and the procedure for obtaining relief from this prohibition, and prescribing mandatory initial and continuing education requirements for various employees of Chapter 16 licensees.

Changes made to the proposed regulations since their initial publication include (i) modification of the definition of "covered employee" to whom licensees must provide initial and continuing education; (ii) clarification of provisions relating to licensees' obtaining criminal history records for their prospective employees; (iii) reduction of hours of initial and continuing education licensees must provide to covered employees; (iv) addition of a provision for allowance of credit for education received by an employee during employment with one licensee when that employee becomes employed by another licensee; and (v) addition of a provision

allowing acceptance of certain certifications, designations or accreditations in lieu of initial education required for employees.

AT RICHMOND, JULY 30, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00289

Ex Parte: In re: proposed amendments to Mortgage Lender and Broker Act regulations

ORDER ADOPTING REGULATIONS

Chapter 863 of the 2008 Acts of Assembly amended the Mortgage Lender and Broker Act (the "Act"), Va. Code § 6.1-408, et seq., effective July 1, 2008. On May 20, 2008, the State Corporation Commission ("Commission") entered an Order to Take Notice of regulations proposed by the Bureau of Financial Institutions ("Bureau") that would implement the 2008 amendments to the Act.

The Order to Take Notice and proposed regulations were published in the Virginia Register on June 9, 2008, posted on the Commission's website, and mailed to all mortgage lenders and mortgage brokers licensed in Virginia and to other interested persons. The Order to Take Notice also scheduled a hearing on July 1, 2008, at which time the Commission heard oral statements pertaining to the proposed regulations, and the Commission received various written comment letters prior to the hearing on July 1, 2008.

Upon consideration of the written comments filed concerning the proposed regulations, the oral statements made at the hearing on July 1, 2008, and recommendations of the Bureau, the Commission concludes that minor modifications to the proposed regulations should be made. Specifically, the Commission finds it appropriate to modify the definition of "covered employee" in 10 VAC 5-160-10; to clarify the procedure set forth in 10 VAC 5-160-70 pertaining to the hiring of a person who has been convicted of a felony or misdemeanor involving fraud, misrepresentation or deceit; to reduce the required number of hours of initial and continuing education and delay the required completion date for the initial training requirements set forth in 10 VAC 5-160-80 B; and to add subsections C and D to 10 VAC 5-160-80, providing for the portability of completed education requirements and allowing licensees to apply for exemptions from initial education requirements based upon certain certifications, designations or accreditations that may have been obtained by covered employees prior to July 1, 2008.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective August 10, 2008.

(2) The regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) AN ATTESTED COPY hereof, together with a copy of the regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

(4) AN ATTESTED COPY hereof, together with a copy of the regulations, shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, together with a copy of the regulations, to all licensed mortgage lenders and mortgage brokers and such other interested persons as he may designate.

(5) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

[1] Several commenters also expressed concerns regarding the language of 10 VAC 5-160-70 A with respect to the timing of criminal record checks and the use of Virginia's Central Criminal Records Exchange in performing such checks. The Commission, however, has no discretion in this area as the statutory requirements are clear and unambiguous.

10VAC5-160-10. Definitions.

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

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of §6.1-411 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Commission" and "commissioner" shall have the meanings ascribed to them in §6.1-409 of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the

applicant of a commitment, but the term does not include fees paid to third persons or interest.

"Covered employee" means an employee involved in [~~soliciting~~ originating] , marketing, [~~processing~~] underwriting, [~~approving~~] closing, or performing compliance or quality control functions in connection with [Virginia] mortgage loan transactions.

"Customer" means an individual seeking a mortgage loan from, or with the assistance of, a licensee.

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Licensee" means a person licensed under Chapter 16 (§6.1-408 et seq.) of Title 6.1 of the Code of Virginia.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval. A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" shall have the meanings ascribed to them in §6.1-409 of the Code of Virginia.

"Personal, family or household purposes" for purposes of §6.1-409 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual

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or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

"Personal identifying or financial information" means the name, social security number, driver license number, home address, telephone number, date of birth, place of birth, race or ethnic origin of a customer together with any information about the customer's account numbers, assets, liabilities, sources of income or credit worthiness.

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and circumstances known to it, within which the mortgage loan will be closed.

"Senior officer" for purposes of §§6.1-414, 6.1-415, 6.1-416 and 6.1-416.1 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Subsidiary" for purposes of subdivision 3 of §6.1-411 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

10VAC5-160-70. Employee criminal record investigations [; exemption]:

A. A licensee shall not, on or after July 1, 2008, [~~and without obtaining prior approval from the commission,~~] hire any individual for a position of employment who may have access to personal identifying or financial information relating to any customer, without first obtaining a criminal history record from the Central Criminal Records Exchange that shows that the prospective employee has not been convicted in any court of any felony, or any misdemeanor involving fraud, misrepresentation or deceit, under the laws of any state or the United States. [If the criminal history record reveals that an individual has been convicted as described, a licensee shall not hire the individual without obtaining prior approval from the commission, as specified in subsection C of this section.] A licensee shall be subject to a separate penalty under §6.1-428 of the Code of Virginia for

each individual hired without obtaining the criminal history record required by this section.

B. Licensees shall make criminal history records obtained under subsection A of this section and employment history information available for review by commission staff.

C. If a licensee wishes to hire an individual notwithstanding the prohibition in subsection A of this section, the licensee shall file a petition seeking an exemption in accordance with 5VAC5-20-100 C of the commission's Rules of Practice and Procedure. The petition shall be accompanied by a copy of the individual's criminal history record, which shall be kept under seal in the Office of the Clerk.

D. When deciding whether or not to grant a petition filed in accordance with subsection C of this section, the commission shall consider the following factors:

1. The number and classification of offenses committed by the individual;
2. The potential and actual penalties imposed for the offenses committed;
3. The dates of the offenses or convictions;
4. The extent to which the nature of the offenses committed relate to the prospective employee's job duties; and
5. Such other factors and evidence as the commission deems pertinent.

E. The petitioning licensee shall bear the burden of proof that an exemption from the employment prohibition under subsection A of this section should be granted.

10VAC5-160-80. Required employee training [; exemption; penalty]:

A. Licensees shall be responsible for providing initial education, and continuing education on at least an annual basis, for all their covered employees with respect to all laws and regulations applicable to the licensees' business. Applicable laws and regulations include, but are not limited to, the Real Estate Settlement Procedures Act (12 USC §2601 et seq.), Truth in Lending Act (15 USC §1601 et seq.), Equal Credit Opportunity Act (15 USC §1691 et seq.) and Fair Credit Reporting Act (15 USC §1681 et seq.), federal and Virginia privacy protection laws, federal and Virginia laws relating to mortgage fraud, the Virginia Mortgage Lender and Broker Act (§6.1-408 et seq. of the Code of Virginia) and all other Virginia laws applicable to the licensees' business, and all regulations adopted under the foregoing laws.

B. Initial education shall consist of at least [~~14~~ 12] hours relating to applicable federal laws and regulations, at least [~~six~~ four] hours relating to applicable Virginia laws and regulations, and additionally at least two hours relating to mortgage fraud prevention, including penalties for

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DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES

Final Regulation

participating in mortgage fraud. Initial education shall be provided to individuals who are covered employees as of July 1, 2008, on or before [~~December~~ May] 1, [~~2008~~ 2009], and to individuals who become covered employees after July 1, 2008, within 90 days of their hire date. Continuing education shall [be conducted on an annual basis and shall] consist of at least [~~six~~ four] hours related to applicable federal laws and regulations, at least [~~four~~ two] hours related to applicable Virginia laws and regulations, and additionally at least one hour relating to mortgage fraud prevention, including penalties for participating in mortgage fraud.

C. [A licensee that hires a covered employee who has received the initial education required under subsection B of this section while previously employed by another licensee shall not be required to provide the covered employee with initial education if the receipt of such education is adequately documented. Required annual education, if completed and so documented, likewise shall be credited with respect to the covered employee.

D. If prior to July 1, 2008, a covered employee has successfully obtained a mortgage certificate, designation or accreditation, the licensee may seek from the Commissioner of Financial Institutions an exemption, in whole or in part, from the initial education requirements for such covered employee. An exemption request shall be made in writing and shall include documentation of the certification, designation or accreditation and a description, including the name and number of hours for each course taken to fulfill the requirements of the certification, designation or accreditation.

E.] Licensees shall maintain a training manual and documentation available for commission staff's review demonstrating successful completion of the education required under this section, including names of education providers, names and descriptions of educational courses, and dates of attendance and numbers of hours completed by each covered employee, and shall provide any additional information relating to such education that the commissioner may require. Mere training in the sale or marketing of mortgage loans shall not count towards required education. Education relating to applicable federal laws and regulations, as identified in subsection A of this section, received pursuant to like educational requirements imposed by other states may be used to fulfill educational requirements imposed under this section relating to applicable federal laws and regulations.

[~~D. E.~~] A licensee shall be subject to a separate penalty under §6.1-428 of the Code of Virginia for each covered employee not provided with the education required by this section.

VA.R. Doc. No. R08-1296; Filed July 30, 2008, 4:07 p.m.

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-311, 12VAC30-70-321).

12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-41).

12VAC30-120. Waivered Services (amending 12VAC30-120-100).

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

Effective Date: October 15, 2008.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

The amendments implement reimbursement changes mandated by the Virginia General Assembly through Chapter 879, Item 306 PP, RR, UU, and VV of the 2008 Acts of Assembly. These changes include reducing the operating rates for both hospitals and nursing facilities, recalibrating resource based relative value system physician rates, and realigning the Medicaid rate for agency-directed individual supported employment. The hospitals' and nursing facilities' reimbursement rates are being amended to reduce the operating rates that these facilities will be paid. The reimbursement rate for agency-directed individual supported employment providers is being amended to be the same as that used by the Department of Rehabilitative Services.

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12VAC30-70-311. Hospital specific operating rate per case.

A. The hospital specific operating rate per case shall be equal to the labor portion of the statewide operating rate per case, as determined in 12VAC30-70-331, times the hospital's Medicare wage index plus the nonlabor portion of the statewide operating rate per case.

B. For rural hospitals, the hospital's Medicare wage index used in this section shall be the Medicare wage index of the nearest metropolitan wage area or the effective Medicare wage index, whichever is higher.

C. Effective July 1, 2008, and ending after June 30, 2010, the hospital specific operating rate per case shall be reduced by 2.683%.

12VAC30-70-321. Hospital specific operating rate per day.

A. The hospital specific operating rate per day shall be equal to the labor portion of the statewide operating rate per day, as determined in subsection A of 12VAC30-70-341, times the hospital's Medicare wage index plus the nonlabor portion of the statewide operating rate per day.

B. For rural hospitals, the hospital's Medicare wage index used in this section shall be the Medicare wage index of the nearest metropolitan wage area or the effective Medicare wage index, whichever is higher.

C. Effective July 1, 2008, and ending after June 30, 2010, the hospital specific operating rate per day shall be reduced by 2.683%.

~~☞~~ D. The hospital specific rate per day for freestanding psychiatric cases shall be equal to the hospital specific operating rate per day, as determined in subsection A of this section plus the hospital specific capital rate per day for freestanding psychiatric cases.

~~☛~~ E. The hospital specific capital rate per day for freestanding psychiatric cases shall be equal to the Medicare geographic adjustment factor for the hospital's geographic area, times the statewide capital rate per day for freestanding psychiatric cases.

~~☞~~ F. The statewide capital rate per day for freestanding psychiatric cases shall be equal to the weighted average of the GAF-standardized capital cost per day of freestanding psychiatric facilities licensed as hospitals.

~~☞~~ G. The capital cost per day of freestanding psychiatric facilities licensed as hospitals shall be the average charges per day of psychiatric cases times the ratio total capital cost to total charges of the hospital, using data available from Medicare cost report.

12VAC30-90-41. Nursing facility reimbursement formula.

A. Effective on and after July 1, 2002, all NFs subject to the prospective payment system shall be reimbursed under "The Resource Utilization Group-III (RUG-III) System as defined in Appendix IV (12VAC30-90-305 through 12VAC30-90-307)." RUG-III is a resident classification system that groups NF residents according to resource utilization. Case-mix indices (CMIs) are assigned to RUG-III groups and are used to adjust the NF's per diem rates to reflect the intensity of services required by a NF's resident mix. See 12VAC30-90-305 through 12VAC30-90-307 for details on the Resource Utilization Groups.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of §1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings and rates.

a. In accordance with 12VAC30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in 12VAC30-90-271.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, for the rest of the state for facilities with less than 61 licensed beds, and for the rest of the state for facilities with more than 60 licensed beds.

3. Each facility's average case-mix index shall be calculated based upon data reported by that nursing facility to the Centers for Medicare and Medicaid Services (CMS) (formerly HCFA) Minimum Data Set (MDS) System. See 12VAC30-90-306 for the case-mix index calculations.

4. The normalized facility average Medicaid CMI shall be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NFs subsequent fiscal year. See 12VAC30-90-306 D 2 for the calculation of the normalized facility average Medicaid CMI.

a. A NFs direct patient care operating cost prospective ceiling shall be the product of the NFs peer group direct patient care ceiling and the NFs normalized facility average Medicaid CMI. A NFs direct patient care operating cost prospective ceiling will be calculated semiannually.

b. A CMI rate adjustment for each semiannual period of a nursing facility's prospective fiscal year shall be applied by multiplying the nursing facility's normalized facility average Medicaid CMI applicable to each

prospective semiannual period by the nursing facility's case-mix neutralized direct patient care operating cost base rate for the preceding cost reporting period (see 12VAC30-90-307).

c. See 12VAC30-90-307 for the applicability of case-mix indices.

5. Direct and indirect ceiling calculations.

a. Effective for services on and after July 1, 2006, the direct patient care operating ceiling shall be set at 117% of the respective peer group day-weighted median of the facilities' case-mix neutralized direct care operating costs per day. The calculation of the medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group direct patient care operating ceilings shall be revised and case-mix neutralized every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

b. The indirect patient care operating ceiling shall be set at 107% of the respective peer group day-weighted median of the facility's specific indirect operating cost per day. The calculation of the peer group medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group indirect operating ceilings shall be revised every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

6. Reimbursement for use of specialized treatment beds. Effective for services on and after July 1, 2005, nursing facilities shall be reimbursed an additional \$10 per day for those recipients who require a specialized treatment bed due to their having at least one Stage IV pressure ulcer. Recipients must meet criteria as outlined in 12VAC30-60-350, and the additional reimbursement must be preauthorized as provided in 12VAC30-60-40. Nursing facilities shall not be eligible to receive this reimbursement for individuals whose services are reimbursed under the specialized care methodology. Beginning July 1, 2005, this additional reimbursement shall be subject to adjustment for inflation in accordance with 12VAC30-90-41 B, except that the adjustment shall be made at the beginning of each state fiscal year, using the inflation factor that applies to provider years beginning at that time. This additional payment shall not be subject to direct or indirect ceilings and shall not be adjusted at year-end settlement.

B. Adjustment of ceilings and costs for inflation. Effective for provider fiscal years starting on and after July 1, 2002, ceilings and rates shall be adjusted for inflation each year

using the moving average of the percentage change of the Virginia-Specific Nursing Home Input Price Index, updated quarterly, published by Standard & Poor's DRI. For state fiscal year 2003, peer group ceilings and rates for indirect costs will not be adjusted for inflation.

1. For provider years beginning in each calendar year, the percentage used shall be the moving average for the second quarter of the year, taken from the table published for the fourth quarter of the previous year. For example, in setting prospective rates for all provider years beginning in January through December 2002, ceilings and costs would be inflated using the moving average for the second quarter of 2002, taken from the table published for the fourth quarter of 2001.

2. Provider specific costs shall be adjusted for inflation each year from the cost reporting period to the prospective rate period using the moving average as specified in subdivision 1 of this subsection. If the cost reporting period or the prospective rate period is less than 12 months long, a fraction of the moving average shall be used that is equal to the fraction of a year from the midpoint of the cost reporting period to the midpoint of the prospective rate period.

3. Ceilings shall be adjusted from the common point established in the most recent rebasing calculation. Base period costs shall be adjusted to this common point using moving averages from the DRI tables corresponding to the provider fiscal period, as specified in subdivision 1 of this subsection. Ceilings shall then be adjusted from the common point to the prospective rate period using the moving average(s) for each applicable second quarter, taken from the DRI table published for the fourth quarter of the year immediately preceding the calendar year in which the prospective rate years begin. Rebased ceilings shall be effective on July 1 of each rebasing year, so in their first application they shall be adjusted to the midpoint of the provider fiscal year then in progress or then beginning. Subsequently, they shall be adjusted each year from the common point established in rebasing to the midpoint of the appropriate provider fiscal year. For example, suppose the base year is made up of cost reports from years ending in calendar year 2000, the rebasing year is SFY2003, and the rebasing calculation establishes ceilings that are inflated to the common point of July 1, 2002. Providers with years in progress on July 1, 2002, would receive a ceiling effective July 1, 2002, that would be adjusted to the midpoint of the provider year then in progress. In some cases this would mean the ceiling would be reduced from the July 1, 2002, ceiling level. The following table shows the application of these provisions for different provider fiscal periods.

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Table I
Application of Inflation to Different Provider Fiscal Periods

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of First PFY	Second PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of Second PFY
3/31	7/1/02	3/31/03	+ 1/4 year	3/31/04	+ 1-1/4 years
6/30	7/1/02	6/30/03	+ 1/2 year	6/30/04	+ 1-1/2 years
9/30	7/1/02	9/30/02	- 1/4 year	9/30/03	+ 3/4 year
12/31	7/1/02	12/31/02	-0-	12/31/03	+ 1 year

The following table shows the DRI tables that would provide the moving averages for adjusting ceilings for different prospective rate years.

Table II
Source Tables for DRI Moving Average Values

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Source DRI Table for First PFY Ceiling Inflation	Second PFYE After Rebasing Date	Source DRI Table for Second PFY Ceiling Inflation
3/31	7/1/02	3/31/03	Fourth Quarter 2001	3/31/04	Fourth Quarter 2002
6/30	7/1/02	6/30/03	Fourth Quarter 2001	6/30/04	Fourth Quarter 2002
9/30	7/1/02	9/30/02	Fourth Quarter 2000	9/30/03	Fourth Quarter 2001
12/31	7/1/02	12/31/02	Fourth Quarter 2000	12/31/03	Fourth Quarter 2001

In this example, when ceilings are inflated for the second PFY after the rebasing date, the ceilings will be inflated from July 1, 2002, using moving averages from the DRI table specified for the second PFY. That is, the ceiling for years ending June 30, 2004, will be the June 30, 2002, base period ceiling, adjusted by 1/2 of the moving average for the second quarter of 2002, compounded with the moving average for the second quarter of 2003. Both these moving averages will be taken from the fourth quarter 2002 DRI table.

C. The RUG-III Nursing Home Payment System shall require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rate or prospective operating ceiling.

D. Nonoperating costs. Plant or capital, as appropriate, costs shall be reimbursed in accordance with Articles 1, 2, and 3 of this subpart. Plant costs shall not include the component of cost related to making or producing a supply or service.

NATCEPs cost shall be reimbursed in accordance with 12VAC30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and plant/capital cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant or capital, as appropriate, costs and NATCEPs costs shall be

reflected in the year in which the nonreimbursable costs are included.

F. Effective July 1, 2001, for those NFs whose indirect operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable indirect operating cost rates and the indirect peer group ceilings.

1. The following table presents four incentive examples:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$0.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Efficiency incentives shall be calculated only for the indirect patient care operating ceilings and costs. Effective July 1, 2001, a direct care efficiency incentive shall no longer be paid.

G. Quality of care requirement. A cost efficiency incentive shall not be paid for the number of days for which a facility is out of substantial compliance according to the Virginia Department of Health survey findings as based on federal regulations.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first

fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of §1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

J. Effective July 1, 2005, the total per diem payment to each nursing home shall be increased by \$3.00 per day. This increase in the total per diem payment shall cease effective July 1, 2006. Effective July 1, 2006, when cost data that include time periods before July 1, 2005, are used to set facility specific rates, a portion of the \$3.00 per day amount identified above, based on the percentage of patient days in the provider's cost reporting period that fall before July 1, 2005, adjusted for appropriate inflation and multiplied times the provider's Medicaid utilization rate, shall be allocated to the facility specific direct and indirect cost per day prior to comparison to the peer group ceilings. For purposes of this subsection, \$1.68 of the \$3.00 shall be considered direct costs and \$1.32 of the \$3.00 shall be considered indirect costs.

K. Effective July 1, 2008, and ending after June 30, 2010, the operating rate for nursing facilities shall be reduced by 1.329%.

12VAC30-120-100. Provider reimbursement.

A. All private duty nursing services shall be reimbursed at an hourly negotiated fee.

B. Respite care shall be reimbursed at an hourly negotiated fee.

C. Prior approval for durable medical equipment and supplies shall be requested from DMAS by the durable medical equipment provider. Prior approval by DMAS shall be required for all durable medical equipment and other medically related supplies furnished under this program before the individual's admission to waiver services and before reimbursement. If additional equipment and supplies are needed following the individual's admission to waiver services, the durable medical equipment provider must obtain DMAS' prior approval. This prior authorization requirement shall apply to all durable medical equipment and supplies that are covered under the State Plan or the waiver.

D. Personal assistance shall be reimbursed at an hourly negotiated fee.

E. Effective July 1, 2008, agency-directed individual supported employment rates shall be paid at the same provider-specific rates paid by the Department of Rehabilitative Services.

VA.R. Doc. No. R08-1406; Filed August 6, 2008, 10:15 a.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-135. Demonstration Waiver Services (amending 12VAC30-135-10, 12VAC30-135-20, 12VAC30-135-30, 12VAC30-135-40, 12VAC30-135-70).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until October 1, 2008.

Effective Date: October 16, 2008.

Agency Contact: Molly Carpenter, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1793, FAX (804) 786-1680, or email molly.carpenter@dmass.virginia.gov.

Basis: Section 32.1-325 grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. Section 32.1-324 authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance (Medicaid State Plan) according to the board's requirements. The Medicaid authority was established by §1902 (a) of the Social Security Act (42 USC §1396a), which provides the governing authority for DMAS to administer the state's Medicaid system.

Purpose: The purpose of this amended regulation is to implement the eligibility requirements of the Centers for Medicare and Medicaid Services (CMS) for continuation of the waiver program. This regulatory change will protect the health, safety and welfare of the citizens of the Commonwealth by providing qualified families with low income the means for obtaining medical family planning services. These services help to prevent unintended pregnancies and space intended pregnancies for healthier mothers and children.

Rationale for Using Fast-Track Process: DMAS is using the fast-track process because this action is mandated by CMS. This fast-track regulation is noncontroversial because the changes represent requirements that must be in effect in order to receive CMS approval for continuation of the waiver program.

Substance: The planned regulatory action makes three types of changes: (i) substantive changes required by CMS as a condition of waiver approval; (ii) substantive changes to facilitate administration and update the program of services; and (iii) nonsubstantive editorial changes.

Current regulations treat individuals applying for coverage under the Medicaid Family Planning Waiver similarly to other Medicaid applicants with regard to creditable health

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coverage, timing of eligibility redeterminations, and retroactive eligibility. The planned regulatory action stipulates that individuals who have creditable health coverage or who have received a sterilization procedure or hysterectomy are ineligible for services under the Family Planning Waiver. It also disallows retroactive eligibility. These limitations are required by CMS as a condition of waiver approval.

Current regulations limit eligibility determination to local departments of social services and are unclear with regard to enrollment for persons eligible for Medicaid or FAMIS under a full-benefits category. The planned regulatory action authorizes use of the DMAS Central Processing Unit or other contractor for determining eligibility should DMAS determine that this is the most practicable approach, and clarifies that those individuals eligible for full-benefit coverage under Medicaid or FAMIS are not eligible under the waiver. Current regulations limit testing for sexually transmitted diseases (STDs) to the initial visit and restrict cervical cancer screening to the Pap test. The planned regulatory action authorizes coverage for additional SDT testing and newer methods of cervical cancer screening. These changes are designed to facilitate administration and update the program of services.

Issues: By meeting CMS requirements for continuation of the Family Planning Waiver program, the proposed regulatory action is an advantage to qualified families with low income by providing them with the means for obtaining medical family planning services to prevent unintended pregnancies and space intended pregnancies for healthier mothers and children.

The primary advantage of the Family Planning Waiver program to the Commonwealth is a cost savings to Medicaid for prenatal care, delivery, and infant care by preventing unintended pregnancies. The Guttmacher Institute estimates a savings of \$3 for every \$1 in public funds spent for family planning services.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action.

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

Summary of the Proposed Amendments to Regulation. The proposed changes will clarify several rules in the Family Planning Waiver program upon request by the Centers for Medicare and Medicaid Services.

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

Estimated Economic Impact. Upon request by the Centers for Medicare and Medicaid Services, the proposed changes will clarify 1) that individuals with creditable health coverage are

not eligible for family planning services under this waiver, 2) that individuals who have received a sterilization procedure or hysterectomy are not eligible for family planning services under this waiver, 3) that retroactive eligibility is prohibited, and 4) that the testing for sexually transmitted diseases is not limited to the initial family planning encounter.

According to Department of Medical Assistance Services, all of the proposed changes are clarifications as they have been already followed in practice. Thus, no significant compliance costs are expected. The main expected benefits, on the other hand, are the increased likelihood of CMS approval for the continuation of this waiver services and the added clarity of the regulatory language.

Businesses and Entities Affected. The proposed regulations apply to approximately 10,000 enrollees and approximately 700 service providers.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No significant costs and other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No adverse impact on real estate development costs is expected.

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 has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Family Planning Waiver Modifications (12VAC30-135-10, 12VAC30-135-20, 12VAC30-135-30, 12VAC30-135-40 and 12VAC30-135-70). The agency raises no issues with this analysis.

Summary:

The proposed changes clarify that (i) individuals with creditable health coverage are not eligible for family planning services under this waiver, (ii) individuals who have received a sterilization procedure or hysterectomy are not eligible for family planning services under this waiver, (iii) retroactive eligibility is prohibited, and (iv) the testing for sexually transmitted diseases is not limited to the initial family planning encounter.

Part I
Family Planning Waiver

12VAC30-135-10. Definitions.

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

"Creditable health coverage" means "creditable coverage" as defined under §2701(c) of the Public Health Service Act (42 USC §300gg(c)) and includes coverage that meets the requirements of §2103 provided to a targeted low-income child under Title XXI of the Social Security Act or under a waiver approved under §2105(c)(2)(B) (relating to a direct service waiver).

~~"FDA" means the Food and Drug Administration.~~

"Family planning" means those services necessary to prevent or delay a pregnancy. It shall not include services to promote pregnancy such as infertility treatments. Family planning does not include counseling about, recommendations for or performance of abortions, or hysterectomies or procedures performed for medical reasons such as removal of intrauterine devices due to infections.

"FAMIS" means the Family Access to Medical Insurance Security Plan described in 12VAC30-141.

"Over-the-counter" means drugs and contraceptives that are available for purchase without requiring a physician's prescription.

"Third party" means any individual entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under the State Plan for Medical Assistance.

12VAC30-135-20. Administration and eligibility determination.

A. The Department of Medical Assistance Services shall administer the family planning demonstration waiver services program under the authority of §1115(a) of the Social Security Act and 42 USC §1315.

B. Local departments of social services or a department contractor shall be responsible for determining eligibility of and for enrolling eligible individuals in the family planning waiver. Local departments of social services or a department contractor shall conduct periodic reviews and redeterminations of eligibility at least every 12 months while recipients are enrolled in the family planning waiver.

12VAC30-135-30. Eligibility.

A. To be eligible under the family planning waiver, an individual must meet the eligibility conditions and requirements found in 12VAC30-40-10, have family income less than or equal to 133% of the federal poverty level, not have creditable health coverage, and not be eligible for enrollment in a Medicaid full benefit coverage group or FAMIS.

B. Individuals who have received a sterilization procedure or hysterectomy are ineligible under the waiver.

C. Individuals enrolled in the family planning waiver will not be retroactively eligible.

~~B. D.~~ A recipient's enrollment in the family planning waiver shall be terminated if the individual receives a sterilization procedure or hysterectomy or is found to be ineligible as the result of a reported change or annual redetermination. The recipient's enrollment in the family planning waiver also shall be terminated if a reported change or annual redetermination results in eligibility for Virginia Medicaid or ineligibility for the family planning waiver in a full benefit coverage group or eligibility for FAMIS. A 10-day advance notice must be provided prior to cancellation of coverage under the family planning waiver unless the individual becomes eligible for a full benefit Medicaid covered group or FAMIS.

12VAC30-135-40. Covered services.

A. Services provided under the family planning waiver are limited to:

1. Family planning office visits including annual gynecological or physical exams (one per 12 months), sexually transmitted diseases (STD) testing (~~limited to the initial family planning encounter~~), Pap cervical cancer screening tests (limited to one every six months);

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2. Laboratory services for family planning and STD testing;
3. Family planning education and counseling;
4. ~~FDA approved contraceptives~~ Contraceptives approved by the Food and Drug Administration, including diaphragms, contraceptive injectables, and contraceptive implants;
5. Over-the-counter contraceptives; and
6. Sterilizations, not to include hysterectomies. ~~A completed sterilization consent form, in accordance with the requirements of 42 CFR Part 441, Subpart F, must be submitted with all claims for payment for this service.~~

B. Services not covered under the family planning waiver include, but are not limited to:

1. Performance of, counseling for, or recommendations of abortions;
2. Infertility treatments;
3. Procedures performed for medical reasons;
4. Performance of a hysterectomy; and
5. Transportation to a family planning service.

12VAC30-135-70. Reimbursement.

A. Providers will be reimbursed on a fee-for-service basis.

B. All reasonable measures including those measures specified under 42 USC §1396 (a) (25) will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients.

C. A completed sterilization consent form, in accordance with the requirements of 42 CFR Part 441, Subpart F, must be submitted with all claims for payment for sterilization procedures.

VA.R. Doc. No. R08-1224; Filed August 1, 2008, 3:15 p.m.



TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

<p>REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from the Administrative Process Act in accordance with (i) §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) §2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board of Housing and Community Development will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: **13VAC5-200. Solar Energy Criteria for Tax Exemption (amending 13VAC5-200-10, 13VAC5-200-40 through 13VAC5-200-80, 13VAC5-200-100).**

Statutory Authority: §58.1-3661 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Department of Housing and Community Development had been required to approve applications from local building officials in order for the applicants to qualify for real estate tax credits for solar heating systems. This action eliminates the application approval requirement by the Department of Housing and Community Development to conform to the Code of Virginia.

Part I
Administration

13VAC5-200-10. Application.

Application for solar equipment tax exemption must be made to the local building department ~~on forms provided by the Department of Housing and Community Development.~~

13VAC5-200-40. Approval.

The applicant for tax exemption must demonstrate to the local building official ~~or to the Department of Housing and Community Development~~ that the proposed or existing solar system performs its intended function.

13VAC5-200-50. Certification.

If, after examination of such equipment, facility or device the local building department determines that the unit is designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy, and conforms to the criteria set forth in this document, the local building department shall approve and certify such application. ~~The local department shall forthwith transmit the application form to the Department of Housing and Community Development, which shall certify to the local assessing officer those applicants applications properly approved and certified by the local building department as meeting all the requirements qualifying such equipment, facility or device for exemption from taxation.~~

13VAC5-200-60. Appeals.

Any person aggrieved by a decision of the local building department may appeal such decision to the ~~State Technical Review Board~~ local board of building code appeals, which may affirm or reverse such decision.

13VAC5-200-70. Assessment.

Upon receipt of the certificate from the ~~Department of Housing and Community Development,~~ local building department the local assessing officer shall, if such local ordinance be in effect, proceed to determine the value of such qualifying solar energy equipment, facilities or devices. The value of such qualifying solar energy equipment, facilities or devices shall not be less than the normal cost of purchasing and installing such equipment, facilities or devices.

13VAC5-200-80. Exemption.

The tax exemption shall be determined ~~by applying the local tax rate to the value of such equipment, facilities or devices, and subtracting such amount, wholly or partially, from the total real property tax due on the real property to which such equipment, facilities or devices are attached. The exemption shall be effective beginning in the next succeeding tax year and shall be permitted for a term of not less than five years; provided, however, in the event the locality assesses real estate pursuant to §55-811.1, of the Code of Virginia effective when such real estate is first assessed, but not prior to the date of such application for exemption in accordance with §58.1-3661 D of the Code of Virginia.~~

13VAC5-200-100. Functional description.

The following section has been reprinted from Appendix C of Solar heating and hot water system functional description is contained in HUD Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Systems, NBSIR #77-1226.

Solar Heating and Hot Water Systems: Functional Description

The basic function of a solar heating and domestic hot water system is the collection and conversion of solar radiation into usable energy. This is accomplished in general terms in the following manner. Solar radiation is absorbed by a collector, placed in storage as required, with or without the use of a transport medium, and distributed to point of use. The performance of each operation is maintained by automatic or manual controls. An auxiliary energy system is usually available for operation, both to supplement the output provided by the solar system and to provide for the total energy demand should the solar system become inoperable.

The conversion of solar radiation to thermal energy and the use of this energy to meet all or part of a dwelling's heating and domestic hot water requirements has been the primary application of solar energy buildings.

The parts of a solar system collector, storage, distribution, transport, controls and auxiliary energy may vary widely in design, operation, and performance. They may, in fact, be one and the same element (a south facing masonry wall can be seen as a collector, although a relatively inefficient one, which stores and then radiates or "distributes" heat directly to the building interior). They may also be arranged in numerous combinations dependent on function, component compatibility, climatic conditions, required performance, site characteristics, and architectural requirements.

Of the numerous concepts presently being developed for the collection of solar radiation, the relatively simple flat plate collector has the widest application. It consists first of an absorber plate, usually made of metal coated black to increase absorption of the sun's energy. The plate is then insulated on its underside and covered with a transparent cover plate to trap heat within the collector and reduce convective losses from the absorber. The captured heat is removed from the absorber by means of a working fluid, generally air or water. The fluid is heated as it passes through or near the absorber plate and then transported to points of use, or to storage, depending on energy demand.

The storage of thermal energy is the second item of importance since there will be an energy demand during the evening, or on sunless days when solar collection cannot occur. Heat is stored when the energy delivered by the sun and captured by the collector exceeds the demand at the point of use. The storage element may be as simple as a masonry floor that stores and then re-radiates captured heat, or as relatively complex as a latent heat storage. In some cases, it is necessary to transfer heat from the collector to storage by means of a heat exchanger (primarily in systems with a liquid working fluid). In other cases, transfer is made by direct contact of the working fluid with the storage medium (i.e., heated air passing through a rock pile).

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The distribution component receives energy from the collector or storage, and dispenses it at points of use. Within a building, heat is usually distributed in the form of warm air or warm water.

The controls of a solar system perform the sensing, evaluation and response functions required to operate the system in the desired mode. For example, if the collector temperature is sufficiently higher than storage temperature, the controls can cause the working fluid in storage to circulate in the collector and accumulate solar heat.

An auxiliary energy system provides the supply of energy when stored energy is depleted due to severe weather or clouds. The auxiliary system, using conventional fuels such as oil, gas, electricity, or wood provides the required heat until solar energy is available again.

The organization of components into solar heating and domestic hot water systems has led to two general characterizations of solar systems: active and passive. The terms active and passive solar systems have not yet developed universally accepted meanings. However, each classification possesses characteristics that are distinctively different from each other. These differences significantly influence solar dwelling and system design.

An active solar system can be characterized as one in which an energy resource in addition to solar is used for the transfer of thermal energy. This additional energy, generated on or off the site, is required for pumps, blowers, or other heat transfer medium moving devices for system operation. Generally, the collection, storage, and distribution of thermal energy is achieved by moving a transfer medium throughout the system with the assistance of pumping power.

A passive solar system, on the other hand, can be characterized as one where solar energy alone is used for the transfer of thermal energy. Energy other than solar is not required for pumps, blowers, or other heat transfer medium moving devices for system operation. The major component in a passive solar system generally utilizes some form of thermal capacitance, where heat is collected, stored, and distributed to the building without additional pumping power. Collection, storage, and distribution is achieved by natural heat transfer phenomena employing convection, radiation, conduction, in conjunction with the use of thermal capacitance as a heat flow control mechanism.

EDITOR'S NOTE: The images that are referenced below are not set out; however, the images are available for viewing purposes in the Virginia Administrative Code, may be obtained from the agency contact provided at the beginning of this regulatory action or from the Registrar of Regulations.

Solar Heating and Hot Water Systems: Operational Description

A. Solar Heating System

Solar systems may be designed to operate in a number of different ways depending on function, required performance, climatic conditions, component and system design, and architectural requirements. Usually, however, solar systems are designed to operate in four modes. In a very basic manner, the four modes of solar system operation for both active and passive systems are described and illustrated below.

1. ~~HEATING HOUSE FROM COLLECTOR.~~ Solar radiation captured by the collectors and converted to thermal energy can be used to directly heat the house.

Image

For Functional description, see Virginia Administrative Code print product.

2. ~~HEATING STORAGE FROM COLLECTOR.~~ If the house does not require heat, the captured (collected) thermal energy can be placed in storage for later use.

Image

For Functional description, see Virginia Administrative Code print product.

3. ~~HEATING HOUSE FROM STORAGE.~~ Heat from storage can be removed to heat the house when the sun is not shining at night or on consecutive sunless days.

Image

For Functional description, see Virginia Administrative Code print product.

4. ~~HEATING HOUSE FROM AUXILIARY.~~ If heat from the collector and storage is not sufficient to totally heat the house, an auxiliary system supplies all or part of the house's heating requirement.

Image

For Functional description, see Virginia Administrative Code print product.

B. Domestic Hot Water System

The solar system may also be designed to preheat water from the incoming water supply prior to passage through a conventional water heater. The domestic hot water preheat system can be combined with the solar heating system or designed as a separate system. Both situations are illustrated below.

1. ~~DOMESTIC HOT WATER PREHEATING SEPARATE SYSTEM.~~ Domestic hot water preheating may be the only solar system included in some designs. A passive thermosyphoning arrangement is shown above.

Image

For Functional description, see Virginia Administrative Code print product.

~~2. DOMESTIC HOT WATER PREHEATING COMBINED SYSTEM.~~ Domestic hot water is preheated as it passes through heat storage enroute to the conventional water heater.

Image

For Functional description, see Virginia Administrative Code print product.

Basics of Solar Utilization

A. Climate

Solar radiation, wind, temperature, humidity and many other factors shape the climate of the United States. Basic to using solar energy for space heating and domestic hot water heating is understanding the relationship of solar radiation, climate and dwelling design.

The amount and type of solar radiation varies between and within climatic regions: from hot dry climates where clear skies enable a large percentage of direct radiation to reach the ground, to temperate and humid climates where up to 40 percent of the total radiation received may be diffuse sky radiation, reflected from clouds and atmospheric dust, to cool climates where snow reflection from the low winter sun may result in a greater amount of incident radiation than in warmer but cloudier climates.

As a result of these differences in the amount and type of radiation reaching a building site, as well as in climate, season and application — heating or domestic hot water — the need for and the design of solar system components will vary in each locale.

Image

For Functional description, see Virginia Administrative Code print product.

B. Solar Radiation.

The sun provides almost all of the earth's energy in the form of radiation. Solar energy, also known as solar radiation reaches the earth's surface in two ways: by direct (parallel) rays, and by diffuse (nonparallel) sky radiation. The solar radiation reaching a building includes not only direct and diffuse but also radiation reflected from adjacent ground and building surfaces. It is these three sources of solar radiation that may be used for space and domestic hot water heating.

~~1. THE SOLAR CONSTANT.~~ A nearly constant amount of solar energy strikes the outer atmosphere = 429.2 BTU per square foot per hour. This quantity is known as the solar constant. A large amount of this energy, however, is lost in the earth's atmosphere, and cannot be regained regardless of collector design.

Image

For Functional description, see Virginia Administrative Code print product.

~~2. ABSORPTION AND REFLECTION.~~ On the average, almost half of the solar radiation reaching the earth's outer atmosphere is lost by absorption in the atmosphere and by reflection from clouds, as it passes through the atmosphere to the earth's surface. The radiation lost actually varies between 60% in Seattle, Washington to only 30% in Albuquerque, New Mexico.

Image

For Functional description, see Virginia Administrative Code print product.

~~3. EARTH'S ATMOSPHERE.~~ As already stated, the radiation reaching the earth's surface is diminished by the condition of the earth's atmosphere; its vapor, dust and smoke content. At lower sun angles, the length of travel through the atmosphere is greatly increased, so the relative amount of radiation received is further diminished.

Image

For Functional description, see Virginia Administrative Code print product.

~~4. DIFFUSE RADIATION.~~ clouds and particles in the atmosphere not only absorb solar energy, but scatter it in all directions. As a result, a part of the solar radiation reaching the earth's surface is diffused, and received from all parts of the sky. Diffuse radiation, as opposed to direct radiation, is more predominant on hazy days than clear ones. At most, however, diffuse radiation can only be about one quarter of the solar constant, or about 100 BTU/hr./sq. ft.

Image

For Functional description, see Virginia Administrative Code print product.

~~5. DIRECT RADIATION ON A HORIZONTAL SURFACE.~~ although the amount of radiation remains constant, less radiation strikes a given horizontal area as the sun gets lower in the sky.

Image

For Functional description, see Virginia Administrative Code print product.

~~6. DIRECT SOLAR RADIATION ON A TILTED SURFACE.~~ The same principle applies to a tilted surface such as a collector. By tilting the collector so that it is nearly perpendicular to the sun's ray, more energy strikes its surface, undiminished by a cosine factor.

Image

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For Functional description, see Virginia Administrative Code print product.

C. Solar Window.

Image

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~~THE SOLAR WINDOW.~~ Imagine the sky as a transparent dome with its center at the solar collector of a house. The path of the sun can be painted (projected) onto the dome, as can be the outline of surrounding houses and trees. The morning and afternoon limits of useful solar collection (roughly 9 A.M. and 3 P.M.) and the sun's path between those hours throughout the year scribes a "solar window" on the dome. Almost all of the useful sun that reaches the collector must come through this window except for the added effect of diffuse radiation. If any of the surrounding houses, trees, etc., intrude into this "solar window," the intrusion will cast a shadow on the collector. The isometric drawing above illustrates the "solar window" for a latitude 40° N. The solar window will change for different latitudes.

~~SIDE VIEW OF SKY DOME WITH "SOLAR WINDOW".~~ A side view of the sky dome from the east illustrates the relative position and angle of the sun throughout the year that defines the boundaries of the "solar window."

~~ANGLE OF INCIDENCE,~~ a term often used in solar collector design, is the angle measured from the normal of the collector surface to the line indicating the sun's altitude at a particular time. The diagram specifically identifies the angle of incidence for June 21.

Image

For Functional description, see Virginia Administrative Code print product.

~~PLAN VIEW OF SKY DOME WITH "SOLAR WINDOW".~~ Viewed from above the sky dome, the seasonal path of the sun can be plotted thus defining the boundaries of the "solar window." This is easily accomplished by the use of a standard sun path diagram for the proper latitude. Sun path diagrams are widely reproduced and used for determining the azimuth and altitude of the sun at any time during the year, and give the points which can be plotted to determine the solar window.

Image

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~~PANORAMA OF THE SKY DOME.~~ As with the spherical earth, the spherical sky dome with its "solar window" can be mapped using a Mercator projection, in

which all latitude and longitude lines are straight lines. Such a map is very useful for comparing the site surroundings with the "solar window" outline, since both can be easily plotted on the map. Any elements surrounding the site that intrude into the "solar window" will cast shadows on the collector.

Image

For Functional description, see Virginia Administrative Code print product.

D. Solar collection and conversion

Basic to the utilization of solar energy for space and domestic hot water heating is the process by which solar radiation is converted to thermal energy. This conversion process is the basic link between the energy supply—the sun—and the energy load—the dwelling. The process is best understood by briefly explaining solar radiation and then discussing the characteristics of collection.

1. ~~SOLAR ENERGY CONVERSION.~~ Solar radiation is electromagnetic radiation generated by the sun, which reaches the earth's surface with a wavelength distribution of .3 to 2.4 micrometers. Radiation is perceived as visible light between .36 and .76 micrometers. For most solar applications, solar radiation in the visible and near-infrared range is the most important.

The drawings to the left [below] show the principle of solar energy collection and conversion. When incoming solar radiation impinges on the surface of a body, it is partially absorbed, partially reflected, and, if the body is transparent, partially transmitted. The relative magnitude of each varies with the surface characteristics, body geometry, material composition, and wavelength.

For solar applications, energy must be first absorbed, then converted into thermal energy and, finally removed by a heat transfer mechanism in order to be useful. Absorbed radiation heats up the absorbing body, which then reemits energy in the form of thermal radiation in the infrared (longwave) part of the spectrum. If the absorbing surface is exposed to the atmosphere, part of the absorbed energy will be lost by converted of radiation.

Image

For Functional description, see Virginia Administrative Code print product.

2. ~~THE GREENHOUSE EFFECT.~~ Most glass and some plastics are transparent in the solar wavelength region and hence are used as windows. At the same time, this glazing has low transmission in the infrared (longwave) region. By placing glass or plastic over the absorber in a collector, energy is trapped in two ways: first, the infrared radiation emitted by the absorbing surface is stopped by the glazing, with a portion reradiated back toward the absorber, and

thereby trapped. Second, the glazing also traps a layer of still air next to the absorber and reduces the convective heat loss. This behavior of glazing is called the "greenhouse effect" and is used in most solar collectors.

Image

For Functional description, see Virginia Administrative Code print product.

E. Collector Orientation and Tilt

Solar collectors must be oriented and tilted within prescribed limits to receive the optimum level of solar radiation for system operation and performance.

1. COLLECTOR TILT FOR HEATING. The optimum collector tilt for heating is usually equal to the site latitude plus 10 to 15 degrees. Variations of 10 degrees on either side of this optimum are acceptable.

Image

For Functional description, see Virginia Administrative Code print product.

2. COLLECTOR TILT FOR HEATING AND COOLING. The optimum collector tilt for heating and cooling is usually equal to site latitude plus 5 degrees. Variations of 10 degrees on either side of the optimum are acceptable.

Image

For Functional description, see Virginia Administrative Code print product.

3. COLLECTOR TILT FOR DOMESTIC HOT WATER. The optimum collector tilt for domestic water heating alone is usually equal to the site latitude. Again, variations of 10 degrees on either side of the optimum are acceptable.

Image

For Functional description, see Virginia Administrative Code print product.

4. MODIFICATION OF OPTIMUM COLLECTOR TILT. A greater gain in solar radiation collection sometimes may be achieved by tilting the collector away from the optimum in order to capture radiation reflected from adjacent ground or building surfaces. The corresponding reduction of radiation directly striking the collector, due to non-optimum tilt, should be recognized when considering this option.

Image

For Functional description, see Virginia Administrative Code print product.

5. SNOWFALL CONSIDERATION. The snowfall characteristics of an area may influence the appropriateness of these optimum collector tilts. Snow

buildup on the collector, or drifting in front of the collector, should be avoided.

COLLECTOR ORIENTATION. A collector orientation of 20 degrees to either side of true South is acceptable. However, local climate and collector type may influence the choice between East or West deviations.

Image

For Functional description, see Virginia Administrative Code print product.

F. Shading of Collector.

Another issue related to both collector orientation and tilt is shading. Solar collectors should be located on the building or site so that unwanted shading of the collectors by adjacent structures, landscaping or building elements does not occur. In addition, considerations for avoiding shading of the collector by other collectors should also be made. Collector shading by elements surrounding the site may be addressed by considering the "solar window" concept.

Image

For Functional description, see Virginia Administrative Code print product.

1. SELF SHADING OF COLLECTOR. Avoiding all shelf shading for a bank of parallel collectors during useful collection hours (9 AM and 3 PM) results in designing for the lowest angle of incidence with large spaces between collectors. It may be desirable therefor to allow some self-shading at the end of solar collection hours, in order to increase collector size or to design a closer spacing of collectors, thus increasing solar collection area. By making the collector's back slope reflective, one could increase the amount of solar radiation striking the adjacent collector, thus negating some of the shading loss.

2. SHADING OF COLLECTOR BY BUILDING ELEMENTS. Chimneys, parapets, fire walls, dormers, and other building elements can cast shadows on adjacent roof-mounted solar collectors, as well as on vertical wall collectors. The drawing to the right [below] shows a house with a 45 degrees North. By mid afternoon portions of the collector are shaded by the chimney, dormer, and the offset between the collector on the garage. Careful attention to the placement of building elements and to floor plan arrangement is required to assure that unwanted collector shading does not occur.

Image

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SOLAR HEATING AND HOT WATER SYSTEMS:

Active Systems

Active solar systems are characterized by collectors, thermal storage units and transfer media, in an assembly which requires additional mechanical energy to convert and transfer the solar energy into thermal energy. The following discussion of active solar systems serves as an introduction to a range of active concepts which have been constructed.

Image

For Functional description, see Virginia Administrative Code print product.

A. Heating and Domestic Hot Water Diagrams

In common use today is the combined solar heating and domestic hot water system. The system operates as follows: solar radiation is absorbed by a collector or series of collectors, and removed to storage in the form of thermal energy by a heat transfer medium. The heat is later removed from storage and distributed to the living spaces, again by a heat transfer medium, which may or may not be the same medium as that flowing through the collector. Circulation throughout the system is aided by pumps, blowers, or other medium moving devices. An auxiliary heating system should be available both to supplement the output supplied by the solar system and to provide for the total energy demand should the solar system become inoperative. Manual or automatic controls monitor both the solar and auxiliary system operation. In a solar heating and hot water combined system, the domestic water supply is preheated in the heat storage, and then passed through the conventional water heater before distribution.

1. SOLAR HEATING SYSTEM: PROCESS DIAGRAM. A space heating system alone can be developed by simply removing the domestic hot water preheating unit from the heat storage. The operation of the solar heating system is then the same as described above.

Image

For Functional description, see Virginia Administrative Code print product.

2. SOLAR DOMESTIC HOT WATER SYSTEM: PROCESS DIAGRAM 1. The combined system diagram can be modified into a domestic hot water system alone by eliminating the heating distribution and the auxiliary heating unit, and also reducing the size of the storage tank. Only the domestic water supply would then pass through the heat storage, preheating the hot water supply, enroute to a conventional water heater.

Image

For Functional description, see Virginia Administrative Code print product.

3. SOLAR DOMESTIC HOT WATER SYSTEM: PROCESS DIAGRAM 2. Another method of preheating the domestic hot water involves passing the potable water supply itself through the collectors. The heated water is stored in the water storage tank until a demand is initiated. An auxiliary heat source is usually present to boost the water temperature when preheat has been inadequate. The preheated water is either pumped from storage, or flows by supply pressure to the house.

Image

For Functional description, see Virginia Administrative Code print product.

B. Collector Storage. The removal of heat from the collector and its placement in heat storage involves the circulation of a heat transfer medium in a transport loop. Several collector storage conditions are shown below.

1. OPEN CIRCUIT LIQUID COLLECTOR. In this system, storage water itself, treated as necessary to prevent corrosion, is drawn from the bottom of storage, pumped through the collector and then returned to the top of storage. The circulating water, which runs through, on top of or under the absorber plate, is distributed to the absorber by a manifold at the top of the collector, or pumped up from below the collector through tubes attached to or integral with the absorber plate. When the system is not running, air is allowed to enter into the collector and piping, and the water drains into storage. In open circuit collectors, storage is at atmospheric pressure, a condition that should be considered in the design of the distribution system.

Image

For Functional description, see Virginia Administrative Code print product.

2. CLOSED CIRCUIT LIQUID COLLECTOR. In this system, a heat transfer liquid — such as treated water, anti-freeze solution or another liquid — is pumped through the collector and then through a heat exchanger in storage and back to the collector, in a closed loop. In this system of separate transfer and storage mediums, the storage may be pressurized. The loop may remain filled with fluid, and therefore must be protected from freezing, or may be drained and replaced with pressurized inert gas.

Image

For Functional description, see Virginia Administrative Code print product.

3. AIR COLLECTOR. Although many arrangements of air collector rock storage and warm air distribution systems are possible, the one diagrammed is typical of the most popular system in use. Air from the cold end of the rock

storage bin is pumped through the collector, gaining heat, and returned to the hot end of storage.

Warm air distribution systems are usually used with air collectors to enable direct heating from the collector. In this case, the dampers must be adjusted to supply heat directly to the house, returning air to the collector thereby bypassing storage. (See diagram page C3.)

Image

For Functional description, see Virginia Administrative Code print product.

C. Storage Distribution Diagrams:

Heat is removed from storage and circulated to the house by the distribution component. There are numerous ways this storage distribution function can be performed, and in numerous combinations with the preceding collector storage circuits. Six typical storage distribution methods are diagrammed.

1. ~~WARM AIR DISTRIBUTION - HOT WATER COIL IN DUCT.~~ A warm air distribution system can be used with liquid heat storage, by pumping the heated storage medium through a suitably sized heat exchange coil in the main supply duct of the distribution system.

Image

For Functional description, see Virginia Administrative Code print product.

2. ~~HYDRONIC DISTRIBUTION.~~ In a hydronic system, with a pressurized storage, liquid from storage is pumped directly through standard baseboard convector units. Because of the relatively low temperatures that usually occur in solar systems during winter conditions, the size of baseboard units, and possibly the piping may change from ordinary hydronic systems.

Image

For Functional description, see Virginia Administrative Code print product.

3. ~~INDIVIDUAL FAN COIL UNIT DISTRIBUTION.~~ When storage is not pressurized, in a fan coil distribution system (as well as hydronic system), a secondary, heat transfer fluid is often circulated in a closed loop to prevent air binding. This fluid is pumped through storage to individual fan coil units located throughout the dwelling for heat distribution. The design and sizing considerations are similar to those for ordinary hydronic distribution.

Image

For Functional description, see Virginia Administrative Code print product.

4. ~~RADIANT HEAT DISTRIBUTION.~~ In a radiant heating system, with a non-pressurized storage, a secondary heat transfer fluid is circulated in a closed loop from heat storage to coils or panels located in the floor, walls and or ceiling of the living space. Besides the liquid temperature, the size and spacing of the coils is critical for effective radiant heat distribution.

Image

For Functional description, see Virginia Administrative Code print product.

5. ~~WARM AIR DISTRIBUTION FROM ROCK STORAGE.~~ For an air collector system employing rock storage, it is advantageous to employ the natural high level of temperature stratification in storage and distribute air to the living space from hottest section of storage. As diagrammed, this will require reversing the flow of air through storage relative to the collection cycle. The most common method for doing this is diagrammed. Using the same fan that supplies the collector along with two automatic dampers, the direction of air flow is reversed from storage, forcing air in a house loop to return, thereby bypassing the collector ducts.

Image

For Functional description, see Virginia Administrative Code print product.

6. ~~HEAT PUMP ASSISTED DISTRIBUTION.~~ Either air or liquid collector storage systems can be used as the source of thermal energy for a heat pump distribution system. As diagrammed, liquid from storage is circulated through a heat exchanger in the pump unit, and heat is transferred to the heat pump's working fluid. By means of its compression cycle, the heat pump further elevates the working fluid temperature and it functions as the auxiliary heat source. This high temperature fluid then transfers heat through another exchanger to either an air or hydronic distribution system. The heat pump may also be used in parallel with thermal energy storage to remove heat from the outside air when storage is depleted.

Image

For Functional description, see Virginia Administrative Code print product.

D. Domestic Hot Water Preheating:

Domestic hot water can be preheated either by circulating the potable water supply itself through the collector, or by passing the supply line through storage enroute to a conventional water heater. Three storage related preheat systems are shown below.

1. ~~PREHEAT COIL IN STORAGE.~~ Water is passed through a suitably sized coil placed in storage enroute to

Regulations

the conventional water heater. Unless the preheat coil has a protective double wall construction, this method can only be use for solar systems employing non toxic storage media.

Image

For Functional description, see Virginia Administrative Code print product.

~~2. PREHEAT TANK IN STORAGE.~~ In this system, the domestic hot water preheat tank is located within the heat storage. The water supply passes through storage to the preheat tank where it is heated and stored, and later piped to a conventional water heater as needed. A protective double wall construction again will be necessary unless a non toxic storage medium is used.

Image

For Functional description, see Virginia Administrative Code print product.

~~3. PREHEAT OUTSIDE OF STORAGE.~~ In this preheat method, the heat transfer liquid in storage is pumped through a separate heat exchanger to be used for domestic hot water preheating. This separate heat exchanger could be the conventional water heater itself. However, if the liquid from storage is toxic, the required separation of liquids is achieved by the use of a double wall exchanger, as diagrammed, in which the water supply simply passes through enroute to the conventional water heater.

Image

For Functional description, see Virginia Administrative Code print product.

E. Auxiliary Energy Diagrams.

The provision of auxiliary energy to the dwelling is needed when the solar heating system becomes inoperative or cannot meet the dwelling's total energy demand. The auxiliary heating component may operate independently or in conjunction with the solar storage and distribution systems. The control of solar and auxiliary system operation becomes an important consideration for the effectiveness of both. Four possible combinations are shown below.

~~1. AUXILIARY HEAT COILS IN AIR DISTRIBUTION SUPPLY DUCT.~~ Two heat exchange coils — one from solar storage and one from the auxiliary unit — are located in the primary distribution supply duct. Depending on the temperature in storage, the auxiliary energy system may provide a full or partial temperature boost to supply of air. The need for auxiliary energy is determined typically by a two-contact room thermostat.

Image

For Functional description, see Virginia Administrative Code print product.

~~2. AUXILIARY WITH SEPARATE DISTRIBUTION.~~ The auxiliary energy system may be a totally separate component not integrated with solar storage or distribution. This may involve a totally separate distribution network, such as individual electric baseboard units placed in the dwelling in locations and numbers as required. The two separate heating systems, however, are linked by temperature controls.

Image

For Functional description, see Virginia Administrative Code print product.

~~3. AUXILIARY HEATING WITH COMBINED DISTRIBUTION.~~ In this system, the auxiliary energy source is located between the storage and distribution components. In this way, an integrated control component monitors whether heat from storage or heat from the auxiliary source is in use. Pumps and valves located at the connection points between the systems regulate the auxiliary energy supply use, and prevents the auxiliary from heating storage.

Image

For Functional description, see Virginia Administrative Code print product.

~~4. AUXILIARY HEATING WITH AIR COLLECTION-DISTRIBUTION.~~ In this system, the auxiliary heat unit is located within the distribution air ducts downstream from the system's fan or blower. In this way, the auxiliary subsystem provides an energy boost to the heated air coming either: 1) from storage, or 2) directly from the collector. The auxiliary unit may be a coil in the duct, containing boiler heated water, or an electric resistance element, or it may be a furnace. The auxiliary and solar system operation is maintained and monitored by an integrated control component.

Image

For Functional description, see Virginia Administrative Code print product.

Solar Heating and Hot Water Systems:

Passive Systems

Passive solar systems are characterized by the use of the sun's energy alone for the transfer of thermal energy throughout the system. Four passive systems are discussed below — three space heating and one domestic hot water preheating system. There are innumerable other concepts, but the following will serve as an introduction to passive solar systems:

~~SPACE AND BUILDING SURFACE HEATING.~~ This concept relies on a large transparent surface for the southern exposure, to increase heat gain directly into the building —

thus heating the space. To avoid daytime overheating, and adequate area and thickness of a thermal mass, such as heavy masonry, should be used on the floors or walls to absorb heat during the day and release it to the space after the sun has set. Insulation devices should also be available to regulate daytime solar exposure and to minimize nighttime heat loss.

Image

For Functional description, see Virginia Administrative Code print product.

~~LIQUID ROOF MASS. This concept is similar to the previous passive system except that the thermal mass — water — is now located in containers above the living space. In some climates, both heating and cooling can be provided by this system. Like the previous concept, proper control must be maintained over the heat exchange process. This can be accomplished by the use of movable insulating panels to expose or cover the containers, or by filling and draining them according to heating or cooling demand.~~

Image

For Functional description, see Virginia Administrative Code print product.

~~COMBINED COLLECTOR STORAGE DISTRIBUTION WALL This passive concept relies on the solar exposure of a south facing thermal mass (containerized water, masonry or concrete) located behind a transparent surface and a separating air space. The thermal mass acts as the collector, storage, and distribution components. Solar radiation collected and stored in the thermal mass is distributed to the space by: 1) radiation, 2) convection, and 3) conduction.~~

~~When collection ceases due to lack of solar radiation, it is advantageous to prevent heat loss through the transparent surface to the outside, by an insulating device. In this example air valves or dampers allow air to circulate across the hot face of the storage mass for convective heat transfer.~~

Image

For Functional description, see Virginia Administrative Code print product.

~~THERMOSYPHONING SYSTEM: DOMESTIC HOT WATER PREHEATING. This passive concept utilizes the natural upward movement of heated fluids for the collection and storage of domestic hot water. The cold water supply is pressure fed to the bottom of a storage tank located above a solar collector. Exposure of the collector to solar radiation allows the cold water to circulate by convection — through the collector — from bottom to top — and, once heated back into storage. The heated water is stored in the tank until a demand is initiated; then water is~~

~~drawn off the top and fed directly to the dwelling or to a conventional water heater.~~

Image

For Functional description, see Virginia Administrative Code print product.

Solar heating and Hot Water Systems:

Component Description

~~A solar heating and domestic hot water system is composed of numerous individual parts and pieces including: collectors; storage; a distribution network with ducts and/or pipes; pumps and/or blowers, valves and/or dampers; fixed or movable insulation; a system of manual or automatic controls; and possibly heat exchangers, expansion tanks and filters. These parts are assembled in a variety of combinations depending on functions, component compatibility, climatic conditions, required performance, site characteristics and architectural requirements, to form a solar heating and/or domestic hot water system. Some components that are unique to the collector system or that are used in an unconventional manner are briefly illustrated and discussed in the next few pages.~~

A. Flat Plate Collectors: An Exploded View.

~~The flat plate collector is a common solar collection device used for space heating and domestic water heating. The collector may be designed to use either gas (generally air) or liquid (usually treated water) as the heat transfer medium. Regardless of the medium used, most flat plate collectors consist of the same general components, as illustrated below.~~

Image

For Functional description, see Virginia Administrative Code print product.

~~1. BATTEN. Battens serve to hold down the cover plate(s) and provide a weather tight seal between the enclosure and the cover.~~

~~2. COVER PLATE. The cover plate usually consists of one or more layers of glass or plastic film or combinations thereof. The cover plate is separated from the absorber plate to reduce reradiation and to create an air space, which traps heat by reducing convective losses. This space between the cover and absorber can be evacuated to further reduce convective losses.~~

~~3. HEAT TRANSFER FLUID PASSAGE. Tubes or fins are attached above, below or integral with an absorber plate for the purpose of transferring thermal energy from the absorber plate to a heat transfer medium. The largest variations in flat plate collector design occurs with this component and its combination with the absorber plate. Tube on plate, integral tube and sheet, open channel flow, corrugated sheets, deformed sheets, extruded sheets and~~

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finned tubes are some of the techniques used for liquid collectors. Air collectors employ such configurations as gauze or screens, overlapping plates, corrugated sheets, and finned plates and tubes.

4. **ABSORBER PLATE.** Since the absorber plate must have a good thermal bond with the fluid passages, an absorber plate integral with the heat transfer media passages is common. The absorber plate is usually metallic, and normally treated with a surface coating which improves absorptivity. Black or dark paints or selective coatings are used for this purpose. The design of this passage and plate combination is of significance in a solar system's effectiveness.

5. **INSULATION.** Insulation is employed to reduce heat loss through the back of the collector. The insulation must be suitable for the high temperature that may occur under no flow or dry plate conditions, or even normal collection operation. Thermal decomposition and outgassing of the insulation must be considered.

6. **ENCLOSURE.** The enclosure is a container for all the above components. The assembly is usually weatherproof. Preventing dust, wind and water, from coming in contact with the cover plate and insulation, is essential to maintaining collector performance.

B. Flat plate collectors.

A flat plate collector generally consist of an absorbing plate, often metallic, which may be flat, corrugated or grooved; coated black to increase absorption of solar radiation insulated on its backside to minimize heat loss from the plate; and covered with a transparent cover plate to trap heat within the collector and reduce cooling of the absorber plate. The captured solar heat is then removed from the absorber by means of a working fluid, generally air or treated water, which is heated as it passes through or over the absorbing plate. Although there are innumerable variants, three type of flat plate collectors will be discussed here as an introductory classification:

1. **FLUID TUBE AND PLATE COLLECTOR.** Most flat plate collectors in use today employ water, oil or an antifreeze solution as the heat transfer medium. The liquid is pumped through fluid passage ways attached to or integral with the absorber plate. There it is solar heated before being circulated through storage in either a closed or open circuit. Freeze protection and prevention of corrosion and leaks require special consideration.

Image

For Functional description, see Virginia Administrative Code print product.

2. **TRICKLING WATER COLLECTOR.** This type of collector uses corrugated metal panels for the exposed circulation of the heat transfer medium. The transfer

medium "trickles" down the channels from a manifold or spray distribution at the top to a trough to the bottom of the collector. The heated water then flows by gravity to the storage tank. Because of the heat transfer fluid's exposure to the atmosphere in this collector, it is always used with the open circuit collector storage system. Therefore, when collection is not occurring, the transfer medium drains back into storage. Efficient operation of this collector is limited to low temperatures because of evaporation effects.

3. **FLAT PLATE AIR COLLECTOR.** Air collectors circulate air or other gases through or over the absorber plate, returning heated air through the ducts to storage or the living space. Compared with liquid collectors, leakage, maintenance, and freeze protection problems are minimal. However, air collectors do require relatively large ducts for their heat transfer medium and often require more mechanical transfer energy per unit of solar energy delivered.

C. High Temperature Collectors.

For heating and cooling systems requiring higher operating temperatures, evacuated tube or concentrating collectors are available. Depending upon the optical and thermal insulation design, the performance of these systems is influenced by the ratio of the diffuse to total available solar radiation.

EVACUATED TUBE COLLECTOR. These collectors employ a vacuum to contain the absorber. The vacuum serves to reduce convective heat losses allowing higher working temperatures and efficiencies. The absorber consists of metal or glass tubes or fins which transfers captured thermal energy to the heat transfer medium (which may be a liquid or gas). The basic modes of heat transfer within the collector are analogous to those illustrated for flat plate collection. No insulation is required for the tubular collector itself; however, the manifold and connecting piping require insulation similar to flat plate units. Both direct and diffuse radiation can be collected.

Image

For Functional description, see Virginia Administrative Code print product.

CONCENTRATING COLLECTORS. Concentrating collectors (also known as focusing collectors) employ curved and multiple point target reflectors to focus radiation on a small area. The area where solar radiation is absorbed can be a point—the focal point—or a line—the focal axis.

A concentrating collector consists of three basic components: the reflector and/ or lens, the absorber, and the housing which maintains alignment and contains insulation for the absorber and connecting piping. Often a mechanism is required to allow the collector/reflector or the absorber to

follow or track the sun's movement across the sky. Maintenance of the reflective surface, particularly in dusty or air polluted areas, and of the tracking mechanism are important considerations for collector performance.

Concentrating collectors are usually best suited for areas with clear skies where most solar radiation is direct. The high temperatures generated may make concentrating collectors particularly viable with solar cooling systems.

As with flat plate collectors, numerous variations of concentrating collectors have been developed including linear and circular concentrators, lens focusing collectors, collectors with directional and non directional focusing and tube concentrators. A number of concentrating configurations are shown to the left [below].

Image

For Functional description, see Virginia Administrative Code print product.

D. Collector Mounting.

Flat plate collectors are generally mounted on the ground or on a building in a fixed position at prescribed angles of solar exposure angles which vary according to the geographic location, collector type, and the use of the absorbed heat. Flat plate collectors may be mounted in four general ways as illustrated below.

1. RACK MOUNTING. Collectors can be mounted at the prescribed angle on a structural frame located on the ground or attached to the building. The structural connection between the collector and the frame and the frame and the building or site must be adequate to resist any impact loads such as wind.

Image

For Functional description, see Virginia Administrative Code print product.

2. STAND-OFF MOUNTING. Elements that separate the collector from the finished roof surface are known as stand offs. They allow air and rainwater to pass under the collector thus minimizing problems of mildew and leakage. The stand offs must also have adequate structural properties. Stand offs are often used to support collectors at an angle other than that of the roof to optimize collector tilt.

Image

For Functional description, see Virginia Administrative Code print product.

3. DIRECT MOUNTING. Collectors can be mounted directly on the roof surface. Generally, the collectors are placed on a water proof membrane on top of the roof sheathing. The finished roof surface, together with the

necessary collector structural attachments and flashing, are then built up around the collector. A weatherproof seal between the collector and the roof must be maintained, or leakage, mildew, and rotting may occur.

Image

For Functional description, see Virginia Administrative Code print product.

4. INTEGRAL MOUNTING. Unlike the previous three component collectors which can be applied or mounted separately, integral mounting places the collector within the roof construction itself. Thus, the collector is attached to and supported by the structural framing members. In addition, the top of the collector serves as the finished roof surface. Weather tightness is again crucial to avoid problems of water damage and mildew. This method of mounting is frequently used for site built collectors.

Image

For Functional description, see Virginia Administrative Code print product.

E. Multiple Collectors.

In active systems, a building's solar collector area is generally composed of individual collector units or panels arranged to operate as a single system. The arrangement and relationship of one collector unit to another, sometimes known as collector ganging, is extremely important for effective solar collection and efficient system operation. Three basic multiple collector arrays are shown below.

1. PARALLEL FLOW DIRECT RETURN. A direct return distribution circuit circulates the transfer medium from the bottom of the collector to a return header or manifold at the top. This arrangement may cause severe operating problems by allowing wide temperature variations from collector to collector due to flow imbalance. Although the pressure drops across each collector are essentially the same and at the same flow rate, high pressure drops occurring along the supply/return header or manifold will cause flow imbalance. This problem can be reduce by sizing each header for minimum pressure drop, although this may be prohibitive because of economic and space limitations. Even manual balancing valves may be difficult to adjust, so automatic devices or orifices might be required for efficient system performance. Provisions must also be made to measure the pressure drop in order to adjust the flow rate to prevent collectors closer to the circulating pump from exceeding design flow rates and those farther away from receiving less.

Image

For Functional description, see Virginia Administrative Code print product.

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~~2. PARALLEL FLOW—REVERSE RETURN.~~ Reverse return piping systems are considered preferable to direct return for their ease of balancing. Because the total length of supply piping and return piping serving each collector is the same and the pressure drop across each collector is equal, the pressure drop across each manifold are also theoretically equal. The major advantage of reverse return piping is that balancing is seldom required since flow through each collector is the same. Provisions for flow balancing may still be required in some reverse return piping systems depending on overall size of the collector array and type of collector.

Image

For Functional description, see Virginia Administrative Code print product.

~~3. SERIES FLOW.~~ Series flow is often used in large planar arrays, to reduce the amount of piping required, by allowing several collector assemblies to be served by the same supply return headers or manifolds. Series flow can also be employed to increase the output temperature of the collector system or to allow the placement of collectors on non-rectangular surfaces. Either direct or reverse return distribution circuits can be employed, but unless each collector branch has the same number of collectors, the reverse return system has no advantage over direct return—each would require flow balancing.

Image

For Functional description, see Virginia Administrative Code print product.

F. Heat Exchangers.

A heat exchanger is a device for transferring thermal energy from one fluid to another. In some solar systems, a heat exchanger may be required between the transfer medium circulated through the collector and the storage medium or between the storage and the distribution medium. Three types of heat exchangers that are most commonly used for these purposes are illustrated below.

~~1. SHELL AND TUBE.~~ This type of heat exchanger is used to transfer heat from a circulating transfer medium to another medium used in storage or in distribution. Shell and tube heat exchangers consist of an outer casing or shell surrounding a bundle of tubes. The water to be heated is normally circulated in the tubes and the hot liquid is circulated in the shell. Tubes are usually metal such as steel, copper or stainless steel. A single shell and tube heat exchanger cannot be used for heat transfer from a toxic liquid to potable water because double separation is not provided water supply, in the case of tube failure.

Image

For Functional description, see Virginia Administrative Code print product.

~~2. SHELL AND DOUBLE TUBE.~~ This type of heat exchanger is similar to the previous one except that a secondary chamber is located within the shell to surround the potable water tube. The heated toxic liquid then circulates inside the shell but around this second tube. An intermediary non-toxic heat transfer liquid is then located between the two tube circuits. As the toxic heat transfer medium circulates through the shell, the intermediary liquid is heated, which in turn heats the potable water supply circulating through the innermost tube. this heat exchanger can be equipped with a sight glass to detect leaks by a change in color—toxic liquid often contains a dye—or by a change in the liquid level in the intermediary chamber, which would indicate a failure in either the outer shell or intermediary tube lining.

Image

For Functional description, see Virginia Administrative Code print product.

~~3. DOUBLE WALL.~~ Another method of providing a double separation between the transfer medium and the potable water supply consists of tubing or a plate coil wrapped around and bonded to a tank. The potable water is heated as it circulates through the tank. When this method is used, the tubing coil must be adequately insulated to reduce heat losses.

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For Functional description, see Virginia Administrative Code print product.

V.A.R. Doc. No. R08-1373; Filed August 12, 2008, 1:16 p.m.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) pursuant to §2.2-4002 A 4; however, under the provisions of §2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-40, 13VAC10-180-50, 13VAC10-180-60).**

Statutory Authority: §36-55.30:3 of the Code of Virginia.

Public Hearing Information:

September 16, 2008 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Glen Allen, Virginia

Public Comments: Public comments may be submitted until 5 p.m. on September 16, 2008.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or email judson.mckellar@vhda.com.

Summary:

The proposed amendments to the authority's rules and regulations for the allocation of low-income housing tax credits will (i) increase the maximum credit amount for application in the nonprofit pool and local housing authority pool from \$650,000 to \$750,000, (ii) permit applications for developments in their compliance period that are no longer subject to an extended use agreement, (iii) limit applications to one per location, (iv) award points to developments with 750 square feet of community space, (v) limit points for windows to Energy Star windows, (vi) make architect certifications mandatory for EarthCraft/LEED and Universal Design points, and (vii) make other miscellaneous administrative clarification changes.

13VAC10-180-40. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the authority which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in §147(f)(2) of the IRC. The executive director may include all or any portion of this chapter in the qualified allocation plan. However, the authority may amend the qualified allocation plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the

submission of applications and the selection thereof as he shall consider necessary or appropriate.

No application for credits will be accepted for any building that has previously claimed credits and is still subject to the compliance period for such credits after the year such building is placed in service. Notwithstanding the limitation set forth in the previous sentence, an applicant may submit an application for credits for a building in which an extended low-income housing commitment has been terminated by foreclosure, provided the applicant has no relationship with the owner or owners of such building during its initial compliance period. No application will be accepted, and no reservation or allocation will be made, for credits available under §42(h)(3)(C) in the case of any buildings or development for which tax-exempt bonds of the authority, or an issuer other than the authority, have been issued and which may receive credits without an allocation of credits under §42(h)(3)(C).

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments. ~~When scoring the applications, the executive director will award points to those applications that submit the form correctly within the deadlines established by the executive director, award no points to those applications that submit the form incorrectly within the deadlines established by the executive director and subtract points from those applications that fail to submit the form by such deadlines.~~

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas,

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separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development

as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under §42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the

credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the director.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be

located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in §42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in §42(i)(1) of the IRC); and
2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and

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(iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in §42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough

credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 \$750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. ~~(40 (minus 50 points; for failure to make timely submission, minus 50 points) submission)~~

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the

local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (30 points)

d. If the proposed development is located in a qualified census tract as defined in §42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

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h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of ~~800~~750 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

(f) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of 8.2 or more and a variable speed air handling unit or thru-the-wall heat pump equipment that has an EER rating of 11.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more and a variable speed air handling unit, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

(g) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(h) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)

(i) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(j) Beginning January 1, 2009, if all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

~~(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:~~

~~(a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10 year warranty against breakage of the seal. (3 points)~~

~~(b) (3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the~~

rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 60 points.

c. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus ~~lines~~ stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

g. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such EarthCraft certification, provided that the proposed development's architect is on the Authority's list of LEED/EarthCraft certified architects. (30 points)

h. Any development for which the applicant agrees to use an authority-certified property manager to manage the development. (25 points)

i. If units are constructed to meet the authority's universal design standards, provided that the proposed development's architect is on the Authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

j. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus .4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected ~~major violation of health, safety and building codes~~ life-threatening hazard under HUD's Uniform Physical Condition Standards. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is

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filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

~~h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)~~

~~i. Evidence that the proposed development's architect has attended the authority's Universal Design symposium and the certificate of attendance is attached with the architect's certification. (5 points)~~

~~j. Evidence that the proposed development's architect has attended an EarthCraft Virginia multifamily professional training seminar and the certificate of attendance is attached with the architect's certification. (5 points)~~

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the

number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development

which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will

not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 450 points for calendar year 2008, and 500 points after January 1, 2009 (425 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder for calendar year 2008, and 475 points for such developments after January 1, 2009), shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under §42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within

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such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet

the requirements of §42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if

the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be

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excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study,

in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time

allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority

and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 50% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the

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application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

VA.R. Doc. No. R08-1573; Filed August 13, 2008, 11:52 a.m.

TITLE 14. INSURANCE

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.

Title of Regulation: 14VAC5-395. Rules Governing Settlement Agents (amending 14VAC5-395-40).

Statutory Authority: §§6.1-2.25 and 12.1-13 of the Code of Virginia.

Effective Date: August 29, 2008.

Agency Contact: Steve Shipman, Supervisor, Agent Regulation Division, State Corporation Commission, Bureau of Insurance, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9465, FAX (804) 371-9396, or email steve.shipman@scc.virginia.gov.

Summary:

Subdivision D 3 of §6.1-2.21 of the Code of Virginia has been amended to increase the surety bond coverage requirement that settlement agents are required to maintain from \$100,000 to \$200,000 effective July 1, 2008. Because 14VAC5-395-40 mirrors the surety bond coverage requirement found in the statute, a corresponding change to the regulation is necessary.

AT RICHMOND, AUGUST 8, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00141

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Settlement Agents

ORDER ADOPTING RULES

By Order entered herein June 13, 2008, all interested persons were ordered to take notice that subsequent to July 18, 2008, the State Corporation Commission ("Commission") would consider the entry of an order adopting a revision proposed by the Bureau of Insurance ("Bureau") to the Rules Governing Settlement Agents, set forth in Chapter 395 of Title 14 of the Virginia Administrative Code, unless on or before July 18, 2008, any person objecting to the adoption of the proposed revised rule filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed revised rule on or before July 18, 2008.

No comments or requests for a hearing were filed with the Clerk.

THE COMMISSION, having considered the proposed revision to 14 VAC 5-395-40, is of the opinion that it should be adopted.

THEREFORE IT IS ORDERED THAT:

(1) The revision to 14 VAC 5-395-40, which is attached hereto and made a part hereof, should be, and it is hereby, ADOPTED to be effective August 29, 2008.

(2) AN ATTESTED COPY hereof, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the adoption of the revision to the rules by mailing a copy of this Order, including a clean copy of the attached final revised rule, to all registered title settlement agents and title insurers, and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, including a copy of the attached rule, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached new rule available on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(4) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) of this Order.

14VAC5-395-40. Insurance and bonding requirements.

A. At the time of registration with the Virginia State Bar, every title insurance agent and title insurance agency acting as a settlement agent shall file with the bureau a certification on a form prescribed by the bureau, that the settlement agent has, and thereafter shall keep in force for as long as they are acting as a settlement agent, the following:

1. An errors and omissions insurance policy providing limits of at least \$250,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia.
2. A blanket fidelity bond or employee dishonesty insurance policy providing limits of at least \$100,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia. Settlement agents that have no employees except the owners, partners, shareholders, or members may request a waiver of this requirement on their certification form.

B. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia or is registered with the Virginia State Bar shall file with the bureau a surety bond in an amount not less than ~~\$100,000~~ \$200,000 on a form prescribed by the bureau. The original surety bond shall be filed with the bureau at the time of registration with the Virginia State Bar and, if such bond is canceled, at the time a replacement bond is issued.

VA.R. Doc. No. R08-1370; Filed August 11, 2008, 2:34 p.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **16VAC25-10. Public Participation Guidelines (repealing 16VAC25-10-10 through 16VAC25-10-120).**

16VAC25-11. Public Participation Guidelines (adding 16VAC25-11-10 through 16VAC25-11-110).

Statutory Authority: §§2.2-4007.02, 40.1-6, and 40.1-22 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: John Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

16VAC25-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Safety and Health Codes Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

16VAC25-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

Regulations

"Agency" means the Safety and Health Codes Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

16VAC25-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

16VAC25-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 16VAC25-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a re-proposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

16VAC25-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

16VAC25-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

16VAC25-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

16VAC25-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

Regulations

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

16VAC25-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

16VAC25-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

16VAC25-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their

effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

V.A.R. Doc. No. R08-1458; Filed August 5, 2008, 9:57 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Forms

NOTICE: The following forms have been filed by the Board of Audiology and Speech-Language Pathology. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology.**

FORMS (18VAC30-20)

Application for a ~~Audiology License to Practice~~ by ASHA or ABA Certification (rev. ~~6/04~~ 6/08).

Application Checklist for Audiology License by ASHA or ABA Certification (rev. 5/08).

~~Application for a License to Practice by ABA (AAA) Certification (rev. 6/04).~~

Application for Provisional Licensure to Practice Audiology (eff. 7/06 rev. 9/07).

Application Checklist for Applicants Requesting Provisional Licensure (rev. 9/07).

Application for Provisional Audiologist to Apply for Full Audiology License (rev. 7/08).

Application Checklist for Provisional Applicants Requesting Full Audiologist Licensure (eff. 8/08).

Form A, Certification of Audiology Education (eff. 7/06).

Application for a License to Practice Speech-Language Pathology by Education (rev. 6/04 9/07).

Application Checklist for Applicants by Education (rev. 9/07).

Application for a License to Practice Speech-Language Pathology by ASHA Certification (rev. 5/08).

Application Checklist for Applicants by ASHA Certification (rev. 5/08).

Application for a License to Practice as a School Speech-Language Pathologist (rev. 6/04 7/07).

Application Checklist for Applicants for School Speech-Language Pathology License (rev. 8/07).

Application for Reinstatement of License to Practice (rev. 10/02 11/07).

Reinstatement Application Checklist for Audiology and Speech-Language Pathology (rev. 11/07 8/08).

Application for Reinstatement of License to Practice as School Speech Language Pathologist Pathology License (rev. 6/04 11/07).

Reinstatement Application Checklist for School Speech-Language Pathologists Applicants (rev. 8/07).

Application for Reinstatement of Inactive License to Practice (rev. 11/07).

Renewal Notice and Application, 2201 (rev. 6/04).

Renewal Notice and Application, 2202 (rev. 6/04).

Renewal Notice and Application, 2203 (rev. 6/04).

Continued Competency Activity and Assessment Form (eff. 3/04 rev. 7/07).

Application for Approval as a Continuing Competency Sponsor (rev. 6/04 7/07).

VA.R. Doc. No. R08-1554; Filed August 13, 2008, 9:23 a.m.

BOARD FOR BRANCH PILOTS

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 18VAC45-10. Public Participation Guidelines (repealing 18VAC45-10-10 through 18VAC45-10-90).

18VAC45-11. Public Participation Guidelines (adding 18VAC45-11-10 through 18VAC45-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-902 of the Code of Virginia.

Effective Date: October 2, 2008.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

18VAC45-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board for Branch Pilots. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

Regulations

18VAC45-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board for Branch Pilots, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

18VAC45-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC45-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC45-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

18VAC45-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the

changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC45-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC45-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

Regulations

18VAC45-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC45-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC45-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC45-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1469; Filed August 12, 2008, 11:27 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Forms

NOTICE: The following forms have been filed by the Board of Funeral Directors and Embalmers. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Titles of Regulations: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers.

18VAC65-40. Regulations for the Funeral Service Internship Program.

FORMS (18VAC65-20)

Funeral Service Provider Application for a License to Practice Funeral Service (rev. 6/06 4/08).

Application for Courtesy Card (rev. 6/06 7/08).

Application for New Funeral Service Establishment, Branch Establishment, Change of Location, Change of Ownership, Change of Trade Name, Change of Manager Application (rev. 6/06 3/08).

Application for Notification of Establishment Changes (rev. 7/08).

Application for Waiver of Full-time Manager Requirement Application (rev. 6/06 7/08).

~~Application for Crematory Registration Application~~ (rev. 6/06 4/08).

~~Application for Renewal for Waiver of Full time Manager Requirement~~ (rev. 12/02).

Verification of State Licensure Form (rev. 12/02 3/08).

~~Application for Surface Transportation and Removal Service Registration Application~~ (rev. 6/06 6/08).

~~Application for Approval as a Continuing Education Provider Application~~ (eff. 6/06 rev. 3/08).

Continuing Education Summary Form (rev. 7/07).

Application for Reinstatement of as a Funeral Service License Provider (eff. 6/06 rev. 4/08).

Application for Reinstatement of Funeral Service Establishment (rev. 4/08).

~~License Renewal Notice and Application, 0502, Funeral Service Providers~~ (rev. 12/02).

~~License Renewal Notice and Application, 0501, Funeral Establishments~~ (rev. 12/02).

~~License Renewal Notice and Application, 0506, Courtesy Card~~ (rev. 12/02).

~~License Renewal Notice and Application, 0509, Surface Transportation~~ (rev. 12/02).

~~License Renewal Notice and Application, 0510, Crematories~~ (rev. 12/02).

Appendix I: General Price List (rev. 12/02 7/07).

Appendix II: Casket Price List; Outer Burial Container Price List (rev. 12/02 7/07).

Appendix III: Itemized Statement of Funeral Goods and Services Selected (rev. 12/02 7/07).

Appendix IV: Embalming Record (rev. 12/02).

FORMS (18VAC65-40)

Registration for Checklist for the Funeral Service Intern Internship Program Checklist and Instructions (eff. 6/06 rev. 4/08).

~~Application for Funeral Service Intern Program Application~~ (rev. 6/06 4/08).

Checklist and Instructions for Funeral Service Provider (rev. 4/08).

Funeral Supervisor Registration Application (rev. 4/08).

First 1000 Hour Internship Report (rev. 3/08).

Second 1000 Hour Internship Report (rev. 3/08).

Third 1000 Hour Internship Report (rev. 3/08).

~~Application for Change of Supervisor: Funeral Service Intern Internship Program Change of Supervisor Application~~ (rev. 6/06 3/08).

Application for Reinstatement as a Funeral Service Intern (rev. 4/08).

~~Renewal Notice and Application 0505 Funeral Service Interns~~ (rev. 6/06).

VA.R. Doc. No. R08-1558; Filed August 13, 2008, 9:08 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Forms

NOTICE: The following forms have been filed by the Department of Health Professions. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Title of Regulation: 18VAC76-20. Regulations Governing the Prescription Monitoring Program.

FORMS (18VAC76-20)

Request for a Waiver or an Exemption from Reporting (rev. 3/06 9/07).

Request to Register as an Authorized Agent to Receive Information from the Prescription Monitoring Program (rev. 8/05 7/08).

Pharmacist Request for Disclosure of Information from Prescription Monitoring Program (rev. 8/05 7/08).

Patient Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (eff. 12/03 rev. 7/08).

Prescriber Request for Discretionary Disclosure of Information from Prescription Monitoring Program (rev. 7/05 7/08).

Request for Disclosure of Information from Prescription Monitoring Program (DHP/DDU/MEO) (rev. 7/08).

Request for Disclosure of Information from Prescription Monitoring Program for Research (rev. 7/08).

Regulatory Authority Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (eff. 12/03 rev. 7/08).

Regulations

Investigation under Virginia Medicaid Program; Request for Discretionary Disclosure of Information from Prescription Monitoring Program (~~eff. 12/03~~ rev. 7/08).

Prescription Monitoring Program Internet Datacenter Registration Form (rev. 7/08).

VA.R. Doc. No. R08-1530; Filed August 13, 2008,

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Title of Regulation: 18VAC76-40. Regulations Governing Emergency Contact Information.

FORMS (18VAC76-40)

Emergency Contact Information Letter and Application (~~eff. 3/04~~) (rev. 7/08).

VA.R. Doc. No. R08-1550; Filed August 13, 2008,

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 18VAC85-10. Public Participation Guidelines (repealing 18VAC85-10-10 through 18VAC85-10-110).

18VAC85-11. Public Participation Guidelines (adding 18VAC85-11-10 through 18VAC85-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of

interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

18VAC85-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Medicine. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC85-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Medicine, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic

list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

18VAC85-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC85-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC85-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC85-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

Regulations

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC85-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC85-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC85-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC85-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC85-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC85-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1480; Filed August 8, 2008, 1:54 p.m.

Forms

NOTICE: The following forms have been filed by the Board of Medicine. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

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

18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners.

18VAC85-50. Regulations Governing the Practice of Physician Assistants.

18VAC85-80. Regulations Governing the Licensure of Occupational Therapists.

18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists.

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers 18VAC85-130. Regulations Governing the Practice of Licensed Midwives.

FORMS (18VAC85-20)

Instructions for Completing an Application to Practice Medicine in Virginia for Graduates of Approved ~~Institutions~~ Medical Schools in the US/Canada (rev. ~~7/03~~ 7/08).

Instructions for Completing an Application to Practice Medicine for Graduates of Nonapproved ~~Institutions~~ Medical Schools (outside of the US/Canada) (rev. ~~7/03~~ 7/08).

~~Instructions for Completing PMLEXIS Examination/License Application~~ (rev. ~~7/03~~).

Information for Completing Chiropractic Endorsement Application (rev. ~~7/03~~ 8/07).

Instructions for Completing Podiatry Endorsement Application (rev. ~~7/03~~ 8/07).

Instructions for Completing Osteopathic Medicine Licensure Application (rev. ~~7/03~~ 11/07).

Form A, Claims History Sheet (rev. ~~12/02~~ 8/07).

Form B, Activity Questionnaire (rev. ~~12/02~~ 8/07).

Regulations

Form C, Clearance from Other State Boards (rev. ~~12/02~~ 8/07).

Form E, Disciplinary Inquiry (rev. ~~12/02~~ 8/07).

Application for a License to Practice Medicine and Surgery (rev. ~~7/03~~ 11/07).

Application for a License to Practice Osteopathic Medicine (rev. ~~7/03~~ 11/07).

Application for a License to Practice Podiatry (rev. ~~7/03~~ 8/07).

Application for a License to Practice Chiropractic (rev. ~~7/03~~ 8/07).

Form H, ~~Virginia Request for Podiatry Disciplinary Action Federation of Podiatric Medical Boards Report~~ (rev. ~~4/04~~ 8/07).

~~Form I, National Board of Podiatric Medical Examiners Request for Scores on Part I and II~~ (rev. ~~1/03~~).

Requirements and Instructions for an Intern/Resident License (rev. ~~3/04~~ 8/07).

Intern/Resident, Form A, Memorandum from Associate Dean of Graduate Medical Education (rev. ~~3/04~~ 8/07).

Intern/Resident, Form B, Certificate of Professional Education (rev. ~~3/04~~ 8/07).

Application for a Temporary License for Intern/Resident Training Program (rev. ~~3/04~~ 8/07).

Form G, Intern Resident, Request for Status Report of ECFMG Certification (eff. ~~3/04~~ 8/07).

Form H, Report of Clinical Rotations (rev. 12/02).

Transfer Request, Intern /Resident (eff. ~~3/04~~ 8/07).

Instructions for Completing an Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 (rev. ~~3/04~~ 8/07).

Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 (rev. ~~3/04~~ 8/07).

Form G, Request for Status Report of Educational Commission for Foreign Medical Graduates Certification (rev. ~~3/04~~ 8/07).

Form L, Certificate of Professional Education (rev. ~~9/04~~ 8/07).

Continued Competency Activity and Assessment Form (rev. ~~4/00~~ 9/07).

Instructions for Reinstatement of Medicine and Surgery Licensure Application (rev. ~~3/04~~ 4/08).

Application for Reinstatement of License to Practice Medicine (rev. ~~3/04~~ 8/07).

Form A, MD Reinstatement, Claims History Sheet (rev. ~~3/04~~ 8/07).

Form B, MD Reinstatement, Activity Questionnaire Form (rev. ~~3/04~~ 8/07).

Form C, MD Reinstatement, State Questionnaire Form (rev. ~~2/04~~ 8/07).

MD Reinstatement, Disciplinary Inquiries to Federation of State Medical Boards (rev. ~~3/04~~ 8/07).

Instructions for Reinstatement of ~~Osteopathy~~ Osteopathic Medicine Licensure Application (rev. ~~2/04~~ 4/08).

Application for Reinstatement of License to Practice Osteopathic Medicine (rev. ~~3/04~~ 8/07).

Form A, Osteopathy Reinstatement, Claims History (rev. ~~3/04~~ 8/07).

Instructions for Reinstatement of a Chiropractic Licensure Application (rev. ~~2/04~~ 4/08).

Application for Reinstatement of License to Practice as a Chiropractor (rev. ~~3/04~~ 8/07).

Instructions for Reinstatement of Podiatry Licensure Application (rev. ~~3/04~~ 4/08).

Application for Reinstatement of License to Practice Podiatry (rev. ~~3/04~~ 8/07).

Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Reinstatement Denied or License Revoked (rev. 8/07).

Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

Reinstatement Application Instructions for Podiatry Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

Application for Reinstatement of License to Practice Medicine/Osteopathy After Petition for Reinstatement Denied or License Revoked (rev. ~~3/03~~ 8/07).

~~Application for Reinstatement of License to Practice Medicine/Osteopathy~~ (rev. ~~2/03~~).

~~Application for Reinstatement of License to Practice Chiropractic~~ (rev. ~~3/03~~).

~~Renewal Notice and Application, 0101 Medicine and Surgery~~ (rev. ~~7/03~~).

~~Renewal Notice and Application, 0102 Osteopathy and Surgery~~ (rev. ~~7/03~~).

~~Renewal Notice and Application, 0103 Podiatry~~ (rev. ~~7/03~~).

~~Renewal Notice and Application, 0104 Chiropractic~~ (rev. ~~7/03~~).

~~Renewal Notice and Application, 0108 Naturopath (rev. 12/02).~~

~~Renewal Notice and Application, 0109 University and Limited License (rev. 12/02).~~

~~Renewal Notice and Application, 0116 Interns and Residents (rev. 12/02).~~

Application for Registration for Volunteer Practice (eff. ~~12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (eff. ~~1/03~~ rev. 8/08).

Guidelines for Completing the Practitioner Profile Questionnaire (rev. 12/02).

Practitioner's Help Section (rev. ~~11/02~~ 11/07).

Practitioner Questionnaire (rev. ~~11/02~~ 8/04).

FORMS (18VAC85-40)

Instructions for Completing a Respiratory Care Practitioner Application (rev. ~~6/04~~ 12/07).

Application for a License to Practice as a Respiratory Care Practitioner (rev. ~~6/04~~ 12/07).

Instructions for Completing Reinstatement Application for Respiratory Care Practitioner License (rev. ~~4/05~~ 8/07).

Application for Reinstatement of License to Practice Respiratory Care (rev. ~~11/04~~ 10/07).

Reinstatement Application Instructions for Respiratory Care Practitioner after Reinstatement Denied or License Revoked (rev. 8/07).

Reinstatement Application Instructions for Respiratory Care Practitioner after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

Form A, Claims History Sheet (rev. ~~6/04~~ 8/07).

Form B, Activity Questionnaire (rev. ~~6/04~~ 8/07).

Form C, Clearance from Other State Boards (rev. ~~3/03~~ 8/07).

Form L, Certificate of Professional Education (rev. ~~9/04~~ 8/07).

Verification of Certification Request Form (NBRC) (rev. ~~6/04~~ 8/07).

~~Renewal Notice and Application, 0117 Respiratory Care (rev. 2/03).~~

Application for Registration for Volunteer Practice (eff. ~~12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (eff. ~~1/03~~ rev. 8/08).

FORMS (18VAC85-50)

Instructions for Completing a Physician Assistant Licensure Application (rev. ~~2/04~~ 2/08).

Application for Licensure as a Physician Assistant (rev. ~~7/03~~ 8/07).

Form #B, Activity Questionnaire (rev. ~~3/03~~ 8/07).

Form #C, Clearance from Other State Boards (rev. ~~3/03~~ 8/07).

Form #L, Certificate of Physician Assistant Education (eff. ~~9/04~~ rev. 8/07).

Form #2, Physician Assistant Invasive Procedures Protocol (rev. ~~3/03~~ 8/07).

~~Renewal Notice and Application, 0110 Physician Assistant (rev. 12/02).~~

Instructions for Completing a Practice Application as a Physician Assistant (rev. ~~9/04~~ 11/07).

Application ~~to~~ for Practice as a Physician Assistant (rev. ~~6/04~~ 11/07).

Request for Prescriptive Authority from the PA (rev. ~~4/04~~ 8/07).

Alternate Supervisors Signature Form (rev. 3/03).

Form #1-A, Addendum to ~~Protect~~ Practice of Physician Assistant Duties (rev. ~~3/03~~ 8/07).

Application for Registration for Volunteer Practice (eff. ~~12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (eff. ~~1/03~~ rev. 8/08).

Physician Assistant Volunteer License Application (eff. 3/03).

FORMS (18VAC85-80)

Instructions for Completing an Occupational Therapist Licensure Application (rev. ~~3/03~~ 12/07).

Application for a License to Practice as an Occupational Therapist (rev. ~~3/03~~ 12/07).

Form A, Claims History Sheet (rev. ~~3/03~~ 8/07).

Form B, Activity Questionnaire (rev. ~~3/03~~ 8/07).

Form C, Clearance from Other State Boards (rev. ~~3/03~~ 10/07).

Form L, Certificate of Professional Education (rev. ~~9/04~~ 8/07).

Board Approved Practice, Occupational Therapist Traineeship (rev. ~~3/03~~ 8/07).

Instructions for Completing Reinstatement of Occupational Therapy Licensure (rev. ~~3/04~~ 8/07).

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Reinstatement Application Instructions for Occupational Therapy Practitioner Licensure after Mandatory Suspension, Suspension or Surrender (rev. 10/07).

Application for Reinstatement of Licensure to Practice Occupational Therapy (rev. ~~3/04~~ 8/07).

Instructions for Supervised Practice, Occupational Therapy Reinstatement (rev. ~~3/04~~ 8/07).

Supervised Practice Application, Occupational Therapy Reinstatement (rev. ~~3/04~~ 8/07).

~~Report of Supervised Practice for Reinstatement, Form #B (rev. 3/04).~~

~~Renewal Notice and Application (rev. 11/02).~~

Continued Competency Activity and Assessment Form (rev. ~~9/00~~ 4/00).

Application for Registration for Volunteer Practice (~~eff. 12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (~~eff. 1/03~~ rev. 8/08).

FORMS (18VAC85-101)

Instructions for Completing an Application for Licensure as a Radiologic Technologist By Examination/Endorsement (rev. ~~6/04~~ 9/07).

Application for a License as a Radiologic Technologist (rev. ~~6/04~~ 9/07).

Form A, Claims History Sheet (rev. ~~6/04~~ 8/07).

Form B, Activity Questionnaire (rev. ~~6/04~~ 8/07).

Form C, Clearance from Other States (rev. ~~6/04~~ 8/07).

Form E, Certification Request from ARRT (rev. ~~6/04~~ 8/07).

Form F, Traineeship Application (rev. ~~6/04~~ 8/07).

Form L, Certificate of Radiologic Technology Education (~~eff. 6/04~~ rev. 8/07).

Instructions for Completing an Application for Licensure as a Radiologic Technologist-Limited (rev. ~~6/04~~ 2/08).

Application for a License to Practice Radiologic Technology-Limited (rev. ~~6/04~~ 8/07).

Form T/A (1) and T/A (2), Radiologic Technologist-Limited Training Application for Abdomen/Pelvis pursuant to Virginia Regulations 18VAC85-101-60 B (3) (rev. ~~6/04~~ 8/07).

Form T/C (1) and T/C (2), Radiologic Technologist-Limited Clinical Training Application (rev. ~~6/04~~ 8/07).

Form T/E, Radiologic Technologist-Limited Traineeship Application (rev. ~~6/04~~ 8/07).

Instructions for Completing Reinstatement of Radiologic Technology Licensure (rev. ~~4/04~~ 8/07).

Application for Reinstatement of License to Practice Radiologic Technologist (~~eff. 4/04~~ rev. 10/07).

Instructions for Completing Reinstatement of Radiologic Technologist-Limited Licensure (rev. ~~4/04~~ 8/07).

Application for Reinstatement of License to Practice Radiologic Technologist-Limited (~~eff. 4/04~~ 10/07).

~~License Renewal Notice and Application, 0120 Radiologic Technologist (rev. 11/02).~~

~~License Renewal Notice and Application, 0122 Limited Radiologic Technologist (eff. 11/02).~~

Application for Registration for Volunteer Practice (~~eff. 12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (~~eff. 1/03~~ rev. 8/08).

Continued Competency Activity and Assessment Form (eff. 7/08).

FORMS (18VAC85-110)

Instructions for Completing an Application for a License to Practice as an Acupuncturist - Graduates of Approved Institutions or Programs in the United States (rev. ~~4/04~~ 8/07).

Instructions for Completing an Application for a License to Practice as an Acupuncturist - Graduates of Nonapproved Educational Programs (rev. ~~3/04~~ 8/07).

Application for a License to Practice as an Acupuncturist (rev. ~~12/02~~ 8/07).

Form A, Claims History Sheet (rev. ~~3/04~~ 8/07).

Form B, Activity Questionnaire (rev. ~~3/04~~ 8/07).

Form C, Clearance from Other State Boards (rev. ~~3/04~~ 8/07).

Form L, Certification of Professional Education (rev. ~~9/04~~ 8/07).

Verification of NCCAOM Certification (rev. ~~3/04~~ 3/08).

~~Renewal Notice and Application, 0121 Licensed Acupuncturist (rev. 12/02).~~

Recommendation for Examination by a Physician (~~eff. 12/01~~ rev. 11/06).

Application for Registration for Volunteer Practice (~~eff. 12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (~~eff. 1/03~~ rev. 8/08).

Instructions for Completing a Reinstatement Application for Licensed Acupuncturist (rev. 8/07).

Reinstatement Application Instructions for Licensed Acupuncturist after Suspension, Surrender or Mandatory Suspension (rev. 8/07).

Application for Reinstatement of a License to Practice as a Licensed Acupuncturist (rev. 8/07).

FORMS (18VAC85-120)

Instructions for Completing an Athletic Trainer Licensure Application (rev. ~~5/04~~ 12/07).

Application for a License to Practice as an Athletic Trainer (rev. ~~5/04~~ 12/07).

Form A, Claims History (rev. ~~5/04~~ 8/07).

Form B, Activity Questionnaire (rev. ~~5/04~~ 8/07).

Form C, Clearance from Other State Boards (rev. ~~5/04~~ 8/07).

Form L, Certificate of Professional Education (rev. ~~9/04~~ 8/07).

Provisional License to Practice as an Athletic Trainer Pursuant to 18VAC85-120-80 (rev. ~~5/04~~ 8/07).

~~Renewal Notice (eff. 5/04).~~

~~License Renewal Notice and Application (rev. 5/04).~~

Application for Registration for Volunteer Practice (~~eff. 12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (~~eff. 1/03~~ rev. 8/08).

Instructions for Completing a Reinstatement Application for Athletic Training (rev. 8/07).

Application for Reinstatement of a License to Practice as an Athletic Trainer (rev. 8/07).

FORMS (18VAC85-130)

Instructions for Completing a Licensed Midwife Application (rev. ~~6/06~~ 12/07).

Application for a License to Practice as a Licensed Midwife (rev. ~~10/05~~ 12/07).

Form A, Claims History (rev. ~~8/05~~ 8/07).

Form B (rev. ~~10/05~~ 8/07).

Form C (rev. ~~10/05~~ 8/07).

VA.R. Doc. No. R08-1551; Filed August 13, 2008, 9:13 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Forms

NOTICE: The following forms have been filed by the Board of Long-Term Care Administrators. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Titles of Regulations: 18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.

FORMS (18VAC95-20)

~~Application for Nursing Home Administrator Licensure, Application~~ General Information (~~eff. 7/05~~ rev. 7/08).

~~Application for Nursing Home Administrator~~ Application for Initial Licensure (rev. ~~7/05~~ 7/08).

~~Endorsement Certification~~ Verification Form A (rev. ~~7/05~~ 3/08).

~~Application for Administrator in Training Registration, General Information~~ (~~eff. 7/05~~).

~~Application for Nursing Home Administrator-in-Training Registration~~ Application (rev. ~~7/05~~ 7/08).

Nursing Home Administrator-in-Training – Notice of Change of Status or Discontinuance (rev. 10/07).

~~Application for Nursing Home Administrator~~ Preceptor Registration Application (rev. ~~7/05~~ 7/08).

Nursing Home Administrator Application for Reinstatement of License (rev. ~~7/05~~ 7/08).

Nursing Home Administrator Application for Licensure by Endorsement (rev. 7/08).

Nursing Home Administrator-in-Training Monthly Report (rev. 10/07).

Nursing Home Administrator-in-Training – Documentation of Completion Form (rev. 8/08).

Domains of Practice (rev. 10/07).

~~Renewal Notice (eff. 4/05).~~

~~Renewal Notice and Application (rev. 7/05).~~

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FORMS (18VAC95-30)

Checklist for Endorsement or Credentials Application to Practice as an Assisted Living Facility Administrator (~~eff. rev. 1/08~~).

Checklist for Licensure by Experience (For Current Administrators only) to Practice as an Assisted Living Facility Administrator (~~eff. rev. 1/08~~).

Checklist for Initial Licensure by Education to Practice as an Assisted Living Facility Administrator (rev. 1/08).

Checklist for Licensure by Examination to Practice as an Assisted Living Administrator (eff. 1/08).

Assisted Living Facility Administrator Application for Licensure (~~eff. rev. 1/08~~).

Assisted Living Facility Administrator Administrator-in-Training Application (~~eff. rev. 1/08~~).

Monthly Report of Assisted Living Facility Administrator-in-Training (~~eff. 1/08~~ rev. 12/07).

Completion of Assisted Living Facility Administrator-in-Training (~~eff. 1/08~~ rev. 12/07).

Endorsement Certification Form (~~eff. 1/08~~ rev. 8/07).

Assisted Living Facility Administrator Preceptor Application (~~eff. rev. 1/08~~).

Domains of Practice (rev. 2/08).

VA.R. Doc. No. R08-1557; Filed August 13, 2008, 9:23 a.m.

BOARD OF OPTOMETRY

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC105-10. Public Participation Guidelines (repealing 18VAC105-10-10 through 18VAC105-10-120).**

18VAC105-11. Public Participation Guidelines (adding 18VAC105-11-10 through 18VAC105-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4426, FAX (804) 527-4466, or email elizabeth.carter@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

18VAC105-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Optometry. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC105-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Optometry, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

18VAC105-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC105-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC105-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC105-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an

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opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC105-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC105-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC105-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

18VAC105-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC105-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC105-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1484; Filed August 8, 2008, 11:22 a.m.

BOARD OF PHYSICAL THERAPY

Forms

REGISTRAR'S NOTICE: The following forms have been filed by the Board of Physical Therapy. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy.

FORMS (18VAC112-12)

Application for Licensure by Examination to Practice ~~Physical Therapy~~ as a Physical Therapist/Physical Therapist Assistant (rev. ~~7/04~~ 9/07).

Application for Licensure by Endorsement to Practice Physical Therapy as a Physical Therapist/Physical Therapist Assistant (rev. ~~7/04~~ 12/07).

Application for Reinstatement of Licensure to Practice Physical Therapy as a Physical Therapist/Physical Therapist Assistant (rev. ~~7/04~~ 8/07).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an ~~American/~~Approved Program) (rev. ~~8/05~~ 11/07).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a ~~Non-American/~~Nonapproved Program) (rev. ~~8/05~~ 11/07).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an ~~American/~~Approved Program) (rev. ~~8/05~~ 8/07).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a ~~Non-American/~~Nonapproved Program) (rev. ~~8/05~~ 8/07).

~~Instructions for Completing - Reinstatement of Licensure Application for to Practice as a Physical Therapist/Physical Therapist Assistant (rev. ~~7/04~~ 4/08).~~

~~Score Transfer Request Application (rev. 5/03).~~

Traineeship Application, Statement of Authorization (rev. ~~7/04~~ 8/07).

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Traineeship Application, Statement of Authorization (1,000-hour traineeship) (rev. ~~7/04~~ 8/07).

Traineeship Application, Statement of Authorization, Relicensure (480-hour traineeship) (rev. ~~7/04~~ 12/07).

~~Form #A, Claims History Sheet (rev. 7/04).~~

~~Form #B, Employment/Practice Verification of Physical Therapy (rev. 7/04).~~

~~Form #C, Verification of State Licensure (rev. 7/04).~~

Form #L, Certificate of Physical Therapy Education (rev. ~~7/04~~ 7/08).

~~Renewal Notice and Application (rev. 7/04).~~

Continued Competency and Assessment Form (rev. ~~7/04~~ 7/08).

480 Traineeship Completion Form (rev. 12/07).

Application for Direct Access Certification (rev. 4/08).

Instructions – Direct Access Certification (rev. 4/08).

Patient Attestation Form (rev. 7/07).

VA.R. Doc. No. R08-1556; Filed August 13, 2008, 9:07 a.m.

BOARD OF COUNSELING

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC115-10. Public Participation Guidelines (repealing 18VAC115-10-10 through 18VAC115-10-120).**

18VAC115-11. Public Participation Guidelines (adding 18VAC115-11-10 through 18VAC115-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

18VAC115-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Counseling. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC115-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Counseling, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a

consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

18VAC115-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed

on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC115-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC115-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

18VAC115-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

Regulations

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC115-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC115-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC115-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

18VAC115-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for

contemporaneous notice to be provided to participants and the public.

18VAC115-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC115-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1487; Filed August 8, 2008, 1:54 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 18VAC120-10. Public Participation Guidelines (repealing 18VAC120-10-100 through 18VAC120-10-180).

18VAC120-11. Public Participation Guidelines (adding 18VAC120-11-10 through 18VAC120-11-110).

Statutory Authority: §§2.2-4007.02, 54.1-201, 54.1-831, and 54.1-1802 of the Code of Virginia.

Effective Date: October 2, 2008.

Agency Contact: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4299, or email mark.courtney@dpor.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

Regulations

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

18VAC120-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Professional and Occupational Regulation. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC120-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Professional and Occupational Regulation, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

18VAC120-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC120-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC120-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

18VAC120-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC120-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC120-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

Regulations

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC120-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC120-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC120-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC120-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1488; Filed August 12, 2008, 3:02 p.m.

BOARD OF VETERINARY MEDICINE

Forms

NOTICE: The following forms have been filed by the Board of Veterinary Medicine. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.

FORMS (18VAC150-20)

Licensure Procedure for Veterinarians (rev. 8/07).

Application for a License to Practice Veterinary Medicine (rev. 8/07).

Instructions to the Veterinary Technician Licensure Applicant (rev. 8/07).

Application for a License to Practice Veterinary Technology (rev. 8/07).

Applicant Instructions for New, Upgrading to Full Service, or Change of Location Inspections (rev. 8/07).

Application for Veterinary Establishment Permit (rev. 8/07).

Application for Reinstatement (rev. 8/07).

~~Renewal Notice and Application—0301 (rev. 7/02).~~

~~Renewal Notice and Application—0302 (rev. 7/02).~~

Licensure Verification - Veterinarian (rev. 8/07).

Licensure Verification - Veterinary Technician (rev. 9/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/07).

Application for Registration to Practice as an Equine Dental Technician (eff. 11/07).

Recommendation for Registration as a Equine Dental Technician (eff. 11/07).

VA.R. Doc. No. R08-1570; Filed August 13, 2008, 9:06 a.m.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **19VAC30-10. Public Participation Policy (repealing 19VAC30-10-10 through 19VAC30-10-40).**

19VAC30-11. Public Participation Guidelines (adding 19VAC30-11-10 through 19VAC30-11-110).

Statutory Authority: §§2.2-4007.02 and 52-8.4 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: LTC Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

19VAC30-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of State Police. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

19VAC30-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of State Police, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

Regulations

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

19VAC30-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

19VAC30-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 19VAC30-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

19VAC30-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an

opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

19VAC30-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

19VAC30-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

19VAC30-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

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3. The agency determines that resolution of a controversy is unlikely.

19VAC30-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

19VAC30-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

19VAC30-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1499; Filed August 6, 2008, 2:13 p.m.

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TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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.</p>
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Title of Regulation: **20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-10, 20VAC5-315-20, 20VAC5-315-40, 20VAC5-315-50).**

Statutory Authority: §§12.1-13 and 56-594 of the Code of Virginia.

Effective Date: August 25, 2008.

Agency Contact: Kelly Gravely, Utilities Analyst, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9765 or email kelli.gravely@scc.virginia.gov.

Summary:

Pursuant to Chapters 877, 888, and 933 of the 2007 Acts of Assembly, §56-594 of the Code of Virginia was amended to (i) increase the allowable total aggregate generation capacity of net metering customers in each utility's Virginia service territory from 0.1% to 1.0% of the utility's adjusted Virginia peak-load forecast in the previous year; and (ii) require each utility, upon written request of a net metering customer (i.e., eligible customer-generator), to enter into a contract to purchase the generation that exceeds the customer's own usage for the 12-month net metering period at a rate approved by the commission, unless the parties agree to a higher rate. The amendments to the rules reflect the statutory increase of allowable total aggregate generation capacity of net metering customers and establish a framework for eligible customer-generators to contract with their electric distribution company for sale of generation exceeding their usage, and make a technical correction to 20VAC5-315-50. Changes from the proposed regulation include modification of the payment rate for investor-owned electric distribution companies to be equal to each individual electric distribution company's PJM zonal Locational Marginal

Price (LMP), rather than the systemwide PJM LMP. Investor-owned electric distribution companies not providing Virginia retail service within a PJM load zone will use the PJM systemwide LMP, as in the proposed regulation. Cooperatives will pay net metering customers a rate equal to the simple average of such cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period. The final regulation also amends the proposed regulation to allow the electric distribution company to offer the net metering customer the choice of an account credit in lieu of a direct payment, and to allow the electric distribution company to provide a link to the online version of its tariff in lieu of a hard copy upon request of the net metering customer.

AT RICHMOND, AUGUST 7, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00008

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ADOPTING FINAL REGULATIONS

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act ("Restructuring Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

On May 1, 2008, the Commission entered an Order Establishing Proceeding to amend the Net Metering Rules ("Order") to reflect statutory changes enacted by Chapters 877, 888, and 933 of the 2007 Acts of Assembly, which amended § 56-594 of the Code to: (1) increase the allowable total aggregate generation capacity of net metering customers in each utility's Virginia service territory from 0.1% to 1% of the utility's adjusted Virginia peak-load forecast in the previous year; and (2) require each utility, upon written request of a net metering customer (i.e., eligible customer-generator), to enter into a contract to purchase the generation that exceeds the customer's own usage for the 12-month net metering period at a rate approved by the Commission, unless the parties agree to a higher rate.

The Commission appended to its Order proposed amendments to the current Net Energy Metering Rules ("Proposed Rules") prepared by the Commission Staff to reflect the increase of allowable total aggregate generation capacity of net metering customers and to establish the framework for eligible customer-generators to contract with their electric distribution company for the sale of generation exceeding their usage. In addition, the Proposed Rules included a needed technical correction to 20 VAC 5-315-50.

Notice of the proceeding was published in the Virginia Register of Regulations on May 26, 2008, and in newspapers of general circulation throughout the Commonwealth.¹ Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before June 26, 2008.

Appalachian Power Company ("APCo"); Virginia Electric and Power Company ("Virginia Power"); the Interstate Renewable Energy Council ("IREC"); and the Potomac Edison Company d/b/a Allegheny Power ("Allegheny") filed comments on or before the June 26, 2008 deadline. The Virginia Energy Purchasing Governmental Association ("VEPGA") filed a Notice of Participation as a Respondent prior to the deadline, but did not comment on the Proposed Rules. In addition, the MD-DC-VA Solar Energy Industries Association and Old Mill Power Company (collectively, "MDV-SEIA") and Virginia, Maryland & Delaware Association of Electric Cooperatives ("Cooperatives")² filed comments after the deadline and requested leave from the Commission to file such comments out of time. No requests for hearing on the Proposed Rules were filed.

The Commission will accept the late-filed comments.

NOW THE COMMISSION, upon consideration of the record and applicable statutes, is of the opinion and finds that the regulations attached hereto as Appendix A should be adopted as final rules. To the extent parties have requested changes to the Proposed Rules that go beyond the scope of such rules, we will not expand the scope of this proceeding to consider issues beyond those required to implement the amendments to § 56-594 of the Restructuring Act and the needed technical correction.

The Proposed Rules required electric distribution companies that are also the energy service provider to purchase excess generation from net metering customers at a rate equal to the system-wide PJM day-ahead annual, simple average Locational Marginal Price ("LMP"). In filed comments, most interested parties proposed alternative payment rate methodologies. APCo requested that the Commission use each utility's individual PJM day-ahead annual, simple average LMP rather than the PJM system-wide LMP. Allegheny proposed a payment rate equal to the all-hours rate provided in each electric distribution company's co-generation tariff, less any distribution and transmission

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charges provided in the retail rate schedule under which the customer receives electric service. The Cooperatives proposed a payment rate equal to the avoided cost of energy, including fuel, under its respective wholesale power purchase agreement with the utility. IREC requested that the Commission establish a rate equal to the full retail rate (including transmission and distribution) applicable to the net metering customer. Finally, MDV-SEIA proposed three alternative payment rate methodologies, including: (1) the value of distributed photovoltaic and distributed wind systems to that specific utility and its non-net metering ratepayers at current electricity prices; (2) the full retail rate (including transmission and distribution) applicable to the net metering customer; or (3) each electric distribution company's zonal PJM LMP.

With respect to investor-owned electric distribution companies, the Commission agrees with APCo and MDV-SEIA that a payment rate equal to each individual electric distribution company's PJM zonal LMP is preferable to the system-wide PJM LMP and more accurately reflects the market conditions in each zone and the avoidable energy cost of the investor-owned utilities. Therefore, the Proposed Rules will be amended to require the investor-owned electric distribution company that is also the energy service provider to purchase excess generation from net metering customers at a rate equal to the PJM zonal day-ahead annual, simple average LMP for the load zone within which the electric distribution company's Virginia retail service territory resides. For those investor-owned electric distribution companies not providing Virginia retail service within a PJM load zone, the Commission will continue to prescribe the PJM system-wide LMP, as described in the Proposed Rules.

The Commission also recognizes that Cooperatives do not buy power directly from, or sell power to, the PJM energy markets and agrees that a more appropriate Cooperative rate for purchasing excess generation from net metering customers is the avoidable energy cost based on each Cooperative's wholesale power purchase agreement. Accordingly, the Proposed Rules will be amended to require each Cooperative that is also the energy service provider to purchase excess generation from net metering customers at a rate equal to the simple average of such Cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period.

The Proposed Rules require an electric distribution company to make full payment to the net metering customer no later than thirty days following the end of each net metering period or publication of the applicable LMP. Virginia Power requested that the Proposed Rules be amended to allow utilities to make payment within sixty days following the end of the net metering period or publication of the applicable LMP. The Cooperatives requested that utilities be provided flexibility in contracting with net metering customers,

including the applicable due date for payment. The Commission finds that the thirty day period in the Proposed Rules is appropriate and will not change this period in the final rules.

Several commenters requested that the Commission permit flexibility in the form of payment for excess generation provided by net metering customers. Virginia Power proposed that utilities be provided the option to credit customers' future bills rather than make payment for excess generation. The Cooperatives requested that distribution companies and net metering customers be permitted to contract for alternative payment arrangements, including credits for excess generation, rather than payment. MDV-SEIA proposed on-going and unlimited "roll-over" of excess generation from one net metering period to the next (rather than annual cash payments) until such time as the net metering customer requests a cash settlement, or until the generator ceases to be a net metering customer. The Commission will amend the Proposed Rules to allow the electric distribution company to offer the net metering customer the choice of an account credit in lieu of a direct payment.

Virginia Power requested that utilities be allowed to provide net metering customers an internet link to the applicable net metering tariff, rather than a hard copy of such tariff. The Commission agrees that an internet link may be preferable for some customers, and will allow the electric distribution company to provide a link in lieu of a hard copy upon request of the net metering customer.

The Cooperatives requested that the Commission impose limits on a non-residential net metering customer's generation to ensure that net metering is used primarily to offset all or part of the net metering customer's consumption, and proposed that no limits be placed on the distribution company if it elects to take reasonable steps to regulate abuse of the net metering rules. The Commission will not address the Cooperatives' general concerns as part of this proceeding. In the event that a Cooperative believes a specific net metering customer has violated the requirements of the Restructuring Act or the Net Metering Rules and files a proper complaint with the Commission thereon, we will address such violations on a case-by-case basis. Likewise, the Commission declines to expand the scope of this proceeding to address time-of-use metering, as requested by MDV-SEIA.

The Cooperatives requested that the Commission clarify that a net metering customer may submit a single request for a power purchase agreement ("PPA") covering multiple net metering periods, rather than a separate request for each individual net metering period. The Commission clarifies that a single PPA request for multiple net metering periods is permissible under the rules as revised herein. IREC requested that the Commission clarify that the rules do not limit the aggregate generation capacity of distributed generation

facilities that electric distribution companies are required to interconnect pursuant to Va. Code § 56-578 A. The Commission does not believe that any change to the Proposed Rules is required to address IREC's concerns. The Commission notes that the net metering rules specifically and carefully define Renewable Fuel Generator so as to avoid any conflict with interconnection requirements relative to the broader category of distributed generation in § 56-578 A.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Net Energy Metering are hereby adopted as shown in Appendix A to this Order, effective as of August 25, 2008.

(2) A copy of this Order with Appendix A including the Regulations Governing Net Energy Metering shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before October 3, 2008, all electric utilities in the Commonwealth subject to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall file with the Commission's Division of Energy Regulation any revised tariff provisions necessary to implement the regulations as adopted herein.

(4) There being nothing further to come before the Commission, this case shall be removed from the docket and the papers filed herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

¹ See, Memorandum from Laura S. Martin and Affidavits of Publication, filed in this docket on June 2, 2008.

² The Association submitted its comments along with and on behalf of its Virginia members: A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and Southside Electric Cooperative.

20VAC5-315-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of §56-594 of the Virginia Electric Utility Restructuring Act (§56-576 et seq. of the Code of Virginia). They establish requirements intended to facilitate net energy metering for customers owning and operating, or contracting

with persons to own or operate, or both, an electrical generator that uses renewable energy, as defined by §56-576 of the Code of Virginia as its total fuel source. These regulations will standardize the interconnection requirements for such facilities and will govern the metering, billing, payment and contract requirements between net metering customers, electric distribution companies and energy service providers.

20VAC5-315-20. Definitions.

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

"Billing period" means, as to a particular customer, the time period between the dates on which the electric distribution company or energy service provider, as the case may be, issues the customer's bills.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the net metering customer's premises.

"Energy service provider" means the entity providing electric energy to a net metering customer, either as a tariffed, competitive, or default service pursuant to §56-585 of the Code of Virginia.

"Excess generation" means the amount by which electricity generated by the renewable fuel generator exceeds the electricity consumed by the net metering customer for the net metering period.

"Net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, a renewable fuel generator under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the date of final interconnection of the renewable fuel generator with the electric distribution company's facilities.

"Net metering service" means measuring the difference, over the net metering period between electricity supplied to a net metering customer from the electric grid and the electricity generated and fed back to the electric grid by the net metering customer, using a single meter or, as provided in 20VAC5-315-70, additional meters.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity and the Commonwealth or any municipality.

"Renewable fuel generator" means an electrical generating facility that:

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1. Has an alternating current capacity of not more than 10 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers;
2. Uses renewable energy, as defined by §56-576 of the Code of Virginia, as its total fuel source;
3. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
4. Is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor;
5. Is interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's facilities; and
6. Is intended primarily to offset all or part of the net metering customer's own electricity requirements.

20VAC5-315-40. Conditions of interconnection.

A. A prospective net metering customer may begin operation of his renewable fuel generator on an interconnected basis when:

1. The net metering customer has properly notified both the electric distribution company and energy service provider (in accordance with 20VAC5-315-30) of his intent to interconnect;
2. If required by the electric distribution company's net metering tariff, the net metering customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch;
3. A licensed electrician has certified, by signing the commission-approved notification form, that any required manual disconnect switch has been installed properly and that the renewable fuel generator has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code;
4. The vendor has certified, by signing the commission-approved notification form, that the renewable fuel generator being installed is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003;
5. In the case of static inverter-connected renewable fuel generators with an alternating current capacity in excess of 10 kilowatts, the net metering customer has had the inverter settings inspected by the electric distribution company. The inspecting electric distribution company may impose a fee on the net metering customer of no more than \$50 for such inspection;
6. In the case of nonstatic inverter-connected renewable fuel generators, the net metering customer has

interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The inspecting electric distribution company may impose a fee on the net metering customer of no more than \$50 for such inspection.

7. In the case of renewable fuel generators with an alternating current capacity greater than 25 kilowatts, the following requirements shall be met before interconnection may occur:

- a. Electric distribution facilities and customer impact limitations. A renewable fuel generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.
- b. Secondary, service, and service entrance limitations. The capacity of the renewable fuel generator shall be less than the capacity of the electric distribution company-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.
- c. Transformer loading limitations. The renewable fuel generator shall not have the ability to overload the electric distribution company transformer, or any transformer winding, beyond manufacturer or nameplate ratings, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.
- d. Integration with electric distribution company facilities grounding. The grounding scheme of the renewable fuel generator shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective net metering customer, the electric distribution company shall assist the prospective net metering customer in selecting a grounding scheme that coordinates with its distribution system.
- e. Balance limitation. The renewable fuel generator shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to

the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

B. A prospective net metering customer shall not be allowed to interconnect a renewable fuel generator if doing so will cause the total rated generating alternating current capacity of all interconnected renewable fuel generators within that customer's electric distribution company's Virginia service territory to exceed ~~0.1%~~ 1.0% of that company's Virginia peak-load forecast for the previous year. In any case where a prospective net metering customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected renewable fuel generators within that electric distribution company's service territory to exceed ~~0.1%~~ 1.0% of that company's Virginia peak-load forecast for the previous year, the electric distribution company shall, at the time it becomes aware of the fact, send written notification to such prospective net metering customer and to the commission's Division of Energy Regulation that the interconnection is not allowed. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to §56-594 D of the Code of Virginia.

C. Neither the electric distribution company nor the energy service provider shall impose any charges upon a net metering customer for any interconnection requirements specified by this chapter, except as provided under subdivisions A 5 and 6 of this section, and 20VAC5-315-50 as related to off-site metering.

D. The net energy metering customer shall immediately notify the electric distribution company of any changes in the ownership of, operational responsibility for, or contact information for the generator.

20VAC5-315-50. Metering, billing, payment and tariff considerations.

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a net metering customer, electric distribution company or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer was not a net metering customer with the exception that time of use metering is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

In instances where net metering customers' metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the net metering customer. In instances where a net metering customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment which is intended to be read off site, the electric distribution company may charge the net metering customer its actual cost of installing any additional equipment necessary to implement net metering service.

If electricity generated by the net metering customer and fed back to the electric grid exceeds the electricity supplied to the net metering customer from the ~~grid~~ grid during a net metering period, the net metering customer shall receive no compensation from the electric distribution company nor the energy service provider unless that net metering customer has entered into a ~~purchase power~~ purchase agreement [~~contract~~] with the electric distribution company and/or the energy service provider.

If the electric distribution company is also the energy service provider of the net metering customer, the electric distribution company, upon the written request of the net metering customer, shall enter into a power purchase agreement for the excess generation for [one or more] net metering periods [, as requested by the net metering customer,] that begin on or after July 1, 2007. For net metering periods beginning during the time period July 1, 2007, through December 31, 2008, the written request of the net metering customer shall be submitted prior to the end of the net metering period. For net metering periods beginning on or after January 1, 2009, the written request of the net metering customer shall be submitted prior to the beginning of the net metering period. The power purchase agreement shall be consistent with this chapter and obligate the [investor-owned] electric distribution company to purchase the excess generation for requested net metering periods at a price equal to the [systemwide] PJM Interconnection, L.L.C. (PJM) [zonal] day-ahead annual, simple average LMP (locational marginal price) [for the PJM load zone in which the electric distribution company's Virginia retail service territory resides], as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. [If the Virginia retail service territory of the investor-owned electric distribution company does not reside within a PJM load zone, the power purchase agreement shall obligate the electric distribution company to purchase excess generation for requested net

Regulations

metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP, as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. The cooperative electric distribution company shall be obligated by the power purchase agreement to purchase excess generation for requested net metering periods at a price equal to the simple average of the cooperative electric distribution company's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.] The electric distribution company shall make full payment annually to the net metering customer within 30 days following the latter of the end of the net metering period or the [date of the] PJM Market Monitoring Unit's publication of the [applicable calendar year previous calendar-year's applicable zonal or] systemwide PJM day-ahead annual, simple average LMP (locational marginal price). [The electric distribution company may offer the net metering customer the choice of an account credit in lieu of a direct payment.] The option of a net metering customer to request payment for excess generation for the net metering period and the corresponding price or pricing formula applicable to such excess generation shall be clearly delineated in the net metering tariff of the electric distribution company. A copy of such tariff [or an Internet link to such tariff, at the option of the customer,] shall be provided to each customer requesting interconnection of a renewable fuel generator.

If electricity generated by the net metering customer and fed back to the electric grid exceeds the electricity supplied to the net metering customer from the grid during any billing period (billing period credit), the net metering customer shall be required to pay only the nonusage sensitive charges for that billing period. Such billing period credits shall be accumulated, carried forward and applied at the first opportunity to any billing periods having positive net consumptions. However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the net metering customer's positive net billed consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and applied from the previous net metering period.

VA.R. Doc. No. R08-1264; Filed August 7, 2008, 2:09 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Final Regulation

REGISTRAR'S NOTICE: The Department of Taxation is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Taxation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (adding 23VAC10-20-155).**

23VAC10-210. Retail Sales and Use Tax (repealing 23VAC10-210-20).

Statutory Authority: §58.1-203 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: Jennifer Lewis, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2341, FAX (804) 371-2355, or email jennifer.lewis@tax.virginia.gov.

Summary:

The amendment moves the section pertaining to administrative rulings from the Retail Sales and Use Tax regulation (23VAC10-210) to the General Provisions regulation (23VAC10-20). The amendment does not impact or change the policy on administrative rulings.

23VAC10-20-155. Administrative rulings.

A. Generally. Any person may request a written ruling from the Tax Commissioner when there is a question about the application of a tax to a specific situation. Any person requesting such a ruling must provide the commissioner with all facts relevant to the situation and may argue for the interpretation of the law most favorable to him. All rulings shall be issued on the basis of the facts presented. Any misrepresentation or change in the factual situations as presented in the ruling request shall invalidate any ruling rendered.

B. Effect of rulings. A written ruling becomes invalid when changed by an amendment to the law, a court decision, or a regulation issued by the commissioner. However, any person who acts on a written ruling that is later revoked, set aside, or superseded by the courts or the commissioner will have acted

in good faith during the period in which such ruling is in effect.

C. Publication of rulings. Pursuant to §58.1-204 of the Code of Virginia, the commissioner may publish any ruling deemed to be of interest to taxpayers and/or practitioners. Confidential information contained in published rulings shall be deleted.

For other administrative remedies, see 23VAC10-20-160. For the administrative appeals process, see 23VAC10-20-165.

23VAC10-210-20. Administrative rulings. (Repealed.)

~~A. Generally. Any person may request a written ruling from the Tax Commissioner when there is a question about the application of the sales and use tax to a specific situation. Any person requesting such a ruling must provide the Commissioner with all facts relevant to the situation and may argue for the interpretation of the law most favorable to him. All rulings shall be issued on the basis of the facts presented. Any misrepresentation or change in the factual situations as presented in the ruling request shall invalidate any ruling rendered.~~

~~B. Effect of rulings. A written ruling becomes invalid when changed by an amendment to the law, a court decision, or a regulation issued by the Commissioner. However, any person who acts on a written ruling which is later revoked, set aside, or superseded by the courts or the Commissioner will have acted in good faith during the period in which such ruling is in effect.~~

~~C. Publication of rulings. Pursuant to §58.1-204 of the Code of Virginia, the Commissioner may publish any ruling deemed to be of interest to taxpayers and/or practitioners. Confidential information contained in published rulings shall be deleted.~~

~~For other administrative remedies, see General Provisions Regulations.~~

VA.R. Doc. No. R08-1566; Filed August 13, 2008, 1:20 p.m.



GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

July 28, 2008

Administrative Letter 2008 - 10

To: All Continuing Care Providers Registered in Virginia

Re: Amended Annual Disclosure Statement § 38.2-4904 of the Code of Virginia

The purpose of this administrative letter is to remind registered continuing care providers of the requirements of § 38.2-4904 D of the Code of Virginia.

Pursuant to § 38.2-4904 of the Code Virginia registered continuing care providers are required to file an annual disclosure statement with the Commission. In addition, an amended disclosure statement is required when the amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or failing to state any material fact required to be stated therein by the provisions of Chapter 49 of Title 38.2 of the Code of Virginia. An amended disclosure statement must be filed with the Commission prior to being delivered to any resident or prospective resident pursuant to § 38.2-4904 D of the Code of Virginia. Any noncompliance with this administrative letter may subject the continuing care provider to a cease and desist order, injunctions or a restraining order pursuant to § 38.2-4915, and/or penalties pursuant to § 38.2-4916.

The disclosure statement guidelines and Chapter 49 may be viewed and printed at:

<http://www.scc.virginia.gov/division/boi/webpages/inspapedocs/ccrapplication.pdf>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC3802000004900000000000>

Questions regarding this letter may be directed to: Andy R. Delbridge, Supervisor, Company Licensing and Regulatory Compliance Section, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, (804) 371-9616, or email andy.delbridge@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

NOTE: Please note that the Bureau of Insurance will be converting to Sircon for States, a new web-based computer system, effective Tuesday, September 16. As a result, the Bureau will be unable to process any transactions or provide information for producer licensing, consumer services, or company admissions from 5:00 p.m., Thursday, September 4 through Monday, September 15. Please keep these dates in

mind as you plan for your business needs in September. See the Bureau website for further details.

BOARD OF COUNSELING

Notice of Periodic Review

The Virginia Board of Counseling is conducting a periodic review of its current regulations governing certified substance abuse counselors and certified rehabilitation providers and is requesting comment on the following current regulations:

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling.

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers.

Public comment period: September 1, 2008, through October 1, 2008.

The board will consider whether the existing regulations are essential to protect the health, safety and welfare of the public in providing assurance that licensed practitioners are competent to practice. Alternatives to the current regulations or suggestions for clarification of the regulation will also be received and considered.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233.

Comments may also be emailed to elaine.yeatts@dhp.virginia.gov or faxed to (804) 527-4434. Regulations may be viewed online at www.dhp.virginia.gov or copies will be sent upon request.

DEPARTMENT OF ENVIRONMENTAL QUALITY

State Program General Permit 07-SPGP-01 Report

Purpose of notice: The Virginia Department of Environmental Quality seeks public comment on the state's first annual review report for the State Program General Permit 07-SPGP-01, granted by the United States Army Corps of Engineers for the discharge of dredged or fill material in nontidal waters of the United States associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia.

Public comment period: August 6, 2008, to September 5, 2008.

Type of response: Public comment.

DEQ has prepared the first annual review report, which is available on DEQ's web page <http://www.deq.virginia.gov/wetlands/publicnotices.html>, or by contacting the person named below. The public may also review the report documents at DEQ's central office in Richmond. DEQ is interested in receiving public comments regarding the report and/or the overall effectiveness of the State Program General Permit (07-SPGP-01) process.

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.

Contact for public comments, document requests and additional information: Elizabeth (Liz) McKercher, Department of Environmental Quality, Central Office, Office of Water and Wetlands Protection, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4347 or email ermckercher@deq.virginia.gov.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cmberndt@deq.virginia.gov.

Total Maximum Daily Load - Bailey Bay, Bailey Creek, Cattail Creek, Powell Creek, and the James River

Notice is hereby given that the Department of Environmental Quality (DEQ) seeks public comment from interested persons on the proposed minor modifications of this total maximum daily load (TMDL) developed for segments of Bailey Bay, Bailey Creek (tidal and nontidal), Cattail Creek, Powell Creek, and a tidal segment of the James River.

A total maximum daily load for E. coli was developed to address the bacterial impairments in the waterways and counties mentioned above. This TMDL was approved by the Environmental Protection Agency on July 10, 2008. The report is available at: <http://www.deq.virginia.gov/tmdl/drftmdls/jmsbail.pdf>.

The Virginia Department of Environmental Quality seeks written comments from interested persons on the modification of this TMDL. The report identifies Honeywell International Incorporated (VA0005291) as a VPDES major industrial plant with a design flow of 189.6 MGD and provides a waste load allocation (WLA) of 3.30×10^{14} cfu/yr. Tables ES.1 (page xxii), Table 3.2 (page 3-5), Table 4.6 (page 4-17), Table 5.11 (page 5-21), Table 5.12 (page 5-22), and Table 5.13 (page 5-23) of the report make reference to Honeywell International Incorporated (VA0005291). DEQ proposes to remove the WLA assigned to Honeywell International Incorporated (VA0005291) and associated wording from the TMDL report because the facility does not

discharge E. coli bacteria in its effluent. The WLA of 3.30×10^{14} cfu/yr will be removed from the above tables and added to the future load in Tables 5.11, 5.12, and 5.13.

The public comment period for these modifications will end on October 1, 2008. Please include the name, address, and telephone number of the person submitting comments. Send to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, phone (804) 527-5124 or email mjismigo@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on August 13, 2008. The order 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 Forty-Four (08)

Virginia's Instant Game Lottery 1062; "\$120 Million Cash Blowout" (effective 8/12/08)

BOARD OF OPTOMETRY

Notice of Periodic Review

The Virginia Board of Optometry is conducting a periodic review of its current regulations governing optometrists and is requesting comment on the following current regulation:

18VAC105-20. Regulations Governing the Practice of Optometry.

The board will consider whether the existing regulations are essential to protect the health, safety and welfare of the public in providing assurance that licensed practitioners are competent to practice. Alternatives to the current regulations or suggestions for clarification of the regulation will also be received and considered.

Public comment period: September 1, 2008, through October 1, 2008.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463.

Comments may also be emailed to elaine.yeatts@dhp.virginia.gov or faxed to (804) 527-4434. Regulations may be viewed online at www.dhp.virginia.gov or copies will be sent upon request.

General Notices/Errata

STATE BOARD OF SOCIAL SERVICES

Notice of Periodic Review

Pursuant to Executive Order Number 36 (2006), the Department of Social Services is currently reviewing 22VAC15-51, Background Checks for Licensed Child Day Centers, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 36 (2006) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until September 22, 2008, in care of Karen Cullen, Program Consultant, Division of Licensing Programs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, by email to karen.cullen@dss.virginia.gov, or by facsimile to (804) 726-7132.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Consent Special Order - City of Colonial Heights

Purpose of Notice: To seek public comment on the terms of a proposed consent special order (order) issued to the City of Colonial Heights regarding its municipal separate storm sewer system.

Public comment period: September 1, 2008, through October 1, 2008.

Summary of proposal: The order describes a settlement between the board and Colonial Heights to ensure compliance with the Virginia Stormwater Management Act and Regulations and the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems.

How to comment: DCR accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received during the comment period beginning August 1, 2008, and ending October 1, 2008. A copy of the order is available on request.

Contact for copies of documents (e.g., proposed order) or other information: Elizabeth Anne Crosier, Virginia Department of Conservation, 203 Governor Street, Suite 206,

Richmond, VA 23219, telephone (804) 225-2549, FAX (804) 786-1798, or email annecrosier@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Virginia Soil and Water Conservation Board, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order - Alliant Techsystems, Inc., and the Radford Army Ammunition Plant

Citizens may comment on a proposed consent order for a facility in Montgomery County, Virginia.

Public comment period: September 2, 2008, to October 1, 2008.

Purpose of notice: To invite the public to comment on a proposed consent order.

A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the facility and entered into by mutual agreement.

Consent order description: The State Water Control Board proposes to issue a consent order to the Alliant Techsystems, Inc. and the United States Army, RFAAP to address alleged violations of Virginia's regulations. The location of the facility where the alleged violation occurred is the Radford Army Ammunition Plant (RAAP). The consent order describes a settlement to resolve effluent limit violations and unpermitted discharges at RAAP. It includes a civil charge.

How a decision is made: After public comments have been considered, the State Water Control Board will make a final decision.

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.

To review the consent order: The public may review the proposed consent order at the DEQ West Central Regional Office every work day by appointment or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Robert Steele, Department of Environmental Quality, West Central Regional Office, Roanoke, VA 24019, telephone (540) 562-6777, FAX (540) 562-6725, or email rpsteele@deq.virginia.gov.

Proposed Consent Order - Black Stallion, LLC

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility.

Public comment period: September 1, 2008, to October 1, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Black Stallion, LLC, to address alleged violations of the regulations. The location of the UST facility where the alleged violations occurred is in Greene 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, Valley Regional Office, Department of Environmental Quality, 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.

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.

ERRATA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code.**

Publication: 24:14 VA.R. 1907-1940 March 17, 2008.

Correction to Final Regulation:

Page 1939, 13VAC5-51-155, in Title column, change "NFPA 25-07" to "NFPA 25-08"

Page 1940, Documents Incorporated by Reference, column 2, change "NFPA 25-07" to "NFPA 25-08"

VA.R. Doc. No. R07-124

